A

PRACTICAL TREATISE

OF

The Law

OF

PATENTS FOR INVENTIONS.

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TO

THE RIGHT HONOURABLE

JOHN SINGLETON,

BARON LYNDHURST,

LORD HIGH CHANCELLOR OF GREAT BRITAIN,

&c. &c. &c.

THIS VOLUME

IS,

BY HIS LORDSHIP'S PERMISSION,

WITH ALL RESPECT, GRATEFULLY INSCRIBED,

BY HIS FAITHFUL

AND OBLIGED SERVANT,

EDWARD HOLROYD.

PREFACE.

THE following Treatise, in which the Author has attempted to methodise and explain the Law of Patents for Inventions, is submitted to the Public, with a hope that it may be found useful to the general reader as well as to the members of his profession.

Middle Temple,
June, 1830.

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ADDENDA & CORRIGENDA.

Page 18. note (*d*), Lewis v. Marlin now reported 4 *Car.* & *P.* 52.

Page 32. note (*r*), Lewis v. Marlin now reported. 4 *Car.* & *P.* 52.

Page 73. in the margin, after the words "public use" dele the period.

Page 56. note, line 16. for "neat" read "heat."

Page 74. dele the words, "or shall do any thing contrary to the stat. 6 G. 1. c. 18," &c. to the words "therein mentioned;" and ibid., in the margin, dele the words "or do any thing contrary to the 6 G. 1. c. 18." The stat. 6 G. 1. c. 18. s. 18. is repealed. See page 136.

Page 110. after the case of Turner v. Winter, insert the following:—"A patent was granted for an improved method of drying and finishing paper. The specification stated 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, which cloth is shown in the drawing by blue lines.' It turned out as to the conducting medium, that no other material except that which the patentee said in his specification he preferred, would answer the purpose. Held, that the specification was bad, as other persons, misled by its terms, might be induced to make experiments which the patentee knew must fail. Crompton v. Ibbotson, 1 Danson and Lloyd, 33."

Page 117. note (*i*), add, "and see Crompton v. Ibbotson, 1 Dans. and Lloyd, 33."

Page 119. note (*n*), add, "and see Crompton v. Ibbotson, 1 Dans. and Lloyd, 33."

Page 121. line 4. S. P. Lewis v. Marlin, 4 Car. & P. 52. Specification made of a machine, and something described therein as being used in the manufacture, but not as an essential part, which was at the time of specifying used by the patentee, and which there was no reason to believe the patentee did not think was a useful part of the machine. The patentee subsequently discovered that the thing so described was unnecessary. Held, no objection to the validity of the patent.

Page 149. four lines from the bottom, for " service," read " exercise."

Page 171. line 13. dele period after " record."

Ibid. note (*g*), for " 8 Wentw. 481," read " 8 Wentw. 431.

Page 188. note (*z*), for " 4th Inst. 87." read " 4th Inst. 88."

A

PRACTICAL TREATISE

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CHAPTER I.

INTRODUCTION.

It has been observed by a learned and popular author (*a*), that "to hurt, in any degree, the interest of any one order of citizens, for no other purpose, but to promote that of some other, is evidently contrary to that justice and equality of treatment which the sovereign owes to all the different orders of his subjects." It cannot be denied that such was the injurious effect of many of those monopolies which were carried to an enormous height during the reign of Queen Elizabeth. (*b*) But a grant, made by the King

(*a*) Adam Smith, in his Inquiry into the Nature and Causes of the Wealth of Nations, vol. iii. p. 18. book 4. chapter 8.

(*b*) 20th Nov. 1601. A great debate took place in the House of Commons concerning monopolies. The affair was first brought in by Mr. Lawrence Hide, for the purpose of passing an act, to be

to the inventor, of the sole use and benefit of a new, material, and beneficial invention, for a limited period, under proper restrictions, has a

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entitled "An Act for the Explanation of Common Law in certain cases of Letters Patent."

It appears from the speeches made on this occasion, that an excessive public grievance then existed, from the multiplication of letters patent for monopolies of almost every branch of trade and manufacture. The following were mentioned, amongst others: salt, aqua vitæ, vinegar, currants, train-oil, oil of blubber, brushes, pots, powder, starch, ox shin-bones, lists of cloth, ashes, aniseeds, steel, cards, saltpetre, &c. There was very little difference of opinion as to the grievances, for many members cited some from their own knowledge.

The following is an extract from the speech of Mr. Francis Bacon, the attorney-general (afterwards Lord Chancellor Verulam):—"The Queen, as she is our sovereign, has 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: for the first, she may grant *non obstante* contrary to the penal laws, which truly, according to my own conscience," and so struck himself on 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 any thing beneficial for the commonwealth, or bring any new invention, 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 unto her by petition, and some by *quo warranto* in the Exchequer."

After much debate whether the proceeding should be by bill, or by petition to her Majesty, but before any thing was con-

very different tendency. A licence or privilege of this kind, seems indeed, the easiest and most obvious way in which a man can be rewarded and recompensed, for employing his time, ingenuity and labour, and spending his money, in experiments of which the public is afterwards to reap the benefit. A privilege like this does not come within the legal definition of a monopoly, nor ought it, at the present day, to be characterised by that odious name.

Lord Coke thus defines a monopoly :—

A monopoly described.

"A monopoly 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." (*c*)

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cluded upon, the Queen sent a message to the House, importing that the monopolies should be revoked; whereupon an address of thanks was voted: it was delivered to her Majesty by the Speaker, attended by about 140 members, on the 30th of November, 1601. The following is an extract from her Majesty's 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 had 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."—See Parl. Hist. of England, vol. iv. p. 452. &c., and Cobb. Parl. Hist. of England, vol. i. p. 923.

(*c*) 3 Inst. 181., and see, 2 Hawk. P. C. b. 1. c. 79. § 1. and 4 Black. Com. 159.

Grant of a monopoly void at common law.

All grants of this kind relating to any known trade, are made void by the common law, as being against the freedom of trade, and discouraging labour and industry, and restraining persons from getting an honest livelihood by a lawful employment, and putting it in the power of particular persons to set what prices they please on a commodity; all which are manifest inconveniences to the public. (*d*) But it seemeth clear, that the king may, for a reasonable time, make a good grant, to any one, of the sole use of any art invented or first brought into the realm by the grantee. (*e*)

Stat. 21 Jac. 1. c. 3.

It appears by the preamble of the statute 21 Jac. 1. c. 3. (*g*), that upon misinformations, and upon untrue pretences of public good, many grants of monopolies had been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of his Majesty's subjects, contrary to the laws of the realm; and it was by that statute, for avoiding thereof, and preventing of the like in time to come, declared and enacted, that all monopolies, and all com-

(*d*) Hawk. P. C. b. 1. c. 79. § 2., and see 3 Inst. 181., and the case of *monopolies*, Darcy v. Allein, 11 Co. 84. b. S. C. Noy 173. Moor, 671.

The case of Darcy against Allein was tried before Chief Justice Popham. It was an action for an infringement of a patent granted by Queen Elizabeth to Edward Darcy, groom of the chamber, for the importation and manufacture of playing cards. The patent was set aside as a monopoly, against the common law, and against divers acts of parliament.

Lord Coke says, that the judgment given in this case was the principal motive of the publishing of the King's Book (1610), mentioned in the preamble of the act 21 Jac. 1. c. 3., and that that book was a great motive of obtaining the act to be passed.

(*e*) Hawk. P. C. b. 1. c. 79. § 6. and Noy, 182, 183.

(*g*) See the stat. in Appendix.

missions, grants, licences, charters, and letters patents thereafter made or granted, or thereafter to be made or granted, to any person or persons, bodies politic or corporate, of or for the sole buying, selling, making, working, or using of any thing within the realm or the dominion of Wales, were contrary to the laws of the realm, and so were, and should be, utterly void and of none effect.

In the 6th section of the above-mentioned statute is the following proviso :—

Proviso in favour of letters patent for new inventions, under certain restrictions.

"Provided also and be it declared and enacted, that any declaration before mentioned shall not extend to any letters patents and grants of privilege, for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patents and grants shall not use, so as also they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient; the said fourteen years to be accounted from the date of the first letters patents, or grant of such privilege, hereafter to be made, but that the same shall be of such force as they should be, if this act had never been made, and of none other." (*h*)

(*h*) There are other provisos and exceptions in the act, in favour of letters patents for specific objects, which it is unnecessary to mention here. See the act in Appendix.

Force of the stat. 21 Jac. 1. c. 3.

The statute, having first made a general declaration against the validity of monopolies, leaves the law as to patents for the sole working or making of any manner of new manufacture, with the restrictions therein mentioned, as if the statute had not been made, only acknowledging by the proviso that such patents may be good.

Stat. 21 Jac. 1. c. 3. declaratory act.

The statute is a declaratory act; declaring, not creating the law; and it is only such patents as were lawful before the statute, that can be good now. Others are declared void, not *de novo* made void.

Patent for a new invention for reasonable time, good at common law.

At the common law then, a patent to the inventor, for a reasonable time, for the sole working or making a manufacture newly invented, was good; if not good at common law, it would not be good now.

Properties stated by Lord Coke, that letters patent should have, to come within the proviso.

Lord Coke, who was chairman to the committee on the bill passed in the 21 Jac. 1., says, that letters patents, to come within the proviso in the 6th section of that statute, must have seven properties. (*i*)

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 making of such letters patents, did not use; for albeit it were newly invented, yet if any other did use it, at the making of the

(*i*) 3 Inst. 183, 184.

letters patents, 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 is it 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 paring and melting, &c. of lead ore: for there it was said, that that was to put but a new button to an old coat, and it is much easier to add than to invent.

"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." (*k*)

5. "Nor mischievous to the state, by raising of prices of commodities at home. In every such new manufacture 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."

(*k*) It has long been established that a patent may be granted for an addition or improvement, provided it be so claimed. It would seem from the last resolution in Bircot's case, as stated by Lord Coke, (viz. that no old manufacture in use before can be prohibited, though the new manufacture be substantially invented according to law,) as if the patent in that case had been claimed for the whole, and not for the improvement only.

7. "Nor generally inconvenient."

Of this Lord Coke 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 four-score men, who got their livings by it. It was ordained (*l*) 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." (*m*)

Lord Coke's reason, why letters patent, for new inventions, are good in law.

Lord Coke further states, that the reason why such a privilege as comes within the proviso in the statute of James 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 that he should have a privilege for his reward (and

(*l*) This was by stats. 22 Ed. 4. c. 5., and 7 Ed. 6. c. 8. These acts were repealed by 1 Jac. 1. c. 25.

(*m*) In the case of the King v. Arkwright, Dav. Pat. Ca. 61., and Bull. N. P. 77., which was tried by Buller J., in 1785, on a *scire facias*, to repeal a patent, and where one of the issues was, that the patent was inconvenient to his Majesty's subjects in general, Buller J., held that it was a mere consequential issue, and a question of law, "whether the patent is prejudicial or not;" that it stated no fact which could be tried by a jury, or which the defendant could come prepared to answer, and refused to hear any evidence upon it. (But see Rex v. Eyre, 1 Stra. 43.)

Since instruments for facilitating and abridging labour, have been ranked among the sources of the wealth of nations, an opinion has prevailed widely differing from that stated by Lord Coke, as to the effect of machinery to diminish labour.

the encouragement of others in the like), for a convenient time." (*n*)

But he adds, "it was thought that the times limited by the act were too long for the private, before the common-wealth should be partaker of the privilege, and such as served such privileged persons by the space of seven years, in making or working of the new manufacture (which is the time limited by law of apprenticehood), must be apprentices or servants still, during the residue of the privilege, by means whereof such numbers of men would not apply themselves thereunto as should be requisite for the common-wealth, after the privilege ended; and this was the true cause wherefore, both for the time past and for the time to come, they were left of such force as they were before the making of the act." (*o*)

The reasoning of Lord Coke might be very applicable to his time, when apprenticeships were deemed essential, and were enforced by law; but such a doctrine clearly would not now operate, to prevent the legislature declaring such privileges to be good, and protecting them by any necessary enactments.

Various Acts vesting the properties of different works in the proprietors for limited periods.

Many acts of parliament have been passed, at various times, to vest the properties of different works in the proprietors thereof for limited periods; and they all appear, by their title or preamble, to have in view the encouragement of the arts to which they relate.

(*n*) 3 Inst. 184. (*o*) Ibid.

Acts relating to copyright.

By the several acts of 8 Ann. c. 19., 41 Geo. 3. c. 107., and 54 Geo. 3. c. 156., made for the encouragement of learning, there is secured to the author of any book, and his assignee or assigns, the sole liberty of printing and reprinting such book, for the term of twenty-eight years from the day of first publishing the same; and if the author shall be living at the end of that period, for the residue of his natural life: and if any person shall, within the time granted, print, reprint, or import such book without the consent of the author or proprietor of the copyright in writing, he is made liable to an action on the case for damages, and double costs of suit; and also to forfeit such book, and every sheet, and to deliver the same to the author or proprietor of the copyright, upon order of court; and also to forfeit three-pence for every sheet, either printed or printing; one moiety to the king, and the other to any person who shall sue for the same.

Acts for encouraging the art of engraving.

By the statutes 8 Geo. 2. c. 13. and 7 Geo. 3. c. 38., made for the encouragement of the arts of designing, engraving, and etching historical and other prints, the sole right and liberty of printing and reprinting any historical print, or any print of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print, is vested in the inventors and engravers thereof for the term of twenty-eight years from the first publication; and any person pirating the same in manner mentioned in the 8 Geo. 2. c. 13., is

made liable to forfeit the plate on which such print shall be copied, and every sheet whereon such print shall be copied and printed, to the proprietor of the original, who is forthwith to destroy the same; and the offender is further to forfeit five shillings for every print found in his custody, one moiety to the king, and the other to any person who shall sue for the same. And by the 17 Geo. 3. c. 57., which was made for more effectually securing the property of prints to inventors and engravers, persons pirating such prints, &c. are made liable to an action on the case for damages, at the suit of the proprietor, together with double costs.

Acts for encouraging the arts of designing, and printing linens, &c.

By the several acts 27 Geo. 3. c. 38., and 34 Geo. 3. c. 23., made for the encouragement of the arts of designing and printing linens, cottons, calicoes, and muslins, every person who shall invent, design, and print, or cause to be invented, designed, and printed, and become the proprietor of any new and original pattern or patterns for printing linens, cottons, calicoes, or muslins, has secured to him the sole right and liberty of printing and reprinting the same for the term of three months from the first publication; and any person who, within that period, prints the same without the consent of the proprietor in writing, is made liable to an action on the case for damages.

Acts for encouraging the art

By the several acts 38 Geo. 3. c. 71., and 54 Geo. 3. c. 56., made for encouraging the art of

of making new models, and casts of busts, &c.

making new models, and casts of busts, and other things therein mentioned, the sole right and property of every new and original sculpture, model, copy, and cast of the human figure, or any part thereof, and of every bust, and of every new and original sculpture, model, copy, and cast representing any animal, &c. is vested in the proprietor for fourteen years; and if living at the expiration of that term, for the further term of fourteen years; and every person putting forth any pirated copy, or pirated cast, of such new and original sculpture, or model, or copy, or cast, or bust, is made liable to an action on the case for damages, to be brought within six months after the discovery of the offence, at the suit of the proprietor or his assignees, together with double costs.

Opinion of the legislature as to grants of sole use of new inventions.

Hence it may be collected, that the legislature has at different times thought it expedient, that the grant of the sole use of a new invented art, for a convenient period, should be allowed, no less for the benefit of the public than for the encouragement of ingenuity.

No law, however, has been created to protect patents for new inventions, the statute 21 Jac. 1. c. 3. declaring them to be of the same force only as if the act had not been made. But the same reasons that prevailed for the protection of the inventions of an author, and the other works of art which are protected by statute, may be urged with equal force in favour of the inventor

of a new manufacture; for the faculties of the mind are as much called forth, and as much time, study, labour, and expense may be employed upon a new manufacture as in writing a book; both are original inventions, and stand on the same footing, whether the production be mechanical or literary.

Good policy.

It may also be considered good policy to secure to a man whose inventions benefit the public, a reasonable compensation for his ingenuity, by giving him the exclusive enjoyment of his discovery for a limited time, as an inducement to the exertion of others.

Law relative to patents for inventions, what it should be.

The law relative to patents for inventions, then, should be such, that men of talent, ingenuity, and skill, who have employed their time and money with success for the service of the community, should not be deprived of their just reward; whilst, on the other hand, the progress of the arts should not be retarded, by depriving the public for too long a term of the use of improvements. (*p*)

(*p*) It has rarely happened that the author of a new invention, though it be of the greatest importance to commercial prosperity, has met with a reward adequate to the ingenuity, labour, and expense bestowed. The legislature has, in some instances, prolonged the term of patents, in order to encourage persons to pursue their inventions; as where a patentee has been at very considerable expense, and the term first granted has been insufficient to bring the invention into use, and inadequate to compensate the inventor for large sums of money expended in the bringing his plan to bear. In this case, however, any objection fatal to the patent would be also fatal to the statute, as having nothing to support it.

Many such cases are stated in

Having endeavoured to give a short outline of the common and statute law on this subject,

the Appendix to the Report of the Select Committee of the House of Commons on this subject in 1829. The following are striking:—

Lord Dudley, who invented the process of making iron by means of pit-coal fuel, and had a patent in 1620, as mentioned in the stat. 21 Jac. 1. c. 3., spent his whole life and fortune in efforts to bring his plan into use, but with very little success; it was not brought into full use until more than a century afterwards, but is now one of the staple manufactures of the kingdom. Mr. Henry Cort, who extended Lord Dudley's invention to the making of bar iron by pit-coal, had a patent in 1784, but derived no profit from his labours, although his plan is now universally employed.

The steam-engine is another invention from which this nation has derived immense wealth during the last century, and increasing means of future wealth. After the enunciation of the principle of action had been made by De Caus in 1615, and Papin in 1690, the real inventors of the engine have been Savery in 1698, Newcomen in 1712, Watt in 1769, Trevethick in 1802, Woolf in 1804, and Fulton, in America, in 1807. Of these, Mr. Watt is the only one, in this country, who derived any adequate advantage, or recompense for his labours.

Mr. Watt expended great part of his time and fortune in making experiments to improve steam-engines, and his case is the most striking amongst the very few, in which an inventor has been protected in his patent rights, for an adequate length of time to enable him to perfectly establish his invention, and consequently recompense himself by the use of it. The great perfection which Mr. Watt attained, and the very general use into which he brought his steam-engines, for a great variety of applications, was entirely owing to that protection; and it is certain that the public would not have benefitted any thing like so much, if his patent had not been prolonged by parliament.

Mr. Woolf's failure of a recompense was entirely owing to the want of protection by an extension of his term; for his engines came into very general use in Cornwall, soon after the expiration of his patent, in place of Mr. Watt's engines, and with such great advantages in economising fuel, that Mr. Woolf would have been amply recompensed if his term had been as long as Mr. Watt's was.

Spinning mills have also been a great source of wealth: the three inventors of spinning machinery, were Hargrave, Arkwright, and Crumpton; to them the nation have owed much; but the first was persecuted, and died in the

I shall proceed to treat of the Law of Patents for Inventions under the following heads: —

greatest poverty, amidst a population rising to opulence by his means. He had a patent for a spinning jenny in 1767, which was infringed, but an association was formed against him, which prevented his prosecuting the infringers. Arkwright, after many years' study and great expense, brought his spinning machinery to bear in 1775, and though he realised a fortune by his manufactory, the bulk of it was not acquired until after his patent had been set aside by *scire facias* in 1785: and others, who invented nothing, but merely copied what he did, made large fortunes by spinning as well as himself. Arkwright's inventions have proved of immense value to the nation; they are universally employed for one great branch of cotton spinning, called twist, for strong hard cotton thread, and still remain nearly on the system that Arkwright himself established during his patents. Crumpton, whose combination of Hargrave's and Arkwright's inventions in what is called the *mule*, has much more than doubled the national advantages conferred by his predecessors, was, like Hargrave, ruined in his circumstances, and languished in poverty during a long life, in the very towns which had grown up from insignificance to wealthy importance, by the practice of his invention. In 1812, his case reached the knowledge of parliament, and £5000 reward was given him; but it came too late to have the effect of removing the established impression, that an inventor is almost certain to be ruined, even if his invention succeeds, and proves ever so valuable to others.

Another case is that of the paper making machinery, for which Mr. Gamble had patents in 1801 and 1803, which were assigned to Messrs. Fourdrinier, and the term of which was prolonged by act of parliament (47 Geo. 3. c. 131. § 2.). This machinery has proved a most valuable invention; it has come into general use, and, together with the modern inventions of machines for printing by steam-power, has proved a great public benefit. Messrs. Fourdrinier, however, expended all their means in bringing it to perfection, and were ruined. They became bankrupts in 1810, owing to the great expenses they incurred; but afterwards the machines were made very complete in the hands of their assignees. In 1817, the assignees were obliged to proceed in Chancery against several infringers, who submitted without coming to a trial. In 1819 an action (Bloxam v. Elliot) was tried in the Court of King's Bench, and the assignees gained a verdict. In 1825 another action (Bloxam v. Elsee) was tried in the same court, and a verdict given for the assignees; but in 1827, the court directed a new trial, which the

1. Of the nature of the invention for which a patent may be granted.

2. Of the person to whom, and for what time, a patent may be granted.

3. Of the manner of passing a patent; of the caveat; and of the enrolment of the specification.

4. Of the patent, its form; and provisions; and herein, more particularly, of the denomination of the invention in the patent; of the specification, its form, and requisites; and of the rule of construction applicable to the patent and specification.

5. Of the title of the patentee; assignment of a patent; and licences to use the invention.

6. Of enlarging the term of letters patent, and enabling the benefit of an invention to be assigned to more than five persons.

7. Of the remedies for an infringement of a patent; and what is an infringement.

8. Of the repeal and surrender of a patent.

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assignees did not pursue; and the opinion of the court being decidedly against the validity of the patents, they were in effect set aside (see 6 B. & Cr. 169.)

Mr. Bensley, also, who purchased the patent for the printing machine invented by Kœnig, went to vast expenses in bringing it to bear; and Mr. Applegath, who afterwards improved so much upon the original machines, as to supersede them, was also ruined by the expenses, notwithstanding that he made a great number of machines.

The three great inventions which have contributed so much to the wealth of the nation in the last century, viz. Lord Dudley's smelting, and Cort's working, of iron by pit-coal, the steam-engines of Newcomen, Watt, and Woolf, and the spinning machinery of Hargrave, Arkwright, and Crumpton, have had a very close connection with each other, and are continually used in concert, mutually aiding and promoting each other. The steam-engine is connected with almost every useful art.

CHAPTER II.

OF THE NATURE OF THE INVENTION FOR WHICH A PATENT MAY BE GRANTED.

By the sixth section of the stat. 21 Jac. 1. c. 3., it is provided, that any declaration before mentioned in the act, shall not extend to any letters patents and grants of privilege for the term of fourteen years or under, thereafter to be made, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors (*a*) of such manufactures, which others, at the time of making such letters patents and grants, shall not use, so as also they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient.

Proviso in the statute 21 Jac. 1. c. 3. s. 6.

The invention, then, for which a patent may be granted, must be a manufacture. (*b*)

The invention, and its requisite qualities.

The manufacture must have two qualities: —

1st. It must be new as to the public use and exercise thereof in England.

2d. It must be useful to the public.

As to the first, —

A foreign invention, upon its first introduction into England, though it has been practised

(*a*) See Chapter III.

(*b*) As to the term manufacture, see infrà, p. 32 to 57.

beyond sea before, may be the subject of a patent. (*c*)

So a manufacture invented or found out by one person, though the same thing has been discovered before by another, will, if confined to the knowledge of the latter, be considered a new manufacture, for which a patent may be obtained. (*d*)

But a manufacture will not be considered new, if it be in use, or known to the public at the time of granting a patent for it.

Therefore a manufacture communicated before to the public, in the shape of a specification of any other patent (*e*); or publicly sold, though by the inventor only (*f*); or taken from a book published in England (*g*); or communicated in any other way, more or less, to others, will not be considered new. (*h*)

(*c*) Edgeberry and Stephens, 2 Salk. 447. S. C., Comb. 84.; and cited by Eyre C. J. in Boulton v. Bull, 2 H. Bl. 491., and see infrà, p. 60.

(*d*) Dollond's case, cited in Boulton v. Bull, 2 H. Bl. 470. and 487., and see infrà, p. 59. Also in Lewis v. Marlin, cor. Lord Tenterden C. J., Nov. 1829, for an infringement of a patent for a shearing machine; it was proved that a model of a machine, which was the same, in respect to invention, as that for which the patent was 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.

(*e*) Per Lord Ellenborough C. J. in Huddart v. Grimshaw, Dav. Pat. Ca. 279. and infrà, p. 21. and see the patent in Appendix.

(*f*) Wood v. Zimmer, 1 Holt's N. P. C. 58. cor. Gibbs C. J. And infrà, p. 23.

(*g*) Rex v. Arkwright, Dav. Pat. Ca. 129., and infrà, p. 19. See Hill v. Thompson, 8 Taunt. 386—399., and 2 Moore, 456.

(*h*) See Tennant's case, Dav. Pat. Ca. 429., and cited per Dallas J. in Hill v. Thompson, 8 Taunt. 395., and infrà, p. 24.

Whether an invention be new and useful, is a question of fact proper for a jury.

But it may safely be laid down, that whatever be the nature of the invention, whether the merit of it rest on discovery, or on improvement, novelty and utility must exist in a material degree.

And if an invention consist in an improvement upon any thing, and that which constitutes the improvement be known, and has been applied before to a similar purpose, though never applied before to the specific thing which the patentee has applied it to, it will not possess sufficient novelty to be the subject of a patent. (*i*)

In the case of the King against Arkwright (*k*) on a *scire facias*, to repeal a patent granted to Mr. Richard Arkwright in 1775, "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. It was admitted that the beater, or hammer for breaking seeds and fining flax, &c. was not new, for Emerson's book was produced, which was printed a third time in 1773, and that contained the same. Other things stated in the specification as parts of the invention, were proved to have been invented before, and used by others. This was proved as to the feeder, by

(*i*) Brunton v. Hawkes, 4 Barn. & Ald. 541., and infrà, p. 25.

(*k*) Dav. Pat. Ca. 61. cor. Buller J.

the person who had invented it before. And Buller J. said: "This shows that it is no new invention, and that it is not invented by the defendant." The filleted cylinder was proved to have been used, both in the manner the defendant used it, and likewise when quite covered with cards: and Buller J. said, "If it was in use both ways, that alone is an answer to it; if not, there is another question, whether the stripe in it makes a material alteration? For if it appears, as some of the witnesses say, to do as well without stripes, and to answer the same purpose; if you suppose the stripes never to have been used before, that is not such an invention as will support the patent." Another article stated in the specification was called the can. As to this, one of the witnesses said, "the only difference between the two (the spinning machine and the present roving machine) is, that the latter has a can;" and on that Buller J. said, "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 it is of no use at all. In the first place, they had that before which answered the same purpose, though not made exactly in the same form: it was open at top; it twisted round, and laid the thread precisely in the same form, and had the same effect this had; so if it was new, it is of no use. But they say it is not new; for though it was not precisely the same shape, in substance it was the same thing."

In Huddart v. Grimshaw (*l*), which was an action for an infringement of Huddart's patent of 1793, for "a new mode or art of making great cables and other cordage, so as to attain a greater degree of strength therein, by a more equal distribution of the strain upon the yarns;" the invention was to make cordage with all the yarns disposed in concentric cylindrical layers, one over another; for this purpose the yarns were wound each upon a distinct bobbin, and therefrom the yarns were conducted through holes in a register plate, those holes being arranged in concentric circles around a central hole: the yarns, after passing through the holes, were all brought together through a tube into one strand. That strand being turned round, and at the same time drawn forwards, drew all the yarns at once with a screwing motion through the tube and through the holes in the register plate, unwinding them from the several bobbins, and collecting them into one twisted strand, which was compressed into a compact cylindrical form in drawing through the tube, and in which each yarn occupied its own place in the strand, always remaining at the same distance from the centre thereof: each bobbin being at liberty, would allow as much yarn to unwind from it as was wanted, according to the place that yarn occupied in the strand, whether the outside or the middle part of the cylinder. A Mr. Belfour had before obtained

(*l*) Dav. Pat. Ca. 265. cor. Lord Ellenborough C. J., December 1803. Verdict for the patentee.

a patent for an invention to improve the manufacture of ropes and cordage, by making every yarn employed in the composition thereof, bear its proper and equal proportion of the stress. The tube in Huddart's invention, through which the yarns were drawn, was no part of Mr. Belfour's invention; but as to the tube, Mr. Belfour said various other methods might be substituted, for the purpose of preventing the strand from twisting, until it had received that position the workman wished; such as pieces of wood with holes bored in them, or by the external application of a ring, or other circular instrument. Lord Ellenborough said, "There are common elementary materials to work with in machinery; but it is the adoption of those materials to the execution of any particular purpose that constitutes the invention: and if the application of them be new; if the combination in its nature be essentially new; if it be productive of a new end, and beneficial to the public; it is that species of invention which, protected by the King's patent, ought to continue to the person the sole right of vending it; but if, prior to the time of his obtaining a patent, any part of that which is of the substance of the invention has been communicated to the public in the shape of a specification of any other patent, or is a part of the service of the country, so as to be a known thing, in that case he cannot claim the benefit of his patent." As to the tube, Lord Ellenborough said, "Now the tube does seem to me an important

difference from the mere circle, because it keeps the yarns in a degree of confinement for a greater time, and more certainly obtains the end pointed out; and had the patent been taken for that to be done by a tube, which was before done by a ring or circle, I should have thought the patent good, for that is a distinct substantive invention."

In Wood v. Zimmer (*m*), an issue out of Chancery to try whether Zinck's patent, bearing date 20th January, 1812, was or was not a valid patent on the 5th February, 1813, the patent was for a new mode of making verdigris, to be called British Imperial Verdigris. It was proved that an article composed precisely in the same manner as that for which the patent was obtained, was sold four months before the date of the patent, under the name of Dutch Imperial Green. And on the objection for want of novelty, Gibbs C. J. said, "The question is somewhat new. Some things are obvious as soon as they are made public; of others the scientific world may possess itself by analysis: some inventions almost baffle discovery; but to entitle a man to a patent, the invention must be new to the world. The public sale of that which is afterwards made the subject of a patent, though sold by the inventor only, makes the patent void."

(*m*) 1 Holt's N. P. C. 58. cor. Gibbs C.J. Upon this doctrine, in its application to cases where a patent is obtained for a new mode of making a thing before known, and not for the thing made, it may be observed, that in many such cases the invention would not be made known to others by the sale of the thing itself.

In Tennant's case, which was an action for an infringement of his patent for a bleaching liquor, the utility of the invention, and the general ignorance of the bleachers in respect to it until after the date of the patent, were proved. But evidence was given by one bleacher that he had used the same means of preparing his bleaching liquor for five or six years anterior to the date of the patent, though he also stated that he had kept his method a secret from all but his two partners, and two servants concerned in preparing it. The plaintiff was nonsuited; and one ground was on the above evidence, that the process had been used five or six years prior to the date of the patent, and therefore was not a new invention. (*n*)

In Manton v. Parker (*o*), an action for an infringement of Manton's patent of 1803, for "a hammer on an improved construction, for the locks of all kinds of fowling pieces, and small arms." The object was to let the air pass out of the gun barrel, when the wadding is rammed down; but to keep the touch-hole always full of powder, in order to prevent flashing or hanging fire. But, upon the evidence, Thomson C. B. said, "The powder passes through the same hole as the air. It seems to me, therefore, that the utility of this invention, and the purpose of

(*n*) cor. Lord Ellenborough C. J. Dec. 1802. Dav. Pat. Ca. 429., and see infrà, p. 60.

(*o*) Dav. Pat. Ca. 327. cor. Thomson C. B., July 1814; plaintiff nonsuited. And see Manton v. Manton, Dav. Pat. Ca. 333.

the patent, wholly fail: for the purpose of the hole, as described in the specification, is to let the air pass through, and at the same time secure the powder from passing through: that of itself would be an answer to this action."

In Brunton v. Hawkes (*p*), an action for an infringement of Brunton's patent of 1813, for "improvements in the construction of, making, or manufacturing of ships' anchors and windlasses, and chain cables or moorings," the infringement was upon the chain cable; it was proved at the trial, that before the granting of the patent, mooring chains had been used, the links of which were twisted, and the stay was introduced into holes made in the sides of the link; the twisting of the link, as well as the perforations of it to admit the stay, had the effect of weakening it. The sides of the plaintiff's link were in the same plane, and his stay was introduced in the manner described in the specification, without perforating or otherwise weakening the sides. It was proved by a series of experiments, made by scientific men, that the plaintiff's mooring chains were capable of resisting a much greater force than those in use before. It was admitted at the trial, that the mode of manufacturing anchors described in the specification had never been applied before to ships' anchors. But it had been applied before to the adze-anchor and the mushroom-anchor. These anchors are used only for the purpose of mooring floating lights,

(*p*) 4 Barn. & Ald. 541.

or vessels intended to remain stationary, and are never taken on board. No point was made as to the windlasses, which were admitted to be new. Abbott C. J. left it to the jury to say, whether the invention, both as to the chain and the anchor, were new and useful; and the jury found a verdict in the affirmative for the plaintiff. Afterwards a rule nisi was obtained for a new trial, on the ground; first, that there was not sufficient novelty in either of these inventions to make them the proper subject of a patent; secondly, that, at all events, there was no novelty in the mode of manufacturing the anchors; and the patent being granted for three several things, if void as to one, was void as to the whole. The Court thought so much of the plaintiff's invention as respected the anchor was not new, and, consequently, that the whole patent was void. (*q*) A new trial was therefore granted. As to the novelty of the inventions, the judges delivered the following opinions: — Abbott C. J., after stating that it was with great reluctance he had come to the conclusion which would have the effect of avoiding the patent, said, "The mode of joining the shank to the flukes of the anchor, is to put the end of the shank, which is in the form of a solid cylinder, through the hollow and conical aperture, and it is then made to fill up the hollow, and to unite itself with it. Now, that is precisely the mode by which the shank of the mushroom-anchor is united to the mushroom

(*q*) As to this see Chapter V.

top; by which the shank of the adze-anchor is united to its other parts. It is, indeed, the mode by which the different parts of the common hammer, and the pick-axe also, are united together. Now, a patent for a machine, each part of which was in use before, but in which the combination of the different parts is new, and a new result produced, is good; because there is a novelty in the combination. But here the case is perfectly different: formerly three pieces were united together; the plaintiff only unites two; and if the union of those two, had been effected in a mode unknown before, as applied in any degree to similar purposes, I should have thought it a good ground for a patent; but, unfortunately, the mode was well known, and long practised.

"I think that 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. It seems to me, therefore, that there is no novelty in that part of the patent, as affects the anchor; and if the patent had been taken out for that alone, I should have had no hesitation in declaring that it was bad. Then, if there be no novelty in that part of the patent, can the plaintiff sustain his patent for the other part, as to the mooring chain? As at present advised, I am inclined to think that the combination of a link of this particular form with the stay of the form which he uses, although the form of the link might

have been known before, is so far new and beneficial as to sustain a patent for that part of the invention, if the patent had been taken out for that alone."

Bayley J. "If the patent had stood on the subject of improvement in chain cables only, the impression on my mind is, that the patent would have been good. The improvement in that respect, as it seems to me, is shortly this: so to apply the link to the force to operate on it, that that force shall operate in one place, namely, at the end; and this is produced by having a bar across, which has not the defect of the bar formerly used for similar purposes. The former bars weakened the link, and they were weak themselves, and liable to break; and then, if they broke, there might be a pressure in some other part. Now, from having a broad-ended bar instead of a conical one, and having it to lap round the link instead of perforating it, that inconvenience would be avoided; and therefore the present impression on my mind as to this part of the case is, that the patent might be supported. As to the ship's anchor, in substance the patent is, for making in one entire piece that which formerly was made in two. The two flukes of the anchor used to consist of distinct pieces of iron, fastened to the shank by welding. In the present form, the flukes are in one piece, and instead of welding them to the shank, a hole is made in the centre, and the shank introduced through the hole. Could there be a patent for

making in one entire piece, what before had been made in two pieces? I think not; but if it could, I think that still this would not be new. In the mushroom and the adze anchors, the shank is introduced into the anchor by a hole in the centre of the solid piece; and, in reality, the adze-anchor is an anchor with one fluke, and the double-fluke anchor is an anchor with two flukes. After having had a one-fluked anchor, could you have a patent for a double-fluked anchor? I doubt it very much. After the analogies alluded to in argument, of the hammer and pick-axe, I do not think that the mere introducing the shank of the anchor, which I may call the handle, in so similar a mode, is an invention for which a patent can be sustained. It is said in this case, that the mushroom-anchor and adze-anchor are not ships' anchors, but mooring anchors: I think they are ships' anchors: they are not, indeed, such anchors as ships carry with them for the purpose of bringing the ship up; but if the ship is required to be stationary at a particular place, then the common mode of making it stationary is by the mushroom-anchor. So the mode adopted to bring a ship containing a floating light to an anchor, is by mooring her to one of these mushroom-anchors. That is the description of anchor for a holdfast to a ship. The analogy between the case of the mushroom-anchor and of the adze-anchor is so close to that of the present anchor, that it does not appear to me that this discovery can be considered so far

new as to be the proper ground of a patent. In reality, it is nothing more than making in one piece, what before was made in two; and introducing into this kind of anchor the shank, in the way a handle is introduced into a hammer or pick-axe."

Best J. "When this case was first presented to my mind, it occurred to me that this was a new combination of old principles, and that the patent was therefore good. I now, however, doubt whether the patent could be supported as to the mooring chain, for the specification cannot stand as a description of a new combination of known principles: it claims an invention as to a part of it, which certainly is not new. I allude, particularly, to the form of the link. The specification states, that the object to be gained, is the greatest possible strength from a given quantity of materials, keeping in mind the direction in which the strain is to be borne. It afterwards says, that this is to be done by the use of that which is new, viz. by the stay introduced between the links; and which, instead of entering them, embraces their sides. If that alone was to be done, it would be new; but the specification further goes on to say, 'It is evident, that of all the forms and constructions that can be given to a link, that form and construction which shall be able to convert a lateral into an end strain, by yielding support to the opposite sides of the link, is the one that should be preferred.' It appears to me, that the patentee

here first claims the merit of originally using the links in the particular form described in the specification, instead of circular links. Now, there can be no doubt that links of that form had been used long before. Then, as to the anchor, the invention claimed is, that he avoids the welding: but that certainly is not new; because that has been done before, in the case of the mushroom and adze anchor, the pick-axe, and the common hammer. It is said, however, that his invention consists in the application of that which was known before to a new subject-matter, viz. that he had, for the first time, applied to the manufacturing of anchors, a mode in which welding was avoided; which, however, had been long practised in other instances to which I have before alluded: but he does not state that, as the ground upon which he had applied for his patent, nor state in his specification, that, it being known that the process of welding weakens the anchor, he had first applied to an anchor a mode long practised in the manufacture of other instruments, viz. of making the two flukes of one piece instead of two. If he had so described his process, the question would then arise, whether that would be a good ground for a patent. I incline to think, however, that it having been long known that welding may be avoided in instruments of a similar form, the application of that practice, for the first time, to a ship's anchor, cannot be considered a new invention; and, therefore, that it is not the ground of a patent."

In Lewis and another v. Davis (*r*), an action for the infringement of a patent of the plaintiffs, dated 15th January, 1818, for "improvements of a machine for shearing and cropping woollen cloths, the same being improvements on a machine for which John Lewis had obtained a patent on the 27th of July, 1815;" the part of the plaintiff's invention, which had been infringed by the defendant, was the shearing cloth with rotatory cutters from list to list, in the manner specified. It appeared that a rotatory cutter to shear from end to end was known before the date of the plaintiff's patent; the patent granted to John Lewis was for a machine with rotatory cutters, which were to shear the cloth from end to end, and cutting from list to list by means of shears worked by hand or by machines, was also known. But Lord Tenterden said, "If, before the plaintiff's patent, the cutting from list to list, and the doing that by means of rotatory cutters, were not combined, I am of opinion that this is such an invention by the plaintiffs as will entitle them to maintain the present action."

Of the manufacture. Exposition of the statute by usage, large.

Now, as to the manufacture itself, which is the main foundation of all patents. Upon this, the exposition of the statute, as far as usage will expound it, has gone very much beyond the letter. (*s*)

(*r*) 3 Car. & P. 502. cor. Ld. Tenterden C. J.; verdict for the plaintiffs. Another action was brought by the patentee in this case against Marlin for a like infringement, cor. Lord Tenterden C. J., Nov. 1829; verdict for the plaintiffs.

(*s*) "In the case of Edgeberry v. Stephens, 2 Salk. 447,

There is no danger in construing the statute extensively; because, in every instance, where mischief or inconvenience to the public can be proved to exist, the patent will be void: and it is important to a manufacturing and commercial country that it should be so; if it were otherwise, there would be a check to the talent, the wealth, the power, and the improvement of the country.

Manufactures, according to the construction given to the statute, may be divided into two classes: — Manufactures, division of.

I. Things made.

II. Practice of making.

I. *Things made.* (*t*)

1. *A thing made which is useful for its own sake, and vendible as such, or some part of such a thing;*

As a medicine, stove, telescope, carriage, watch, &c.; or an addition or alteration in a stove, telescope, or carriage; or a movement to a watch; or an improvement in the texture of articles, or the materials of which they are composed, as new kind of cloth, of thread, of lace, or rope, &c.

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;*

As a lace machine, stocking frame, steam engine

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the words 'new devices' are substituted and used as synonymous with the words 'new manufactures.'" Per Eyre C. J. Boulton v. Bull, 2 H. Blackst. 492.

(*t*) As to the requisite novelty and utility, see supra, p. 17 to 32.

for raising water from mines or for turning mills, a spinning machine, printing machine, &c.; or an addition to or improvement on such machines.

II. *Practice of making; or principles carried into practice in a new manner, or new results of principles.*

1. *An artificial manner of operating with the hand, or with instruments in common use; or a mode of employing practically art and skill, producing an effect useful to the public; or an improvement in any known manner of so operating or employing practically art and skill.* (*u*)

Hartley's patent for his method of securing buildings from fire might come under this head. (*w*)

2. *A process, or combination of processes, in any art, producing an effect useful to the public;*

Or an improvement in a process, or combination of processes, in any art, producing an effect useful to the public;

As a process to be carried on by known implements or elements, acting upon known substances, and ultimately producing some other known substance, but producing it more advantageously to the public, as in a cheaper or more expeditious manner, or of a better or more useful kind; — or any chemical process, or combination of processes, producing a useful effect; — or an alteration in such a process or processes by difference of proportion, or by addition of ingredients, producing such useful effect.

(*u*) Whether the utility and advantages produced be sufficient to support a patent, must depend upon each particular case; see the cases suprà, p. 17 to 32., and observations there per Buller J. in the King v. Arkwright; Lord Ellenborough in Huddart v. Grimshaw; and Abbott C. J., Bayley J., and Best J. in Brunton v. Hawkes; and see Brunah v. Hardcastle, infrà p. 81.

(*w*) See infrà, p. 41 to 45.

I shall now endeavour to support, by judicial authority, the extended construction here given to the term "manufacture."

In the great case of Boulton v. Bull, which occupied more attention in the courts of Westminster-hall, than any other upon the subject of patents, what comes within the term "new manufacture," was much considered; and Lord Chief Justice Eyre delivered a very clear, distinct, and elaborate judgment upon the subject in that case. (*x*)

(*x*) 2 H. Bl. 463. and see 8 T. R. 95.

In this case it appeared that a patent was granted to James Watt, for a method by him invented of lessening the consumption of steam and fuel in fire engines, for fourteen years, with a proviso for a specification in the usual manner. This was an action by Boulton and Watt for the infringement of that patent. The cause was tried, Sittings after Trinity term, 1793, cor. Eyre C. J., and a case was reserved for the opinion of the Court. An act of parliament, reciting the patent to have been for the making and vending certain engines by the patentee invented, extended to him for a longer term than fourteen years the privilege of making, constructing, and selling the said engines.

The specification was as follows: —

"My method of lessening the consumption of steam, and consequently fuel in fire engines, consists of the following principles: —

"First, that vessel in which the powers of steam are to be employed to work the engine, which is called the cylinder in common fire engines, and which I call the steam vessel, must, during the whole time the engine is at work, be kept as hot as the steam that enters it; first, by enclosing it in a case of wood, or any other materials that transmit heat slowly; secondly, by surrounding it with steam or other heated bodies; and thirdly, by suffering neither water nor any other substance colder than steam to enter or touch it during that time.

"Secondly, in engines that are to be worked wholly or partially by condensation of steam, the steam is to be condensed in vessels distinct from the steam vessels or cylinders, although occasionally communicating with them; these vessels I call condensers; and whilst the engines are working, these condensers

Lord Chief Justice Eyre said: —

"It was admitted in the argument at the bar, that the word manufacture in the statute

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ought, at least, to be kept as cold as the air in the neighbourhood of the engines, by application of water or other cold bodies.

"Thirdly, whatever air or other elastic vapour is not condensed by the cold of the condenser, and may impede the working of the engine, is to be drawn out of the steam vessels or condensers by means of pumps wrought by the engines themselves, or otherwise.

"Fourthly, I intend in many cases to employ the expansive force of steam, to press on the pistons, or whatever may be used instead of them, in the same manner as the pressure of the atmosphere is now employed in common fire engines. In cases where cold water cannot be had in plenty, the engines may be wrought by this force of steam only, by discharging the steam into the open air after it has done its office.

"Fifthly, where motions round an axis are required, I make the steam vessels in form of hollow rings or circular channels, with proper inlets and outlets for the steam, mounted on horizontal axles like the wheels of a water-mill; within them are placed a number of valves that suffer any body to go round the channel in one direction only; in these steam vessels are placed weights so fitted to them as entirely to fill up a part or portion of their channels, yet rendered capable of moving freely in them by the means hereinafter mentioned or specified. When the steam is admitted, in these engines, between these weights and the valves, it acts equally on both, so as to raise the weight to one side of the wheel, and by the reaction on the valves successively to give a circular motion to the wheel; the valves opening in the direction in which the weights are pressed, but not in the contrary, as the steam vessel moves round, it is supplied with steam from the boiler, and that which has performed its office may either be discharged by means of condensers, or into the open air.

"Sixthly, I intend, in some cases, to apply a degree of cold not capable of reducing the steam to water, but of contracting it considerably, so that the engines shall be worked by the alternate expansion and contraction of the steam.

"Lastly, instead of using water to render the piston or other parts of the engines air and steam tight, I employ oils, wax, resinous bodies, fat of animals, quicksilver, and other metals in their fluid state."

was of extensive signification; that it applied not only to things made, but to the practice of

To the above specification this memorandum was added by Watt: that he did not intend that any thing in the fourth article should be understood to extend to any engine where the water to be raised enters the steam vessel itself, or any other vessel having an open communication with it.

The case was twice argued, first by Watson and Le Blanc Serjts.; secondly by Adair and Williams Serjts.

The questions for the opinion of the Court were, Whether the patent was good in law and continued by the act of parliament above mentioned; and, Whether the above specification was sufficient to support the patent. The Judges of the Common Pleas being equally divided in opinion, no judgment was given. It was agreed by all the judges that the invention itself was original, and might be the subject of a patent if properly taken. Mr. Justice Rooke was in favour of the patent. His Lordship thought the objections, viz. "that the patent is not for fire engines, upon the particular construction which contains the new improvement, but for a new invented method of lessening the consumption of steam and fuel:—that no particular engine is described in the specification, but that it only sets forth principles:—and that the statute has not duly prolonged the patent, because the patent is for a method, and the statute for an engine:"—to be merely verbal and formal. As to the first objection, he thought the obvious meaning of the words was, that Mr. Watt had made an improvement in the construction of fire engines; and that method meant mode, or manner of effecting. He thought the words tantamount to fire engines of a newly invented construction. As to the second objection, he held it sufficient that the improvement was set forth intelligibly in the specification, which the jury found to be the fact; that although the patentee professed to set forth principles only, his specification should be supported if in point of fact he had set forth the improvement in an intelligible manner; the court were not bound by what he professed to do, but by what he had really done; and whether the patentee call it a principle, invention, or method, or by whatever other appellation, the court were not bound to consider his terms, but the real nature of his improvement, and the description he had given of it; that the part of the specification representing the future intentions of the patentee might be considered, according to the language of the specification, as merely theoretical.

Mr. J. Heath was against the pa-

making, — to principles carried into practice in a new manner, — to new results of principles car-

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tent. His Lordship said that the patent was expressly for a new invented method for lessening the consumption of steam and fuel in fire engines — that it was for the general application of a principle to an old machine — that the following objections arose to the patent which he could not answer: viz. that if there may be two different species of patents, the one for an application of a principle to an old machine, and the other for a specific machine, one must be good and the other bad. The patent that admits the most lax interpretation should be bad, and the other alone conformable to the principles of common law, and to the statute on which patents were founded. He said another objection might be urged against the patent, upon the application of a principle to an old machine, — that whatever machinery might be thereafter invented would be an infringement of the patent, if founded on the same principle; and that if this were so, it would reverse the clearest positions of law respecting patents for machinery; by which it had been always holden, that the organization of a machine might be the subject of a patent, but principles could not. He further considered that Mr. Watt's patent extended to all machinery that might be made on his principle, so that he had taken a patent for more than he had specified.

Mr. J. Buller was against the patent. His Lordship thought the patent was granted for the engine — that verbal criticisms should not prevail, but that *principle* in the patent and *engine* in the act meant the same thing. That the objections to the patent as a patent for an engine were two: first, that the fire engine was known before; and 2dly, though the plaintiff's invention consisted only of an improvement of the old machine, he had taken the patent for the whole machine and not for the improvement alone, and that having claimed the right (as his Lordship considered it) to the whole machine, to that extent the right could not be sustained, therefore judgment ought to be for the defendant.

Lord C. J. Eyre thought the patent good. That if (as was his Lordship's opinion), upon the true construction of the statute, there might be a patent for a new method of manufacturing or conducting chemical processes, or of working machinery, so as to produce new and useful effects, then he was warranted to conclude that the patent was in its original creation good. His Lordship admitted that if the patent was to be taken to be a patent for a fire engine, the specification was not sufficient; it was not a specification of mechanism of any determinate form, having component parts capable

ried into practice. Let us pursue this admission. Under things made, we may class in the

of precise arrangement, and of particular description. On the other hand, if the patent were not for a fire engine, but in effect, for a manner of working a fire engine, so as to lessen the consumption of steam, which his Lordship conceived the words of the patent to import, then the specification did sufficiently describe a manner of working fire engines, so as to produce the effect expressed in the patent. He considered the specification as saying to the constructor of a fire engine, "For the future, condense your steam out of the body of the cylinder, instead of condensing it within it: put something round the cylinder, to protect it from the external air, and to preserve the heat within it, and keep your piston air-tight without water." It could scarcely be supposed that a workman capable of constructing a fire engine, would not be capable of making such additions to it as should be necessary to enable him to execute that which the specification required him to do. That plain directions, too, were given for doing this, and that this difficulty was put an end to, for the jury found that a workman could execute this improvement in consequence of the specification. Those parts of the specification which did not properly relate to the method described in the patent, but were rather intimations of new projects of improvement in fire engines, he thought might be rejected as superfluous. He thought the objection on the act of parliament of the same nature as one of the objections to the specification: that the specification called a *method* of lessening the consumption of steam in fire engines, a *principle* which it was not: the act called it an engine, which perhaps also it was not; but both the specification and the statute were referable to the same thing, and when taken with their correlative were perfectly intelligible.

Another action was afterwards brought by Boulton and Watt v. Hornblower and Maberly, in the Common Pleas; and upon a general verdict being found for the plaintiffs, and judgment given for them (which was without argument, the Court having been equally divided before), the defendants brought a writ of error; and besides the general error, assigned for error that the invention for which the letters patent were granted was not an invention of any formed or organized machine, instrument, or manufacture, but of mere principles only, for which no such letters patent could, by law, be granted. (See the case, 8 T. R. 95.) This was twice argued: first by Gaselee for the plaintiffs in error, and Holroyd for the defendants; and secondly by Le Blanc, King's Serjeant, for the former, and Rous for the latter.

first place, new compositions of things, such as manufactures in the most ordinary sense of the word; secondly, all mechanical inventions, whether made to produce old or new effects; for a new piece of mechanism is certainly a thing

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The judgment was affirmed. Lord Kenyon C. J. said it was rather from a deference to the opinions given in the Court of Common Pleas on the former occasion, than from any doubt the Court of King's Bench entertained, that a second argument was awarded. The principal objection,—that this was a patent for a philosophical principle only, neither organized, nor capable of being organized,—if well founded in fact, would be decisive: but his Lordship did not think it was so; he thought it was a patent for a manufacture, which he understood to be something made by the hands of man.

Mr. J. Ashhurst was of the same opinion.

Mr. J. Grose said that the patent was not merely for principles, nor did the specification describe principles only: that the inventor shewed in his specification (which might be resorted to, and deemed as part of the patent itself,) the manufacture, by means of which the principles on which he proceeded were to take effect; which effect was to be the lessening of the consumption of steam and fuel, by keeping the steam vessel of one uniform heat with the steam, so long as the engine was worked. And taking the patent as for an engine, he considered it not as a patent for the old engine, but only for the addition to, or improvement of, the old engine; and that so the act of parliament considered it. He thought that, although in words the privilege granted may be to exercise a method of making, or doing any thing, yet if that thing is to be made or done by a manufacture, and the mode of making that manufacture is described, it then becomes in effect (by whatever name it may be called), not a patent for a mere principle, but for a manufacture for the thing so made and not merely for the principle on which it is made.

Mr. J. Lawrence considered that the patent must be supported as granted for an improvement and addition to old engines known and in use: that the patent was good in that point of view: that Mr. Watt had, with sufficient accuracy, stated a definite alteration or addition which might be made in all fire engines, in such a way as to enable a workman to execute it: but whether the directions were sufficient, was not a question for the decision of the Court then; it was for the determination of the jury, and they had decided it.

made. Under the practice of making, we may class all new artificial manners of operating with the hand, or with instruments in common use, new processes in any art producing effects useful to the public.

"When the effect produced is some new substance, or composition of things, it should seem that the privilege of the sole working or making ought to be for such new substance or composition, without regard to the mechanism or process by which it has been produced, which, though perhaps also new, will be only useful as producing the new substance. Upon this ground Dollond's patent was, perhaps, exceptionable; for that was for a method of producing a new object-glass, instead of being for the object-glass produced.

"If Dr. James's patent had been for his method of preparing his powders, instead of the powders themselves, that patent would have been exceptionable upon the same ground. (*y*)

"When the effect produced is no substance or composition of things, the patent can only be 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, by which the effect is produced. To illustrate this: —

"The effect produced by Mr. David Hartley's (*z*)

(*y*) See infrà.

(*z*) The validity of Mr. Hartley's patent was never disputed; and in 1777 an act (17 Geo. 3. c. 6.) was passed for vesting in David Hartley, Esq., the sole use and property of his method of securing buildings against the cala-

invention for securing buildings from fire, is no substance or composition of things: it is a mere negative quality, — the absence of fire. This effect is produced by a new method of disposing iron plates in buildings. In the nature of things, the patent could not be for the effect produced. I think it could not be for the making the plates of iron, which, when disposed in a particular manner, produced the effect; for those are things in common use. But the invention consisting in the method of disposing those plates of iron, so as to produce their effect, and that effect being a useful and meritorious one, the patent seems to have been very properly granted to him, for his method of securing buildings from fire. And this compendious analysis of new manufactures mentioned in the statute satisfies my doubt, whether any thing could be the sub-

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mities of fire throughout his Majesty's dominions for a limited time. Mr. Hartley had a patent for England and the Colonies in 1773, for his method of applying iron plates to cover the woodwork of buildings and ships so as to prevent the access of fire; and having expended large sums in experiments to perfect the invention, and still more money being requisite, without a prospect of recompence during the term of the patent, the term was prolonged thirty-one years from the passing of the act and the patent right extended to Great Britain and the Colonies, except as to ships. The invention might be applied in any buildings used in fitting out or victualling the king's ships of war, without licence from the patentee. The privilege not to be transferred to more than five persons. Any objection to the invention not being new, sufficient to invalidate the patent, to be a bar to any action brought under the act. The patentee not to be allowed to take more than a specified price for the iron plates. — A public act.

2,500*l.* was afterwards granted by parliament to Mr. Hartley, to enable him to ascertain the practicability and utility of his method.

ject of a patent, but something organized, and capable of precise specification. But, for the more satisfactory solution of the other points which are made in this case, I shall pursue this subject a little further.

" In Mr. Hartley's method, plates of iron are the means which he employs, but he did not invent those means: the invention wholly consisted in the new manner of using, or, I would rather say, of disposing a thing in common use, and which thing every man might make at his pleasure, and which, therefore, I repeat, could not, in my judgment, be the subject of the patent. In the nature of things it must be, that in carrying into execution any new invention, use must be made of certain means proper for the operation. Manual labour to a certain degree, must always be employed; the tools of artists frequently; often things manufactured, but not newly invented, such as Hartley's iron plates; all the common utensils used in conducting any process, and so up to the most complicated machinery that the art of man ever devised. Now, let the merit of the invention be what it may, it is evident that the patent, in almost all these cases, cannot be granted for the means by which it acts, for in them there is nothing new, and in some of them nothing capable of appropriation. Even where the most complicated machinery is used, if the machinery itself is not newly invented, but only conducted by the skill of the inventor, so as to produce a new

effect, the patent cannot be for the machinery. In Hartley's case it could not be for the effect produced, because the effect, as I have already observed, is merely negative, though it was meritorious. In the list of patents with which I have been furnished, there are several for new methods of manufacturing articles in common use, where the sole merit, and the whole effect produced, are the saving of time and expence, and thereby lowering the price of the article, and introducing it into more general use. Now I think these methods may be said to be new manufactures, in one of the common acceptations of the word, as we speak of the manufactory of glass, or any other thing of that kind. The advantages to the public from improvements of this kind, are beyond all calculation important to a commercial country; and the ingenuity of artists who turn their thoughts towards such improvements is, in itself, deserving of encouragement; and in my apprehension it is strictly agreeable to the spirit and meaning of the stat. James I. that it should be encouraged: and yet the validity of these patents, in point of law, must rest upon the same foundation as that of Mr. Hartley's. The patent cannot be for the effect produced, for it is either no substance at all, or, what is exactly the same thing as to the question upon a patent, no new substance, but an old one, produced advantageously for the public. It cannot be for the mechanism, for there is no new mechanism em-

ployed. It must then be for the method; and I would say, in the very significant words of Lord Mansfield (*a*), in the great case of the copy-right, it must be for method, detached from all physical existence whatever. And I think we should well consider what we do in this case, that we may not shake the foundation upon which these patents stand. Probably I do not over-rate 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. If the list were examined, I dare say there might be found fifty patents for methods of producing all the known salts, either the simple salt, or the old compounds. The different sorts of ashes used in manufactures are, many of them, inventions of great merit; many of them, probably, mere speculations of wild projectors: the latter ought to fall, the former to stand. If we wanted an illustration of the possible merit of a new method of operating with old machinery, we might look to the identical case now in judgment before the court. If we consider into what general use fire engines are come; that our mines cannot be worked without them; that they are essentially necessary to the carrying on many of our principal manufactures; that these engines are worked at an enormous expence in coals, which in some parts of the king-

(*a*) 4 Burr. 2397.

dom can with difficulty be procured at all in large quantities; it is most manifest that any method found out for lessening the consumption of steam in the engines, which by necessary consequence lessens the consumption of coals expended in working them, will be of great benefit to the public, as well as to the individual who thinks fit to adopt it. And shall it now be said, — after we have been in the habit of seeing patents granted in the immense number in which they have been granted, 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 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 the country? This, I confess, I am not prepared to say. An improper use of the word principle in the specification set forth in this case, has, I think, served to puzzle it. Undoubtedly, 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. Now this is, in my judgment, the thing for which the patent stated in the case was granted, and this is what the specification describes, though it miscalls

it a principle. It is not that the patentee has conceived an abstract notion that the consumption of steam in fire engines may be lessened; but he has discovered a practical manner of doing it; and for that practical manner of doing it he has taken his patent. Surely this is a very different thing from taking a patent for a principle; it is not for a principle, but for a process."

Mr. Justice Heath and Mr. Justice Buller seem to have taken a narrower view of the term "manufacture" than Lord Chief Justice Eyre did, and than has since been laid down. Mr. Justice Heath (*b*) says, "What then falls within the scope of the proviso? Such manufactures as are reducible to two classes. The first class includes machinery; the second, substances (such as medicines) formed by chemical and other processes, where the vendible substance is the thing produced, and that which operates preserves no permanent form. In the first class the machine, and in the second the substance produced, is the subject of the patent. I approve 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 introduced for the benefit of trade. That which is the subject of a patent ought to be specified; and it ought to be that which is vendible, otherwise it cannot be a manufacture." And Mr. J. Buller (*c*) says, — "But then it was said

(*b*) Boulton v. Bull, 2 H. Bl. 481, 482.
(*c*) Ibid. 486.

that though an idea or a principle alone would not support the patent, yet that an idea reduced into practice, or a practical application of a principle was a good foundation for a patent, and was the present case. The mere application, or mode of using a thing, was admitted in the reply not to be a sufficient ground; for on the Court putting the question, Whether if a man by science were to devise the means of making a double use of a thing known before, he could have a patent for that? — it was rightly and candidly admitted that he could not. The method and the mode of doing a thing are the same; and I think it impossible to support a patent for a method only, without having carried it into effect and produced some *new* substance."

In Hornblower v. Boulton and Watt in error, (*d*) Lord Kenyon, in giving his judgment on the validity of Watt's patent, says, — "I have no doubt in saying that this is a patent for a manufacture, which I understand to be something made by the hands of man." What is here said by Lord Kenyon is not at all at variance with the judgment of Lord Ch. J. Eyre.

So also in the case of the King v. Wheeler (*e*), on a *scire facias* to repeal a patent obtained by the defendant for a "new or improved method of drying and preparing malt," Lord C. J. Abbott in delivering the opinion of the Court, after stating that the Court had taken time to consider of the

(*d*) 8 T. R. 99. (*e*) 2 Barn. & Ald. 345.

case, in order that the defendant, whose rights would probably be concluded by the judgment, might not be affected by any other than a deliberate and considered opinion, says, "Now the word 'manufactures' 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 in 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 expeditious manner, or of a better and more useful kind. But no merely philosophical or abstract principle can answer to the word 'manufactures.' Something of a corporeal and substantial nature, something that can be made by man from the matters subjected to his art and skill, or at the least, some new mode of employing, practically, his art and skill, is requisite to satisfy this word.

A person, therefore, who applies to the Crown for a patent, may represent himself to be the inventor of some new thing, or of some new engine or instrument. And in the latter case, he may represent himself to be the inventor of a

new method of accomplishing that object, which is to be accomplished by his new engine or instrument, as was the case of Watt's patent (*f*), in which he represented himself to be the inventor of a new method of lessening the consumption of steam and fuel in fire engines; and, by his specification, he described certain parts to be used in the construction of fire engines. Or supposing a new process to be the lawful subject of a patent, he may represent himself to be the inventor of a new process; in which case, it should seem that the word 'method' may be properly used as synonymous with process."

Observations on Boulton v. Bull, and Rex v. Wheeler.

The above cases of Boulton v. Bull, and the King v. Wheeler, are the only cases in which so compendious an analysis has been given by the courts of the term "new manufacture;" and although the Court do not, in the case of the King v. Wheeler, express so decided an opinion as Lord Chief Justice Eyre, in Boulton v. Bull, that a patent may be granted for a new process or method, producing an old substance advantageously for the public, or producing an effect, positive or negative, useful to the public, yet the Court, in the case of the King v. Wheeler, by no means decide that such a patent would not be good; on the contrary, it would appear that the inclination of the opinion of the Court was in favour of such a patent, and there is no decision of any court to the contrary. For the reasons stated by Lord Chief Justice

(*f*) 2 H. Bl. 463., 8 T. R. 95., and see supra, p. 35. note x.

Eyre in Boulton v. Bull, it seems expedient and proper that a patent should be allowed for an application of old principles and practices, to a new purpose, if it produces a beneficial effect that had never before been produced or thought of, as capable of being thereby produced. And it would make no difference, whether the effect produced be a new substance; or an old substance advantageously for the public; or a positive or negative effect, useful and beneficial, though not of a substantial nature, provided such effect be produced by the practical application or employment of the art and skill of man, or by the application of a method in a substantial form. If, indeed, a patent for a new process or method, producing an old substance advantageously for the public, be good, which patent must be for the process or method, the substance not being new; then a patent for a new process or method, producing an effect positive or negative, though not of a substantial nature, if beneficial, must also be good. The patent, in either case, must be for the process or method, which is the *modus operandi*, or practical manner of doing the thing, and producing thereby a beneficial effect. (*g*)

(*g*) The following are instances of patents for new processes, or methods, producing old substances advantageously for the public, or effects useful to the public.

Hartley's patent alluded to by Lord Chief Justice Eyre, in Boulton v. Bull.

Rowntree's patent of 1798, for "a method of applying fire for heating boilers, &c." On action brought for an infringement, cor. Lord Eldon C. J. in 1800, plaintiff was nonsuited, because on the evidence the specification was not sufficiently clear to enable an ordinary tradesman to put the in-

In Huddart v. Grimshaw (*h*), which was an action brought by Captain Huddart, against the defendant, to recover damages for the infringe-

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vention in practice; but semb. otherwise good.

Koops's patents, viz. in 1800, for making paper from straw, hay, thistles, waste and refuse of hemp, flax, &c. fit for printing upon; and in 1801, for a method of manufacturing paper generally from like substances, enumerating them. Also Plees's patent in 1802 for a method of manufacturing paper for various purposes, cited in Hill v. Thompson, 8 Taunt. 389.

Huddart's patent of 1793 for a new mode of making great cables and other cordage, so as to attain a greater degree of strength therein, by a more equal distribution of the strain upon the yarns. Dav. Pat. Ca. 265. and supra, p. 21.

Forsyth's patent of 1807, for his method of giving fire to artillery, and fire-arms, by percussion powder.

Constant's patent of 1812, for methods of refining sugar by the use of charcoal; and Martineau's patent of 1815, for doing the same by animal charcoal.

Zinck's patent of 1812, for a method of making verdigris. Holt's N. P. C. 58.

Hall's patent of 1817, for a method of improving every kind of lace, or net. The process was to singe lace-net by drawing it over the flames of gas-lights, and thereby burning away all the superfluous fibres from the cotton thread of which the lace is composed, by which the beauty of the lace was much improved. This patent was supported in an action brought by Hall v. Boot for an infringement, cor. Abbott C. J. Dec. 1822. Verdict for the plaintiff.

Daniell's patent of 1819 for improvements in dressing woollen cloth. This was repealed on scire facias (Rex v. Daniell, 1827, cor. Abbott C.J.) on the ground of the invention not being new.

Hill's and Haddock's patent of 1818 for an improvement in the manufacture of sulphuric acid; employing iron pyrites, or other metallic sulphurets, as a material for producing sulphuric acid, by burning the same in close chambers, and condensing the sulphureous vapour proceeding from the combustion into sulphuric acid, by the aid of atmospheric air and steam. This patent was supported in an action for an infringement against Thompson and Hill.

(*h*) Dav. Pat. Ca. 265., and supra, p. 21. This invention might be considered as of a two-fold nature; that is, the ropes made and sold by the patentee were themselves an improved article of manufacture, owing to the internal arrangement of the yarns, and at the same time, the machinery by which those ropes were made, was in itself an invention of great utility by the saving of labour; in fact, the

ment of a patent for a new mode or art of making great cables and other cordage, so as to attain a greater degree of strength therein, by a more equal distribution of strain upon the yarns; Lord Ellenborough says, "I suppose it will not now be disputed, that a new combination of old materials, so as to produce a new effect, may be the subject of a patent;" and the same noble judge says in the same case, "In inventions of this sort, and every other through the medium of mechanism, there are some materials which are common, and cannot be supposed to be appropriated in the terms of any patent. There are common elementary materials to work with in machinery, but it is the adoption of those materials to the execution of any particular purpose that constitutes the invention; and if the application of them be new, if the combination in its nature be essentially new, if it be productive of a new end, and beneficial to the public, it is that species of invention which, being protected by the king's patent, ought to continue to the patentee the sole right of vending it."

In the case of Hill v. Thompson (*i*), on a patent for certain improvements in the smelting and working of iron, it seemed to be the opinion of the Court, that a patent for combinations, and proportions, producing an effect altogether new, by a mode and process, or series of processes, un-

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patentee made the better ropes by cheaper means than usual.

(i) 8 Taunt. 391. S. C., 2 B. Moore, 448.

known before, or a patent for a combination of processes altogether new, leading to a beneficial result, would be good.

And in the same case of Hill v. Thompson (*k*), Lord Chancellor Eldon says, "There may be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of applying such materials."

The opinions delivered in the above cases of Huddart v. Grimshaw, and Hill v. Thompson, seem to support the opinion of Lord Chief Justice Eyre, in Boulton v. Bull, in which opinion the Court of King's Bench, in the King v. Wheeler, was also inclined to coincide.

A patent for a machine, each part of which was in use before, but in which the combination of the different parts is new, and a new result produced, is good, because there is novelty in the construction. (*l*)

In Morris v. Branson (*m*), the question was, whether an addition to an old stocking frame was the subject of a patent? Lord Mansfield said, "If the general question of law, viz. that there can be no patent for an addition, be with the defendant, that is open upon the record, and he may move in arrest of judgment; but that objection would go to repeal almost every patent that was ever granted."

(*k*) 3 Mer. 629.

(*l*) Per Abbott C. J., Brunton v. Hawkes, 4 Barn. & Ald., 550.

(*m*) Bull. N. P. 77., and cited by Buller J. in Boulton v. Bull, 2 H. Bl. 489. S. P., per Lord Mansfield in different cases; and per Buller J. in Rex v. Else, Bull. N. P. 76.

Since that case, it has been the generally received opinion in Westminster Hall, that a patent for an addition is good. (*n*)

Dollond's patent, which was for a "new method of making the object glasses of refracting telescopes," was in effect for an improved refracting telescope; so also Watt's patent, which was for a "new invented method of lessening the consumption of steam and fuel in fire engines," was in effect for improvements on the steam engine.

Abstract principle not the subject of a patent.

It seems clear that a mere philosophical or abstract principle, not reduced to practice, cannot be considered as a manufacture within the statute of James. (*o*) Principles, until embodied

(*n*) Boulton v. Bull, 2 H. Bl. 489. per Buller J.; and see per Grose J. ibid.

(*o*) Boulton v. Bull, 2 H. Bl. 463. Hornblower v. Boulton, 8 T. R. 95. Rex v. Wheeler, 2 B. & A. 345. The prinicpal objection urged against Watt's patent was, that it was a patent for a philosophical principle only, neither organised or capable of being organised. But that was not the case. The subject matter of his patent appears from the patent and specification taken together, coupled with the previous state of fire engines. His invention was not a mere principle or idea, the truth of which, as a general or universal proposition, may have been ascertained by much labour and expense: not the mere general principle that steam will be generated, and be continued, and do its office better and quicker, when not checked by cold, or in a vessel kept always hot; and will be condensed better, when the condensation is not checked by heat, or in a vessel kept always cold; and that if the continuation and employment of the steam, and the condensation could be in separate vessels, neither the one nor the other would be checked: a patent for which, if good, would prevent all persons from using or acting upon that principle on all occasions where it might be useful, or to which it might be applied. But Mr. Watt's invention arose from an attention to, and knowledge of this principle, and a discovery of the use and benefit, and of the mode of application of it to the steam engines then in use. He discovered that this might

and reduced to practice, are like the sentiments of an author while in his own mind; their whole existence is in the mind alone; incapable of any other mode of acquisition or enjoyment, than by mental possession or apprehension (*p*): in that state they are alike the property of him or of another; exclusive property commences in the organisation or practical application of them. A patent for a principle, too, might be considered void, as being hurtful to trade, and generally inconvenient; for it would manifestly be a check to improvement, if a patent for a principle unorganised, and not reduced to practice, could be enforced, so as to

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be done in the steam engine, — that the steam might be generated and continued, till it had done its office, in a vessel kept always hot, and condensed afterwards at its proper time in a vessel kept always cold, by having separate vessels, and by an occasional communication. His mode of applying this principle to steam engines then in use, — of generating the steam without its being checked by cold, and of condensing it again by cold, without any check by heat, was by condensing the steam in a vessel distinct from that on which it acts upon the engine, but occasionally communicating, by keeping the steam vessel as hot as the steam which enters it, the means of doing which are pointed out; by keeping the condenser as cold as the air surrounding it by water or other cold bodies, — by pumping out the elastic vapour not condensed, and by keeping the piston air-tight by oils, &c. The method is a *modus operandi*, — the production of a beneficial effect in a manufacture, that is, in a steam engine, by a variation of the machine or mechanism before used, — by an alteration of the engine, — by a new combination, — by a new working of it, — of a manufacture, in a manner different from the manner in which that manufacture had been worked before, the merit and effect of which was a saving of time and expense. The patent therefore was not for a principle, but for a practical manner of doing a thing by an alteration in the machine.

(*p*) See Millar v. Taylor, 4 Burr. 2361. Per Yates J.

prevent another person from practically applying such principle; and it would therefore be inexpedient and unjust that another person should be prohibited from reducing such principle into practice, more particularly when it is considered, that, by so doing, he would not be interfering with any benefit or advantage that the inventor of the principle had by his invention, when he (the inventor) knew of no practical mode of applying it.

CHAPTER III.

OF THE PERSON TO WHOM, AND FOR WHAT TIME, A PATENT MAY BE GRANTED.

Term of a patent.

THE term for which letters patent may be granted is limited by the saving clause (s. 6.) of the stat. 21 Jac. 1. c. 3. to fourteen years or under, to be accounted from the date of the grant.

The usual term is fourteen years: and the duration of the term can be prolonged by act of parliament only. In some instances, in particular cases, and under special circumstances, the legislature has extended the term to a period, varying from twenty to thirty years. (*a*)

It is not only necessary that the manufacture for which a patent may be granted should be both new and useful, but the person to whom the grant may be made must be the true and first inventor thereof. (*b*) And though a thing be new in every particular, and the true and first inventor apply for a patent, it is in the judgment of the Crown whether it will or will not, as matter of favour, make the grant. (*c*)

True and first inventor.

The true and first inventor of a new manufacture, within the meaning of the stat. of James, is,

(*a*) See infrà, chapter 7.

(*b*) See section 6. of the statute, supra, p. 17.

(*c*) See the language of the patent, infrà, p. 71., and per Bayley J. in Brunton v. Hawkes, 4 Barn. & Ald. 553.

1. A person who discovers an invention, and who, under the protection of a patent, first publishes it to the world.

2. A person who brings from abroad, or has had communicated to him by a foreigner, an invention, and who, under the protection of a patent, first publishes it in England.

1. If, therefore, one person make a discovery, and it has not been communicated to, or made use of, by others, but is confined to the knowledge of the party having made it, and another person also discover the same thing, and procure a patent for it, the latter will be protected in his right as the true and first inventor.

The objection to Dollond's patent 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 were not acquainted with it, Dollond was to be considered as the inventor. (*d*)

(*d*) Per Buller J. in Boulton v. Bull, 2 H. Bl. 470. In Ex-parte Dyer, in Chancery, in 1812, Lord Eldon held, that in concurrent applications for a patent for the same object, that which obtains the Great Seal first will have the right at law; see also Forsyth v. Riviere, Chitty, jun. Prerog. of the Crown, 182. In Huddart v. Grimshaw, Dav. Pat. Ca. 290. Lord Ellenborough said that it had happened to him (as Attorney General), in the same morning, to give, as far as he was concerned, his consent to the granting of three different patents for the same thing; but the mode of attaining it were all different, and he thought he was entitled to receive them. But quære, whether the patents granted after the first should not be confined, in such cases, to the new method or process of attaining, by practical means, such thing?

2. The case of Edgeberry v. Stephens (*e*), established that the first introducer of an invention practised beyond sea, should be deemed the first inventor: and it is there said, "the stat. speaks of new manufactures within this realm; so that if they be new here, it is within the statute, for the act intended to encourage new devices useful to the kingdom; and whether learned by travel or by study it is the same thing."

But a person who has learnt an invention from a book, or from the information of another person in England, though his own servant, is not the true and first inventor.

In Arkwright's case (*f*), it was agreed that a book produced containing the invention, and printed and published previous to the patent, constituted the discovery so as to negative invention by the patentee.

In Tennant's case (*g*), the basis of the improvement in the bleaching liquor, for which Tennant had a patent, had been suggested to him by another person; and on this ground, as well as on the ground of the invention having been used prior to the date of his patent, Tennant was held not to be the true and first inventor.

In Barker and Harris *v.* Shaw (*h*), which was

(*e*) 2 Salk. 447. Agreed by Holt and Pollexfen. S. C. Comb. 84. 1 Rol. Rep. 4.

(*f*) Rex *v.* Arkwright, Dav. Pat. Ca. 129., and see Hill v. Thompson, 8 Taunt. 399.

(*g*) Tennant v. ————, cor. Lord Ellenborough C. J., Dec. 1802., Dav. Pat. Ca. 429., and supra, p. 24.

(*h*) Barker and Harris v. Shaw, cor. Holroyd J., Lancaster summer assizes, 1823; and see Rex v. Arkwright, Dav. Pat. Ca. 137.; and per Bayley J., Bloxam and another v. Elsee, 1 Car. and P.

an action for the infringement of a patent for an improved manner in making hats, one of the plaintiff's men (Thos. Walmsley), whom they called as a witness, proved that he himself invented the improvement which was the subject of the patent, whilst employed in their workshop. The plaintiffs were therefore held not to be the inventors, and were nonsuited.

The law, as to what constitutes previous discovery by one man, so as to preclude another being deemed the true and first inventor, is thus laid down by Mr. Justice Dallas: (*i*)

"It may be proper shortly to consider what novelty and discovery are deemed to be: and when I say novelty and discovery, I mean to distinguish between those terms; for it is not enough to have discovered what was unknown to others before, if the discovery be confined to the knowledge of the party having made it; but it must have been communicated more or less, or it must have been more or less made use of, so as to constitute discovery, as applied to subjects of this sort. The case of Dollond has been men-

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568. One of the objections made at the trial in this last case was, that the patent, which stated that the invention had been communicated to the patentee by a foreigner, was taken out in trust for one who was at the time an alien enemy, and that that fact not being disclosed at the time of applying for the patent, it was n fraud on the crown, and rendered the patent void. The point was reserved; but the case, which afterwards came before the Court, on motion for a nonsuit or new trial, was decided on other grounds.

(*i*) Hill v. Thompson, 8 Taunt. 394, 395.

tioned at the bar, as also Tennant's patent for bleaching liquor; and they stand so contrasted as to illustrate the distinction to which I allude. In Dollond's case, the question was, who was the true inventor within the meaning of the statute? Hall had made the discovery in his closet, but had never made it public; and on this ground Dollond's patent was confirmed. In Tennant's case, the great utility of the invention was proved, and the general ignorance of the bleachers of it till after the date of the patent. But, on the other side, a bleacher near Nottingham deposed, that he had used the same means of preparing his bleaching liquor, for six years anterior to the date of the patent; but he also stated that he had kept his method a secret from all but his two partners and his two servants concerned in preparing it: and, in addition to this, different conversations were proved to have passed between Tennant, and a chemist of Glasgow, before the patent, and in these conversations the chemist had suggested to Tennant the basis of the improvement in question. Under these circumstances, Tennant was deemed not to be the inventor, and a nonsuit took place. So in the case of Arkwright's (*k*) patent, with respect to a particular roller, part of the machinery, the evidence was, that Arkwright had been told of it by one Kay; that, being satisfied of its value, he took Kay as a servant, kept him for two years, employed him to make models, and afterwards

(*k*) Dav. Pat. Ca. 61. 137, 138.

claiming it as an invention, made it the foundation of a patent. The same fact was proved as to a crank which had been discovered by a person of the name of Hargrave, which also had been adopted by Arkwright; and although it had been made use of in a degree before by a few, a general ignorance with respect to it was proved by a great number of persons in the trade. Mr. Justice Buller was of opinion that though this might be perfectly true, (that is, the general ignorance as to those improvements,) it signified nothing: the fact that the witnesses on the part of the plaintiff had not heard of those improvements, was no contradiction of previous knowledge and previous use by others."

CHAPTER IV.

OF THE MANNER OF PASSING A PATENT; OF THE CAVEAT; AND OF THE ENROLMENT OF THE SPECIFICATION.

Manner of obtaining a patent.

A PERSON who wishes to obtain a patent for a new invention, must prepare a petition to the King, supported by an affidavit sworn before a Master, or a Master extraordinary, in Chancery, stating that he has invented, or has by communication made to him by a foreigner residing abroad, or by a person residing out of the king's dominions, become possessed of the knowledge of something (giving the title of the invention) which he believes will be of great public utility; that he is the first and true inventor thereof; and that the same hath not been practised, or used by any other person or persons, to his knowledge or belief; and praying the King to grant to him letters patent, for the sole use and benefit of his invention, for fourteen years.

The following is the form of the affidavit, to be sworn before a Master, or, if in the country, a Master Extraordinary in Chancery:

A. B. of maketh oath and saith, that, after much study and expense, he hath invented *(here state the title of the invention)*. That he is the first and true inventor thereof; and that the said invention is entirely new, and has never been practised or used by any other person or

persons to the best of his knowledge and belief. (Signed) A. B.

Sworn at , this day of
before me,
C. D.

The following is the form of the petition: —

To the King's Most Excellent Majesty. Petition.

The humble petition of A. B. of ,

Sheweth, that your petitioner hath, after much study and expense, invented (*here state the title of the invention*), which invention he believes will be of great public utility. That he is the first and true inventor thereof; and that the said invention hath not been practised or used by any other person or persons whatsoever, to the best of his knowledge and belief.

Your petitioner therefore humbly prays Your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, Your Majesty's Royal Letters Patent, under the great Seal of Your Majesty's United Kingdom of Great Britain and Ireland, for the sole use, benefit, and advantage of his said invention, within that part of Your Majesty's United Kingdom of Great Britain and Ireland called England, your dominion of Wales, and town of Berwick-upon-Tweed (*a*) for

(*a*) When it is desired that the patent should extend to the colonies, the words, "and in all Your Majesty's colonies and plantations abroad," should be here inserted.

the term of fourteen years, pursuant to the statute in that case made and provided.

And your petitioner will ever pray, &c.

Petition presented to the King.

The petition and affidavit must be taken and left at the office of the Secretary of State for the Home Department, through whom the petition is to be presented to the King.

Answer to petition.

A few days after, the answer to the petition may be had, containing a reference (*b*) of it to the Attorney or Solicitor General, to report as to the propriety of granting its prayer.

Report.

The report (*c*) of the Attorney or Solicitor General may be had in a few days.

The report, if in favour of the prayer of the petition, must be taken to the office of the Secretary of State for the King's warrant.

King's warrant to prepare the bill.

This warrant (*d*) is directed to the Attorney or Solicitor General, and is the authority for preparing a bill for the King's signature, and is to be taken to the patent office of the Attorney or Solicitor General for that purpose.

The bill.

The bill (*e*) which contains the grant must be taken to the Secretary of State's Office, for the King's sign manual thereto.

Passed at the signet office.

It must be then taken to be passed at the office of the Signet.

Privy Seal.

One of the clerks of the signet (*f*) will make, in the King's name, letters of warrant (*g*) under the hand of such clerk, and sealed with the King's

(*b*) See the form in Appendix.
(*c*) Ibid.
(*d*) Ibid.
(*e*) Ibid.

(*f*) By stat. 27 H. 8. c. 11., see the statute in Appendix.
(*g*) See the form in Appendix.

signet, to the Lord Keeper of the Privy Seal for further process to be had therein. (*h*)

And the clerk of the Privy Seal will make other letters of warrant (*i*), subscribed by him, to the Lord Chancellor (*k*), for writing and sealing with the seal in his custody letters patent. Great Seal.

This last warrant must be taken to the patent office of the Lord Chancellor; the patent will be there prepared, and sealed with the great seal, and is thus passed. (*l*)

The above is the manner of passing a patent for England; and the object of its going through so many offices seems to have been, that the grant should be carefully inspected by the King's officers. (*m*) No examination however, in point of fact, takes place in any of the offices through which it is necessary to go for the purpose of obtaining a patent, except those of the Attorney or Solicitor General, and the Lord Chancellor, at each of which offices caveats (*n*) may be lodged, and an enquiry respecting the invention for which a patent is claimed may be had. Object of patent going through so many offices.

Nothing is required from those who oppose a patent but to shew they have an interest. (*o*)

(*h*) By stat. 27 H. 8. c. 11. See the statute in Appendix.

(*i*) See the form in Appendix.

(*k*) By stat. 27 H. 8. c. 11. See the statute in Appendix.

(*l*) See the form of the patent in Appendix.

(*m*) Lord Coke says, "Such was the wisdom of prudent antiquity, that whatsoever should pass the Great Seal should come through so many hands, to the end that nothing should pass that Great Seal, that is so highly esteemed and accounted of in law, that was against law, or inconvenient; or that any thing should pass from the king any ways, which he intended not, by undue or surreptitious means." 2 Inst. 556.

(*n*) Of the cavent, see infrà, p. 69.

(*o*) Ex parte O'Reilly, 1 Ves. jun. 112.

It may here be added, that the statute 27 H. 8. c. 11., requiring patents to go through the offices of the Signet, Privy Seal, and Keeper of the Great Seal, was made not so much with reference to patents for inventions, as to patents for grants of land, offices, and honours.

To what countries the patent extends.

A patent for an invention granted for England does not extend to Ireland or Scotland.(*p*)

Separate patents therefore must be taken for those countries, if it be wished to extend the patent right there.

A patent for England is in practice made to extend to the colonies, if desired, and included in the prayer of the petition, though the expense is thereby somewhat increased.

Patents have been granted for the colonies only, where not included in the original patent.

Time in which patent may be passed.

The time in which a patent may be passed varies according to circumstances, but it may generally be passed in about two months.

Preparing and enrolling the specification.

After the patent is passed, the specification(*q*) should be prepared within the time allowed for that purpose, and acknowledged and lodged at the enrolment office, to have the usual certificate (*r*) of the enrolment indorsed on it. The time allowed for enrolling the specification of a patent for England is generally two months; but if the inventor state in his affidavit that he intends to apply for patents for Scotland and

(*p*) Universities of Oxford and Cambridge v. Richardson, 6 Ves. jun. 708.

(*q*) As to the specification, see infrà, chapter 5., and see the form in Appendix.

(*r*) See the form in Appendix.

Ireland, then the time allowed is six months. The time may be extended by the Attorney General at any time before the patent is passed, but good grounds must be shown for so doing. It cannot, however, be enlarged after the patent is passed, except by act of parliament. (*s*)

The enrolment, being for the benefit of the public, will not be dispensed with. (*t*)

If the patent be required to be enrolled within a certain time next after the date thereof, the words "next after the date" are exclusive of the day of the date, and therefore the day on which the patent bears date is not in such case to be reckoned. (*u*)

Caveat.

A caveat, which may be entered by any person at the patent office of the Attorney or Solicitor General, is in the following form:—

"Caveat against granting a patent to any person or persons for, &c. (giving the title in as general terms as possible) without notice to A. B. of, &c."

The caveat, when entered, remains on the books for a year, and may be renewed from year to year.

Effect of entering a caveat.

The only effect of entering a caveat is, that no patent for the particular invention mentioned or referred to in the caveat will be granted to any applicant, without giving notice of the application to the person who has entered the caveat,

(*s*) Ex parte Koops, 6 Ves. jun. 599.

(*t*) Ibid. 595.

(*u*) Watson v. Pears, 2 Campb. 295.

so that he may, if he has an interest (*x*), and think fit, oppose the application.

Opposition to granting the patent.

If opposition be not made before the Attorney General until after the warrant come to him to prepare the bill, the opposing party is in practice required to deposit a certain sum of money, sufficient to cover the expenses incurred by the applicant for the patent, in thus far soliciting it, in case it be refused by reason of the opposition; but applicants for patents are not entitled to any expenses incurred by them in soliciting their patents, if opposition be made in the first instance.

In case of an opposition, the Attorney or Solicitor General hears each party separately; and if his opinion be in favour of the party applying for the patent, he reports accordingly, and the patent is obtained in the usual course. If the party who has entered the caveat be not satisfied with the decision of the Attorney or Solicitor General, he may enter a caveat at the patent office of the Lord Chancellor, who will give a like hearing to the parties, and decide between them. The Lord Chancellor does not in general give costs in a case of this kind; but if the opposition be unreasonable, he probably would. (*y*)

(*x*) Ex parte O'Reilly, 1 Ves. jun. 112.

(*y*) See Ex parte Fox, 1 Ves. & B. 67.

CHAPTER V.

OF THE PATENT: ITS FORM AND PROVISIONS; AND HEREIN MORE PARTICULARLY OF THE DENOMINATION OF THE INVENTION IN THE PATENT.—OF THE SPECIFICATION: ITS FORM AND REQUISITES; AND OF THE RULE OF CONSTRUCTION APPLICABLE TO THE PATENT AND SPECIFICATION.

THE letters patent, after reciting the petition and the prayer thereof (*a*), state that the King, "being willing to give encouragement to all arts and inventions which may be for the public good, of his especial grace, certain knowledge, and mere motion, doth give and grant unto the petitioner, his executors, administrators, and assigns, his especial licence, full power, sole privilege and authority, that he the said petitioner, his executors, administrators, and assigns, and every of them, by himself or themselves, or by his or their deputy or deputies, servants or agents, or such others as he the said petitioner, his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times thereafter, during the term of years therein expressed, shall and lawfully may 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,

Letters patent, clauses, &c.

Grant of the privilege.

(*a*) Suprà, p. 65., and see the patent at length in Appendix.

and town of Berwick-upon-Tweed (*b*), in such manner as to the said petitioner, his executors, administrators, and assigns, or any of them, shall in his or their discretions seem meet; and that the said petitioner, 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 his said invention, for and during the term of years therein mentioned, to have, hold, exercise, and enjoy the said licence, powers, privilege, and advantages thereinbefore granted or mentioned to be granted unto the said petitioner, his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years from the date of the patent next and immediately ensuing, and fully to be complete and ended, according to the statute in such case made and provided."

Command to all persons not to interfere with patentee's right.

The patent then contains a clause by which the King requires and strictly commands all persons within that part of the united kingdom of Great Britain and Ireland called England, his dominion of Wales, and town of Berwick upon Tweed, "that neither they nor any of them, at any time during the continuance of the said term of fourteen years, either directly or indirectly, do make, use, or put in practice the said invention or any part of the same, nor in any-

(*b*) If for the colonies, "in all His Majesty's colonies and plantations abroad," are added.

wise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the licence, consent, or agreement of the said petitioner, his executors, administrators, and 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 the royal command, and further to be answerable to the said petitioner, his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned."

Mandate to all mayors, officers, &c. not to molest patentee in his right.

Next comes a mandate to all justices of the peace, mayors, sheriffs, &c. and other officers of the King, that "they do not, during the term, in anywise molest, trouble, or hinder the petitioner, his executors, administrators, and assigns, or any of them, &c. in or about the due and lawful use or exercise of the said invention, or any thing relating thereto."

Conditions on which the patent is granted.

Then follow certain conditions; that,

If contrary to law, or prejudicial to the subject; if not a new invention as to the public use.

If during the term it shall be made appear to the King, his heirs or successors, or any six or more of his or their privy council, that the grant is contrary to law, or prejudicial or inconvenient to the King's subjects in general; or that the said invention is not a new invention as to the public use and exercise thereof, in England,

thereof, or not invented by the petitioner.

Wales, and Berwick-upon-Tweed, or not invented or found out by the petitioner; or

If an imitation of any invention before found out by any other, and publicly used, to whom a patent has been granted.

If the invention be an imitation of any invention or work before found out by any other of the King's subjects, and publicly used or exercised in England, Wales, and Berwick-upon-Tweed, unto whom like letters patent have been granted, for the sole use, benefit, and exercise thereof; or

If the person interested in the patent transfer it, to more than five persons, or receive subscriptions from more than five persons, or act as a corporate body, or do any thing contrary to the 6 Geo. 1. c. 18., &c.

If the petitioner, his executors, administrators, or assigns, or any person or persons who shall or may at any time during the continuance of the grant have or claim any title or interest, in law or equity, of or in the privilege, shall make any transfer or assignment, or any pretended transfer or assignment, of the said liberty and privilege, or any share or shares of the benefit or profit thereof, or shall declare any trust thereof to or for any number of persons exceeding five, or shall open or cause to be opened any book for public subscriptions to be made by more than five persons, in order to raise money under pretence of carrying on the privilege, or shall receive subscriptions of more than five persons for the like purpose, or shall presume to act as a corporate body, or divide the benefit of the patent into more than five shares, or shall do any thing contrary to the stat. 6 Geo. 1. c. 18. for securing certain privileges granted by two charters for assurance of ships and merchandise at sea, and for lending money on bottomry, and for restraining several extravagant practices

therein mentioned; or in case the privilege shall become vested in, or in trust for more than five persons, or their representatives, at one time, reckoning executors or administrators as and for the single person whom they represent.

In any of the above cases the patent is to be void.

Then comes a proviso, that

Proviso for specification.

If the said patentee shall not particularly describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be enrolled in the Court of Chancery within a certain time after the date of the letters patent, that then the letters patent, and all liberties and advantages whatsoever thereby granted, shall utterly cease and become void.

Patent to be construed in most beneficial sense for the patentee.

And the patent concludes by declaring, that the same, or the enrolment or exemplification thereof, shall be in all things good, valid, and effectual, and shall be taken, construed, and adjudged in the most favourable and beneficial sense for the best advantage of the patentee, his executors, administrators, and assigns, as well in all the King's courts of record as elsewhere, &c. notwithstanding the not full and certain describing the nature or quality of the said invention, or of the materials thereunto conducing and belonging.

Points for consideration on the patent.

The most important points arising for consideration out of the language of the patent, and

of the several conditions on which the same is granted, relate to the denomination of the invention in the patent itself, or, to what the invention really is of which the patentee claims the merit of being the inventor; to the novelty and material utility of the invention; and to the sufficiency of the specification, in particularly describing and ascertaining the nature of the invention, and in what manner the same is to be performed.

These points arise out of the language of the grant as to the matter, or thing, of which the sole use and exercise is thereby granted for a limited period, and out of those clauses in the grant which, in conformity with the stat. 21 Jac. 1. c. 3. s. 6., make it rest on the following conditions;— that the invention is new, and does not interfere with any patent before granted; and that the grant is not contrary to law, nor prejudicial or inconvenient to the King's subjects in general.

The novelty and utility of the invention, and who is to be deemed the true and first inventor, have been already considered.

Now, as to the denomination of the invention in the patent, the form and requisites of the specification, and of the rule of construction applicable to the patent and the specification.

The patent and specification are closely connected with each other, and the specification may be considered as part of, and so far incorporated in the patent, that the patent may

be explained and reduced to certainty by the specification. (*c*)

But the patent must not represent the party to be the inventor of one thing, and the specification shew him to be the inventor of another; because, perhaps, if he had represented himself as the inventor of that other, it might have been well known that the thing was of no use, or was in common use, and he might not have obtained a grant as the inventor of it. (*d*)

It seems better, therefore, to treat of the patent and the specification separately.

First, then, as to the patent: —

Denomination of the invention in the patent.

The denomination of the invention in the patent rests upon the representation of the party applying for the patent; and it is entirely at his hazard, whether or not he has invented or found out the matter or thing of which he has represented himself to be the inventor.

Description of invention in the patent is the language of the patentee.

The language in which the supposed invention is described in a patent is the language of the patentee himself. He represents to the Crown, that he has invented this, or that thing, and that he is the first and sole inventor thereof, &c.; and the Crown, yielding to his representation, and willing to give encouragement to all arts and inventions that may be for the public good, grants to the patentee the sole liberty and

(*c*) Hornblower v. Boulton, 8 T. R. 98., per Lord Kenyon; ibid. 102., per Grose J.; ibid. 106., per Lawrence J.; Harmar v. Playne, 11 East., 101.; and Rex v. Wheeler, 2 Barn. & Ald. 350. per cur.

(*d*) Rex v. Wheeler, 2 Barn. & Ald. 350, 351. per cur.

privilege of using his said invention for a certain term, under the conditions before noticed. (*e*)

Consideration of the grant; consequence of failure in; where the patentee is not the inventor of that which he represents.

If the patentee has not invented the matter or thing of which he represents himself to be the inventor, the consideration of the royal grants fails, and the grant consequently becomes void: and this will not be the less true, if it should happen that the patentee has invented some other matter or thing, of which, upon a due representation thereof, he might have been entitled to a grant of the exclusive use. (*f*)

One of the grounds on which Wheeler's (*g*) patent was held void was, that the patent appeared to be for a different thing from that mentioned in the specification. The patent was for "a new or improved method of drying and preparing malt:" whereas the invention by the specification appeared to be not a method of drying or preparing the well-known article malt, but of a method of giving to it, when previously prepared, some qualities which it did not possess before, or which it possessed only in a very slight degree; namely, the qualities of being soluble in water, and colouring the liquor in which it should be dissolved, which latter was the object in view; and this was to be effected by a second and additional process, the application of a high degree of heat.

So in Metcalf's case.(*h*) The patent was for

(*e*) Per cur. Rex v. Wheeler, 2 Barn. & Ald. 349.

(*f*) Ibid.

(*g*) Ibid.

(*h*) Rex v. Metcalf, 2 Stark. 249. But if the word "tapering" had a different meaning annexed to it by the usage of trade,

a new manufacture of hair brushes, described to be tapering brushes, and it turned out that the invention was of brushes not tapering, or gradually converging to a point, which the term "tapering" meant, but having the hairs or bristles of unequal lengths, and the patent was held void: — the jury having found that it was not a tapering brush, but only an unequal brush.

So Lord Cochrane's patent (*i*), which was for "an improved method of lighting cities, towns, and villages," was held void, because the invention consisted in the improvement of an old street lamp, by a new combination of parts known before; and Mr. Justice Le Blanc, in an action brought by Lord Cochrane v. Smethurst, for an infringement of the patent, thought it too general in its terms, and that it should have been obtained for an improved street lamp, and not for an improved mode of lighting cities, towns, and villages.

Consideration of grant; failure of, in part, &c.

A patent, then, cannot extend beyond the consideration; and the consideration being entire, if it fail in any part, the patent is void *in toto*.

If, therefore, a person applying for a patent state that he has discovered improvements in two things, and obtain a patent for the two, and it should turn out that there is no novelty in one,

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it might have been received in its perverted sense. Per Lord Ellenborough C.J., ibid., and see infrà, p. 103., and rule of construction for patents, p. 97. et seq.

(*i*) Lord Cochrane v. Smethurst, 1 Stark. 205.; see infrà, p. 112.

the patent fails; and the reason is, that as the patentee claims the merit of having invented two things, the discovery of the two forms the entire united consideration for the grant, and the advisers of the Crown may think the two the proper subject for a patent, (the granting of which is matter of favour on the part of the Crown, although the thing may be new in every particular,) when they might not have recommended the grant of a patent for each *per se*. The Crown is considered as deceived by the representation.

So also if a person represents himself as the inventor of a thing entirely new, and it turns out that part is not new.

In Jessop's case, the patent was taken for a whole watch, when the invention was a particular movement only.

This case of Jessop was cited by Buller J. in Boulton v. Bull (*k*), who there said, a patent for an addition is good, but it must be for the addition only, and not for the old machine too. Where a patent is taken for an improvement only, the public have a right to purchase that

(*k*) 2 H. Bl. 489. Mr. Justice Buller thought Watt's patent was a patent granted for the engine; and to the patent, as a patent for the engine, the objections, his Lordship said, were two: 'first, that the fire-engine was known before; and, secondly, though the plaintiff's invention consisted only of an improvement of the old machine, he has taken the patent for the whole machine, and not for the improvement alone." Mr. Justice Heath said, there was no doubt that the patentee might have obtained a patent for his machinery, but he thought the patent as taken extended to all machinery that might be made on Watt's principle; so that he had taken a patent for more than he had specified.

improvement by itself, without being encumbered with other things. Where men have neither fire engines nor watches, it is highly probable that they will go to the inventor of the last and best improvements for the whole machine; and if they do, it is an advantage which the inventor gets from the option of mankind, and not from any exclusive right vested in him.

In Bramah v. Hardcastle (*l*), which was an

(*l*) Sittings, London Tr. T. 1789, cor. Lord Kenyon C. J. As there is no report of this case in print, I have thought it well to give the following note of it:—

Action on the case for infringing letters patent, granted to plaintiff for the sole making, vending, &c. of a newly constructed water-closet for fourteen years. Tried before a special jury.

The letters patent recite, that the plaintiff is "the inventor of, and has brought to perfection, a water-closet which will prevent a noisome stench, and is, in all respects, upon a different and much superior construction;" and grant to him the sole making and vending, &c. of the invention.

The specification states:— "The merit of this my invention depends chiefly on two valves, so situated and constructed as to prevent the inconveniences of the water-closets heretofore used;" and then states the operation of the valves to be by one pull or motion, letting the water in and out at the same time: their situation and mode of acting, and the preventing the return of the smell through the waste pipe by a curve therein, which curve always remains filled with water, and consequently prevents all return of the smell through that pipe.

The plaintiff established by evidence the superiority of his water-closet to the others before used. That the operation of it was by two valves, placed horizontally and opening downwards, the one to let in the water, the other letting the filth together with the water pass clear away. That former machines stopped the apertures by plugs pulling upwards: that in them the wire passed through the water and in contact with it for the purpose of pulling up the plug or valve which let the water into the machine, and was thereby frequently obstructed by the frost; and that by the plug or valve being at the bottom of the feeding pipe (which is the pipe conveying the water into the machine), that pipe always remained full of water, and consequently its ope-

action for an infringement of Bramah's patent for the sole making, vending, &c. of a newly

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ration was frequently obstructed by frost.

The plaintiff had remedied both these inconveniences; the first, by conducting the wire in a hollow tube through the water, and thereby preventing the wire from being in contact with the water; and the latter, by placing the valve at the top of the feeding pipe: consequently, when the valves were shut, all the water in that pipe emptied itself into the machine, and the pipe itself always remained empty.

It appeared in evidence that plaintiff had made two or three of these machines before he obtained his patent; but Bearcroft admitted that circumstance would not invalidate the patent, unless the invention had likewise been used by others, the statute empowering the King to grant the monopoly for fourteen years of any manner of new manufacture to the first inventors, which others, at the time of making the patent, shall not use.

Bearcroft also, for defendant, admitted that for an addition the Crown may grant a new patent, but insisted that the wires passing through the pipe was the only part new, for which plaintiff might have had a patent; but this patent goes further, claiming the monopoly of the whole water-closet as the inventor of the whole, and is therefore void. If any part which he claims by his patent to be new is not so, the whole is void. (Lord Kenyon assented.)

It was admitted that valves were not new inventions; but Erskine for plaintiff insisted, that the application of them to this machine, and the manner of placing them, viz. horizontally and opening downwards, thereby acting more freely and without any obstruction, and free from filth, was new. He also contended, that for that new invented application, and not for the basons, pipes, and valves themselves, is the patent sought or obtained. If that objection would hold, no patent for any mechanical invention could be maintained, because all the mechanical powers amount but to five, and are all well and anciently known. No protection should be granted for the sole publishing of any book, because all the letters and words of which it is compounded were well known and understood before. The same will hold of watches, which go upon wheels that were used, and upon the same principles in mills, before they were so applied to watches. The question therefore is, not whether the valve was new, but whether a valve had been so used or applied before—to obtain this effect—before applied to the same use; and he insisted that the valve thus used was never so

constructed water-closet, it was contended that the invention was only an improvement on

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used before, consequently was a new invention.

The specification says, "The merit of my invention is on a valve so situated and constructed: I have thereby prevented the effect of the frost, and the filth and stench arising from the former machines." We do not seek by the patent to prevent persons from doing what they had done before. Suppose a person had done this by a valve placed vertically instead of horizontally, no action would lay for it, it would be no infringement. (Lord Kenyon.— I doubt that. If a thing so near was done, I think it would be an infringement.)

Lord Kenyon. — The petition for this patent states, that the plaintiff had invented a water-closet which would prevent any offensive smell, and in all respects on a different and much superior construction. In my opinion the stress of the cause mainly depends upon this, whether the thing granted by the patent be entirely new. The conducting of the wire through the hollow tube, to prevent obstruction from frost, I admit, is very ingenious, and perfectly new, but is not claimed by the patent. Unlearned men look at the specification, and suppose every thing new that is there. If the whole be not new, it is hanging terrors over them. Plaintiff goes to the King, saying, Here are offensive smells: these are prevented by two valves, causing the water to rush in and out at the same time. That is not new: in a former machine there was one valve and a plug. The question is, whether in principle that is the same, i. e. the effect obtained of stopping the apertures by means? Whether those means differ in shape or not, I think, is not material; the thing is, the effect obtained by stopping the aperture. He concluded with telling the jury, the patent was void, this not being new; and that they should find a verdict for defendant.

The jury, however, found a verdict for the plaintiff.

See also Williams v. Brodie, which was a patent for a stove, with a pipe for conveying air into it, cited in the King v. Arkwright, S. P., Dav. Pat. Ca. 97. Williams brought an action against Brodie for invading his patent for a machine, which was described all of it together, taking it in the patent and covering the old stove, which was an existing thing which the world was in possession of before. The plaintiff Williams's invention was very ingenious, and equal to maintain a patent. It was the insertion of a pipe for conveying the air into the same stove; but it was not described properly in the patent, it was taken with the ad-

the water-closets before used. Lord Kenyon said, "the cause mainly depends on this, whether the thing granted by the patent be entirely new. I admit one part is very ingenious and perfectly new, but it is not claimed by the patent. Unlearned men look at the specification, and suppose every thing new that is there: if the whole be not new, it is hanging terrors over them."

So in Bovill v. Moore(*m*), where the plaintiff brought an action for an infringement of a patent granted to John Browne, and assigned to the plaintiff, "for a machine for the manufacture of bobbin lace, or twist net, similar to and resembling the Buckinghamshire lace net, and French lace net, as made by the hand with bobbins on pillows," the patent was held void, because the machine was not new *in toto*, but the invention was a valuable improvement only.

In the case of Brunton v. Hawkes(*n*), the

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dition, describing the thing in the patent and the stove with it, but it was not described as a new application of a new invention upon an old thing; and the defendant had a verdict.

(*m*) 2 Marsh. 211., and infrà, p. 124. This patent of Browne's was an invention of great merit, and would have supported a patent if properly claimed. See also per Cur. in Hill v. Thompson, 8 Taunt. 394. 401., and see Rex v. Else, infrà, p. 122.

(*n*) 4 B. & A. 541. and suprà, p. 25.

The specification stated the plaintiff's improvements in manufacturing ships' anchors to be, that in place of the common method of joining the arms to the shank, which was by welding, and which required the iron to be so frequently heated as to destroy and injure its tenacity, he made the shank in one piece, and the two arms in another piece. The piece intended for the arms is formed into shape, and of such a thickness or substance in the middle, as to allow a hole to be

plaintiff had obtained a patent for improvements in the construction of ships' anchors, wind-

made through the centre of the solid piece, to receive the thick end of the piece which forms the shank, and the said hole in the arm-piece is made somewhat conical or bell-mouthed, so that no strain can separate the arms from the shank; by which means the necessity of endangering the solidity of the materials is avoided, only one heat being necessary to bring the thick end of the shank and the hole in the arm-piece into perfect contact; for the strength of this important part of the anchor is not trusted to a union effected by welding, which may be, and generally is, defective but to the impossibility of drawing a thick solid conical piece of iron through the smaller aperture of a conical opening into which it is fitted. The arms with their flukes may be made of good cast iron, taking care to allow them sufficient substance. But anchors should not only have the utmost strength which can be attained, but also be made as secure as possible against the danger of being lost, by the cable or chain by which they are attached to the ship giving way. Cables made of hemp can never be rendered safe, but chain cables may. The specification then described the improvements in the construction of chain cables and moorings, and stated, that the object to be gained was the greatest possible strength from a given quantity of materials, keeping in mind the direction in which the strain is to be borne. It then showed, that the applying receding forces to a circular link, would change its form into one with round ends and parallel sides, and that the effect of this alteration was to destroy the link, by disturbing the relative position of every particle of the metal and destroying its corpuscular attraction, and concluded that a circular was therefore a bad form. The specification then stated, that if the sides of the circular link were prevented from collapsing, the evil would be thereby lessened; and that, if a stay or diagonal bar were introduced between the sides of the circular link, it would then be able to resist a greater force than before, having two points of support; the unsupported parts, however, would, by applying a strain, assume a quadrilateral form, a change which could not be effected without a derangement of the matter in the link, which must rupture and destroy it. It stated, that stays with pointed ends had been used in chains, but that such a stay only supported two opposite points of the link; the tendency of the receding forces being to straighten, and consequently to rupture, the parts that were left unsupported. It then proceeded thus: — "My

lasses, and chain cables; it turned out that there was no novelty in the construction of the anchors,

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said improvements in chain cables or moorings are founded on considerations drawn from the facts that have been alluded to. If a circular link, instead of being supported only in two opposite points, have its opposite sides supported by a stay embracing two considerable and opposite segments, taking care to leave such opening as shall allow sufficient play for the links received into it, the link would be much stronger than with a stay having its ends pointed; but still the link would be of a bad form; and, moreover, even if circular links could be made unobjectionable as to strength, they should be avoided on account of the greater weight of metal which a given length of chain would require, than when formed of links of a less exceptionable form. We have seen that the tendency of receding forces applied to curved links, is to draw portions of them into straight forms: thence, it follows, that twisted links of every kind should be avoided where strength is required; for such links, even if their opposite sides be supported by an interposed stay, must, by the application of a sufficient strain, untwist themselves to become straight, and thus have the arrangement of their particles disturbed. As the tendency of forces, applied as before mentioned, to curved or twisted links, is to convert the curves or distortions into straight portions as above described, it follows, that links presenting in their original construction straight parts between the points of strain are the strongest that can be made, with an equal portion of metal; and hence links with parallel sides and semi-circular ends would in every case be preferred, were it not necessary to the quality of good chain, that it should be able to resist lateral violence, as well as a general strain operating by stretching." After shewing the effect of a lateral strain upon such a link, the specification then proceeded thus:—"From the preceding considerations it is evident, that of all the forms and constructions that can be given to a link, that form and construction which shall be able to convert a lateral into an end strain, by yielding proper support to the opposite sides of the link, is the one that should be preferred; and of such a form and construction is the link described in a figure annexed to the specification, having circular ends and sides nearly parallel but bulging out towards the middle, with my broad-ended stay introduced between the sides of the link. At the time the stay is introduced, the link is wide enough to receive it; and the link being red-hot at the time of its intro-

and it was held that the patent was wholly void; and in that case the Lord Chief Justice (Abbott) said: "It is not without great reluctance that my mind has at length come to a conclusion which (as far as my judgment goes) will have the effect of avoiding this patent. It appeared in evidence at the trial, that the mode of making cables and anchors introduced by the plaintiff into general use, was highly beneficial to His Majesty's subjects; and I should wish that he who introduced it might be entitled to sustain the patent. Upon a full consideration of all the arguments that have been addressed to us, and a view of the patent, the specification, and the evidence given at the trial, I feel myself compelled to say, that I think so much of the plaintiff's invention as respects the anchor is not new, and that the whole patent is therefore void."

And in the same case Abbott C. J., speaking of the case of Hill v. Thompson (*o*), which under-

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duction, and being pressed home to the stay by a die or press, or any suitable mechanical means, takes a fast hold of it and retains it in its place. Other ways of introducing and retaining in its place this broad-ended stay may be employed; but the preceding one has been found exceedingly simple and efficacious. These broad-ended stays should embrace the whole or the opposite curved parts of the middle of the link." For what was proved on the trial, and the opinion of the judges as to the novelty in the anchor, see suprà, p. 25. et seq.

(*o*) 8 Taunt. 375. S. C., 2 B. Moore, 424. The invention was for extracting iron from slags which were formerly useless, and thrown away as rubbish. This was effected by smelting such slags in mixture with certain proportions of limestone, and mine rubbish, the substance in which iron stones are usually found. Another part of the invention was, the use and application of lime to iron, during its

went great consideration in the Common Pleas, says: "In that case, the patent was granted to the plaintiff for the invention of certain improvements in the smelting and working of iron; and the Court of Common Pleas appear to have considered that the improvement introduced by the plaintiff into what may properly be called the smelting of iron, was the obtaining iron from that cinder and slag which before had been thrown away as refuse, and that that might be considered as new. It appeared, however, that the plaintiff claimed further the merit of having discovered that the application of lime in certain stages of the process would cure a disease common to all iron, not merely to that which he was to produce, but to iron originally manufactured from the fresh ore. Now it turned out that that

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treatment in the furnaces subsequently to the operation of the blast furnace, in order to prevent the quality of cold short in the iron, that is, brittleness when cold. It was proved that the processes were valuable improvements, but that slags and mine rubbish had been smelted together before; and also that lime had been used to prevent cold short. It was contended by the defendant's counsel that the plaintiff had taken his patent for too much, that he ought to have confined himself to particular proportions and qualities, or to a beneficial mode, and not have claimed it for extracting iron from slags, and the application of lime to cure the distemper of cold short — both of which were previously known. It was also contended that the claim, both in the title of the patent and in the specification, was too loose and general. — The Jury found a verdict for the plaintiff. See Holt's N. P. C. 636. The points made by the defendant's counsel were reserved for the opinion of the Court; and it seems from the report, that afterwards, on motion for nonsuit or new trial, a nonsuit was entered, on the ground that no infringement had been proved, and that the invention was not new.

was not a discovery; for the application of lime to iron made from the cinder, originally used in making ore, was known and practised before. No two things can be more distinct in their nature than the obtaining of iron from a material from which it was impracticable to obtain it before, and the cure or prevention of a disease to which all iron was subjected. In that case, however, the Court of Common Pleas held, that, admitting there was novelty in the one, yet, as there was no novelty in the other, the patent was wholly void."

And in Hill v. Thompson(*p*) Lord Chancellor Eldon said: "If there be a patent both for a machine and for an improvement in the use of it, and it cannot be supported for the machine, although it might for the improvement merely, it is good for nothing altogether, on account of its attempting to cover too much."

The same point also, as to the grant being void upon failure of the consideration in part, was decided in Bloxam and another, assignees of Fourdrinier, *v.* Elsee. (*q*) The patent was granted for a machine for making paper in single sheets, without seam or joining, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length; and it was granted upon the representation of the inventor being in him by a foreigner. Abbott C. J. there says:

(*p*) 3 Mer. 629.
(*q*) 1 Car. & P. 558. and 6 Barn. & C. 169.

"The consideration of the grant is the invention of a machine for making paper, in sheets of width and length varying within the limits designated. If any material part of the representation was not true, the consideration has failed in part, and the grant is consequently void; and a defendant, in an action for infringing the patent, has a right to say that it is so. Now, I think it impossible to say that both width and length are not important parts of this representation." And his lordship afterwards adds, "Then if the representation be (as I think it is), that paper of various widths *may* be obtained by one and the same machine, I must look to the evidence to discover whether the patentee was possessed of a machine, or of the invention of a machine, capable of accomplishing this object; and, unfortunately, the evidence shews that he was not; I say unfortunately, because it is to be lamented that the advantage of great ingenuity, labour, anxiety, and expense should be lost to those who have bestowed them. The patentee was at the time possessed of one machine, and one only, and this adapted to one degree of width, and one degree only; and he was not then possessed of any method by which different degrees of width might be manufactured by that machine or by any other."

So also Campion's patent (*r*), which was for

(*r*) 3 Brod. & Bing. 5. The plaintiff's specification was as follows:—"I, the said Robert Campion, do hereby describe and ascertain the nature of my said invention, and the manner in which

"a new and improved method of making and manufacturing double canvass and sail-cloth with

the same is to be performed, as follows: (that is to say,) my new and improved method of making and manufacturing double canvass and sail-cloth with hemp and flax, or either of them, without any starch whatever, consists in first spinning the warp-yarn, either by hand or with the sort of machinery generally used for such purposes, without water or dampness of any kind whatever; afterward, properly cleansing and bleeching the same in the best manner; and, having made it perfectly dry from that process, placing and working it on a machine similar to those commonly used in cotton manufactories, round the upper bobbins of which machine the same is rolled in single threads, so as that when the said machine is put in motion in the usual manner, the effect thereof is to untwist those threads, and take out of them all the twist that was made therein by the operation of spinning, and to twist or interweave two of them into one thread, or into half the number of other bobbins in the lower part of the said machine, the reverse or contrary way to that in which the single thread or warp had been before twisted. By this process, the yarn is not so hard twisted as at first; and in the operation of thus reversing the twist, the fibres of the flax are so closely united, and are laid or arranged so perfectly level or even in every respect, as to render the warp-yarn or threads much stronger than any double threads are by the usual mode of manufacture with starched chains. The double threads or warp-yarn being thus prepared and twisted together into one chain or warp, the same is thereby preserved from injury whilst passing through the hay-walk in the subsequent operations of weaving; and thus, the necessity of using any starch, or substitute for starch whatever, which, in the ordinary mode of manufacture, is used only for the purpose of winding the two threads or warp, and making them smooth, so as to pass through the hay-walk with facility and without injury, is altogether superseded. The canvass thus manufactured is much more pliant than what is made with starch, or in any other manner, and is stronger, not only because its being so very regular and even, necessarily makes the stress equal in every part, but because, in consequence of there being no starch used in the manufacture, the weight of that material, which is considerable in every web or piece, must be supplied by an additional quantity of warp and woof, and being soft and pliant it will thicken when used, and become of a closer texture, without breaking or running up, or being liable to mil-

hemp and flax, or either of them, without any starch whatever," was held bad, because the dis-

dew, or turn black. Where hemp is used in the manufacture, I hackle the same with soft soap, and a very small proportion of oil, in preference to the entire use of oil, as generally practised; for this preparation lays the fibres as even as oil does, and at the same time counteracts the viscous qualities of the hemp, and, with a proper quantity of pearl or potash, assists in bleaching the yarn, and obtaining a good colour in that process; the advantages of my invention, of course, extend to canvass made of unbleached yarn; and the only difference in the manufacture thereof, is the process of bleaching being then dispensed with."

At the trial, before Dallas C. J. (London sittings after Hilary term 1821), it was proved, that double sail-cloth had been made without starch ever since the year 1803, particularly by Mr. Dempster, and that the exclusion of starch was an improvement of great importance. But the plaintiff's witnesses deposed, that his process for making unstarched sail-cloth was new, and different from the process pursued by the defendant for making unstarched cloth, particularly as to reversing the original twine; and that by this means the plaintiff produced a better article. Some of the defendant's witnesses denied that the process pursued by the plaintiff differed from the defendant's process. One of them said, the process of reversing the twine was far from being new or original, and that the wrapper of an Egyptian mummy, which he had examined, was woven in the same manner.

Dempster's specification was as follows:—

"Instead of using single yarns not twisted, but glued together with starch or other mucilage, in order to form the warp of the canvass, as is now commonly done, to the great injury of the article, by rendering it liable to spontaneous destruction by mildew, I use twine, composed of two or more yarns of prime material of equal size and strength, both for the warp and woof, and I am by that means enabled to weave, and I do weave my canvass, without starch, or any other mucilage whatever, and I do thereby produce an article nearly twice as strong as common canvass of the same weight and fineness, and with the advantage, that its threads have an equal bearing on one another, in all directions; not liable, like the common canvass, to split longitudinally, being much stronger in the cross direction, not capable of rot or mildew from the presence of mucilage, and extremely durable, because it is subject to no irregular action of sharp cutting threads on its woof, but is only exposed to the fair, slow,

covery, if any, consisted in an improved mode of texture, to be applied to unstarched cloth, and not in the making the cloth without any

and gradual wear of its well combined and duly proportioned component parts, which maintain their relative strength to the last."

The jury found a verdict for the plaintiff.

Lens Serjt. obtained a rule nisi to set aside this verdict and enter a nonsuit, or have a new trial, on the ground (among other objections to the verdict) that the patent was taken out for more than the plaintiff could claim as his own discovery; the patent appearing to claim for the plaintiff the discovery of the process of making sail-cloth without starch.

Per Dallas C. J. "The patent is 'for a new and improved method of making and manufacturing double canvass and sail-cloth with hemp and flax, or either of them, without any starch *whatever*.' On reading this, how is a common person to decide? The discovery claimed is not simply a method of making double canvass and sail-cloth, but a new and improved method; and in what is this new and improved method stated to consist but in the making the cloth without any starch whatever? From the time I first read the patent down to the present day, I thought that the object of the patentee was to make cloth without starch. Then as to the specification, if that be different from the patent, the whole is void; if it coincides, it is open to the same objection as the patent. But the specification, after describing the operation of spinning, and after stating that thereby the necessity of using any starch, or substitute for starch whatever, is superseded, proceeds to allege that 'the canvass thus manufactured is much more pliant than what is made with starch, or in any other manner; and is stronger, not only because its being so very regular and even, necessarily makes the stress equal in every part, but because, in consequence of there being no starch used in the manufacture, the weight of that material must be supplied by an additional quantity of warp and woof; and being soft and pliant, it will thicken when used, and become of a closer texture, without breaking or running up, or being liable to mildew, or turn black.' Whether we look to the patent or the specification, I have no doubt that the claim of the plaintiff is too extensive: it is not confined to an improved method of weaving the cloth or twisting the threads, but also comprehends another mode of proceeding, which is not a new discovery."

Per Park J. "But if he only meant to claim as his own an improved mode of texture or twisting the thread, to be applied

starch whatever as the patent imported, the advantage of excluding starch not being a new discovery.

Felton's patent of 1827 (*s*), for "a machine for an expeditious and correct mode of giving a fine edge to knives, razors, scissors, and other cutting instruments," was held bad, because the machine described by the specification, though useful in sharpening knives, would not do for scissors.

When necessary to state in the patent the purpose which the manufacture is to answer.

In general, it is not necessary to mention in a patent the purpose which the manufacture for which the patent is granted is to answer; but if in any particular case the mention of the purpose be necessary to explain the words previously used, to shew that they were not used in their ordinary and obvious sense, but in a sense limited and confined to that particular purpose, in such a case the purpose ought to be mentioned. (*t*)

For instance, in Wheeler's case (*u*), if the patentee had represented himself to be the inventor of a method of preparing malt for the purpose of colouring beer and porter, every person who read his representation would understand that the malt, prepared according to his

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to the making of unstarched cloth, he might have guarded against ambiguity by disclaiming, as his own discovery, the advantage of excluding starch."

Per Richardson J. "If the specification had guarded against misapprehension on the part of the public, by stating that the patentee claimed no merit for the exclusion of starch, it is not impossible but that the patent might have been valid."

(*s*) Felton v. Greaves, 3 Car. & P. 611. Action for an infringement of plaintiff's patent; plaintiff nonsuited. See infrà, p. 116.

(*t*) Rex v. Wheeler, 2 B. & A. 352.

(*u*) Ibid., and see suprà, p. 78. and infrà, p. 115.

method, was not intended to answer the common and known purposes of that article, viz. the brewing of beer, but was intended only for the special and particular purpose of colouring the liquor, and to be used in addition to common malt; and the Court held that he ought so to have represented.

Where a patent is granted for a machine upon a false representation, and another patent is afterwards granted for an improvement on such machine.

If a patent be granted for a machine, upon representations made by the patentee that it is capable of producing certain effects, some of which, however, it is not capable of producing, and another patent be afterwards granted for improvements on the machine for which the first patent was granted, and the improved machine be capable of producing the effects which the other could not, still both patents are void; and on the same ground, that is, that the patentee has in neither case invented that of which he represents himself to be the inventor. The first patent is granted upon a representation not true, and so also the second: for it does not furnish an improvement of any thing previously existing, but an addition of some new matter not existing or known at the date of the first patent, and which, nevertheless, is therein represented as existing or known, and which cannot but be considered an important part of the representation then made, and of the consideration of the grant. The second patent, therefore, being founded on the first, has nothing to support it. (*x*)

(*x*) See Bloxam and another, assignees, v. Elsee, 6 Barn. & Cr. 178., per Lord Tenterden C. J.

And the consequence will be the same, though an Act of Parliament so far substitute the specification under the second patent in the place and stead of the specification under the first, as to remove all formal objections to the former to which the latter is not open. (*y*)

The Act of Parliament cannot so far act retrospectively as to enable the patentee to say, that at the time of granting the first patent he possessed, or had then discovered or invented, a machine which it appears he did not possess, and had not invented or discovered until a much later date. (*z*)

But if the machine first invented were capable of doing what is represented, though clumsily and imperfectly, the latter machine might be considered an improvement of it. (*a*)

(*y*) See Bloxam and another, assignees, v. Elsee, 6 Barn. & Cr. 180., per Lord Tenterden C.J.

(*z*) Ibid. per Lord Tenterden, C. J.

(*a*) Ibid. In this case a patent was granted to one Gamble, in April, 1801, for "a machine for making paper, in single sheets without seam or joining, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length;" and in June, 1803, Gamble obtained a patent for certain improvements on, and additions to, the machine for which he had obtained the first patent.

Gamble assigned his interest in the patents to Messrs. Fourdrinier, and their term in the patent for the improved machine was enlarged, by an act of parliament passed in 1807, for seven years or thereabouts, in addition to the term granted by the patent; and by one section of the act, every objection which might have been made to the validity of the patent, and to the sufficiency of the specifications enrolled, should be of the like force and effect in law in any action brought by virtue of that act, as such objections would have been if the act had not passed, and if also the specifications to be enrolled, as required by that act, had been enrolled,

From the foregoing cases it will be seen how necessary it is that a correct denomination should be given to the invention, in the letters patent. Summary as to the title of the patent &c.

It must not be too general, nor contain any ambiguity. It should state in substance what is set out in detail in the specification, as to the nature of the invention.

If the invention be a new thing, useful for its own sake, the patent should be for such new thing. (*b*)

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instead of the former specifications respectively, except only as to the extension of the privilege for the further term of years thereby granted.

It appeared by the specification of the patent taken out in 1801, that the machine then invented was so constructed as to be capable of producing paper of one definite width only, and in order to vary the width a new machine was required. By the subsequent improvements, one and the same machine became capable of producing paper of various widths.

It was objected at the trial, that, as the person who petitioned for the first patent had represented to the Crown that he was in possession of one machine capable of making paper of different widths, which was not true, the first and subsequent patents founded upon it were void. The Lord Chief Justice reserved the point. — The case ultimately went to the jury on this question, "Whether the machine, for which the first patent was granted, was capable of producing useful paper." On a verdict being found for the plaintiffs, and a motion being afterwards made for a new trial, the Court granted a new trial, on the ground that the question ought to have been left to the jury, "whether the machine, as originally constructed, was capable of doing that which the patentee professed it should do, namely, make paper of different widths." — See the case, 6 Barn. & Cr. 169.

(*b*) Rex v. Wheeler, 2 B. & A. 350. It should seem that a patent granted for making the new thing would be good as a patent for the thing itself. Lord Chief Justice Eyre, indeed, in Boulton v. Bull, 2 H. Bl. 492., intimated that in such a case the patent ought to be for the new substance or composition; and he said, upon this ground Dollond's patent, which was for a method of making a new ob-

If the invention be any addition or improvement to a thing useful for its own sake, the patent should be for such addition or improvement only; that is, for the improvement of the thing, or for the improved thing. (*c*)

If the invention be a new engine or instrument, or any addition or improvement to an engine or instrument, the patent may be taken for the new engine or instrument, or addition or improvement, (according as the invention may be of an entire new engine, or an improvement only), or it may be for a new method of accomplishing that object, which is to be accomplished by the new engine or instrument, or addition or improvement. (*d*)

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ject-glass for refracting telescopes, and not for the object-glass produced, was perhaps exceptionable. But, as was said by Lord Kenyon, in Hornblower v. Boulton, in error, 8 T. R. 98., "No technical words are necessary to explain the subject of a patent; as Lord Hardwicke said upon another occasion, there is no magic in words; the questions here are, whether, by looking at the patent, explained as it is by the specification, it does not appear to be a patent for a manufacture." See also same case, per Grose J. and Lawrence J. And in The King v. Wheeler, 2 B. & A. 352., the Court of King's Bench seemed to think that a patent for a new method of drying and preparing malt, for the colouring of beer, might be good as a patent for the manufacture, that is, for the malt so dried and prepared, if followed by a sufficient specification.

(*c*) See supra, p. 80, 81. 84., Jessop's case, Bramah v. Hardcastle, Rex v. Else, Bovill v. Moore, and see Boulton v. Bull, 2 H. Bl. 482, per Heath J., and ibid. 488, 489. per Buller J.

(*d*) See Boulton v. Bull, 2 H. Bl. 463., Hornblower v. Boulton, 8 T. R. 95., and Rex v. Wheeler, 2 B. & A. 350. per Cur. Some inventions may combine two properties, as being new or improved means of producing a new or improved substance; or as being a new machine, and also a new use of machinery. See 3 Mer. 629, 630. per Lord Eldon. Huddart's invention for

If the invention be an improvement upon an engine for which a patent has been granted, the term of which is not expired, and the improvement cannot be used without the original engine, a patent may nevertheless be obtained for the improvement, although it cannot be used until the expiration of the original patent. (*e*)

If the invention be a machine consisting of an entirely new combination of parts from the beginning, though all the parts, separately, might have been used before, the whole machine may be claimed as the invention of the patentee. But if a combination of a certain number of those parts have previously existed up to a certain point in a former machine, which, carried no farther than that, was a useful invention, the patentee merely adding other combinations; then the whole should not be claimed as the invention, but the improvement only. (*f*)

If the invention be a new process or method producing an old substance advantageously for the public, or an effect useful to the public (supposing such an invention to be the lawful sub-

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rope-making was new machinery, and produced ropes of an improved quality by reason of the interior disposition of their yarns. So also the machinery for making bobbin-net lace was a new invention of machinery, and the lace produced by it was a new article in trade.

(*e*) Per Lord Eldon, ex parte Fox, 1 Ves. & B. 67.

(*f*) Bovill v. Moore, 2 Marsh. 211., and per Abbott C.J. in Brunton v. Hawkes, 4 B. & A. 550., and per Best J. 556., and suprà, p. 25., and per Lord Eldon in Hill v. Thompson, 3 Mer. 629.

ject of a patent), the patent must be for the new process or method. (*g*)

II. *As to the Specification, its Form and Requisites.*

Of the specification.

By a proviso (*h*) in the letters patent, the patentee is required particularly to describe and ascertain the nature of his invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and to cause the same to be enrolled in the Court of Chancery within a certain time after the date of the patent.

The instrument here referred to is called the specification. The proviso requiring a specification was first introduced into letters patent towards the end of the reign of Queen Anne. (*i*)

Specification must embrace two points.

It will be seen by the above proviso that the specification must embrace two points: it must particularly describe and ascertain, first,

(*g*) Boulton v. Bull, 2 H. Bl. 493., per Eyre C. J., and suprà, p. 42., and Rex v. Wheeler, 2 B. & A. 350. 353.

(*h*) See suprà, p. 75.

(*i*) Before this time a patentee was not called upon for any specification. Mr. Savery's patent of 1698, and Mr. Pownoll's of 1712 (11 Anne), had no clause in them requiring any specification. But the attorney or solicitor-general (who are directed to insert in the patent all such clauses as they shall judge requisite), in order to obviate the inconveniences to the public of giving the patentee a privilege without clearly defining the nature and object of his invention, had a clause inserted in the patent to render a specification necessary, which clause has ever since been inserted.

the nature of the invention; and, secondly, the manner in which it is to be performed.

Object of the specification.

The object of the specification is, that the public may have the full benefit of the invention after the expiration of the patent.

What required in the specification.

For this purpose it is required that the nature of the invention, and the manner of performing it, be described in the specification in the clearest and most explicit manner of which the subject is capable, so that persons of reasonably competent skill in the subject matter may be able, by following the directions in the specification, to practise the invention for which the patent is granted, without the expense or labour of experiment or trial, and in as cheap and beneficial a way as the patentee himself. (*k*)

In the King v. Arkwright (*l*), Mr. Justice Buller lays down the following rules as to specifications:—

1. "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."

2. "He must so describe it, that the pub-

(*k*) Liardet v. Johnson, Bull. N. P. 76.; Rex v. Arkwright, Bull. N. P. 77., and Dav. Pat. Ca. 61.; Turner v. Winter, 1 T. R. 602.; Boulton v. Bull, 2 H. Bl. 484.; Harmar v. Playne, 11 East, 101.; Wood v. Zimmer, Holt's N. P. C. 58.; Bovill v. Moore, Dav. Pat. Ca. 400.; Hill v. Thompson, 8 Taunt. 393.; Rex v. Wheeler, 2 B. & A. 345.

(*l*) Bull. N. P. 77.

lic 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; 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."

3. "If the specification be, in any part of it, materially false or defective, the patent is against law, and cannot be supported."

Further rules, &c. for specifications.

The subjoined rules may also be found worthy of attention in framing specifications:—

1. No prescribed form of words is necessary in the specification; but if it be intended that any words used should not be understood in their plain ordinary sense, an explanation should be given, to show that the words are to be understood in some special and peculiar sense. (*m*)

2. But where words, by the known usage of trade, or the like, have acquired a peculiar sense, distinct from the popular sense of the words, they may be used in such peculiar or perverted sense (*n*).

3. The description may be by words alone, or by words aided by figures, or drawings with proper references. (*o*)

(*m*) See per Ashurst J. in Turner v. Winter, 1 T. R. 606.; per Lord Ellenborough C. J. in Rex v. Metcalf, 2 Stark. 250.; and per Cur. in Rex v. Wheeler, 2 B. & A. 352.

(*n*) Per Lord Ellenborough C. J. in Rex v. Metcalf, 2 Stark. 250.

(*o*) Boulton v. Bull, 2 H. Bl. 463.; per Lord Ellenborough C. J. in Macfarlane v. Price,

4. The patent may be explained and reduced to certainty by the specification; but the specification must support the title of the patent, it must extend to the invention claimed by the patent, and it must not show the patentee to be the inventor of a different thing from that which is there claimed. (*p*)

5. The specification must be confined to that which is the real invention of the patentee. (*q*) If, for instance, the invention be an addition or improvement to any thing, and the whole improved thing be described in the specification, a distinction must be made between what is new and what is old, and the claim of the patentee confined to the former. (*r*) And this has been held requisite though one of several drawings annexed to the specification contained a detached

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1 Stark. 201., and per Abbott C. J. in Bloxam v. Elsee, 1 Car. & P. 564.; and per Gibbs C. J. in Bovill v. Moore, Dav. Pat. Ca. 369., speaking of drawings annexed to specifications:—"A rough plan, drawn by a person who understands the subject, with pen and ink, is better than the most beautiful drawing of a man who does not understand it."

(*p*) Hornblower v. Boulton, 8 T. R. 98.; Rex v. Wheeler, 2 B. & A. 350., and Rex v. Metcalf, 2 Stark. 249.; Lord Cochrane v. Smethurst, 1 Stark. 205., and Felton v. Greaves, 3 Car. & P. 611.

(*q*) Per Lord Mansfield in different cases, and per Buller J. in Rex v. Else, Bull. N. P. 76., Dav. Pat. Ca. 144., and see Bovill v. Moore, Dav. Pat. Ca. 361., and 2 Marsh. 211., and per Lord Eldon in Hill v. Thompson, 3 Mer. 629. This is sometimes done by disclaiming, as part of the patentee's invention, any thing stated which is not new. See Campion v. Benyon, 3 Brod. & Bingh. 5., per Park and Richardson Js., and suprà, p. 90., (n.)

(*r*) Macfarlane v. Price, 1 Stark. 199., cor. Lord Ellenborough, and per Gibbs C. J. in Manton v. Manton, Dav. Pat. Ca. 349.

and separate representation of the parts in which the improvement consisted.(*s*)

6. But if a patent be obtained for a machine, and a specification be duly enrolled, and afterwards another patent be obtained for certain improvements in the same machine, and the grant of the first patent be recited in the second, then, if the specification to the second patent so reciting the first, contain a full disclosure of the whole machine so improved, it sufficiently distinguishes between what is new and what is old; because the patent and the specification are to be construed together as one instrument, and the latter specification, through the medium of the patent, has express reference to the former one; and, by comparing the two specifications, a person would have no difficulty in discriminating between the old and new parts; and if the patentee were only to describe in the second specification the precise improvements on the former machine (which he might do), reference must still be made to the original specification, or at least a person must bring a full knowledge of it with him, before he could understand truly how to adapt the new parts described to the old machine, and the trouble and labour would be fully as great in the one case as in the other.(*t*)

(*s*) Macfarlane v. Price, 1 Stark. 199

(*t*) Harmar v. Playne, 11 East. 101., and see 14 Ves. 130. The following case was stated for the opinion of the Court by the Lord Chancellor:—

By letters patent of the 20th of March, 1787, the king granted to John Harmar (the plaintiff) for fourteen years the sole privilege of making, using, and vending a certain machine by him invented for raising a shag on all

7. In a specification of a patent for an improvement in a machine, it seems not ne-

sorts of woollen cloths, and cropping or shearing them, which together come under the description of dressing woollen cloths, and also for cropping and shearing of fustians; with the usual proviso or condition for avoiding the patent on failure of enrolling a specification. In pursuance of this proviso, Harmar duly enrolled a specification of the said invention, with drawings of the machine in the margin thereof. On the 29th of March, 1794, his Majesty granted another patent to Harmar, whereby, after reciting that Harmar had obtained letters patent of the 20th of March, 1787, authorizing him to make, use, and vend his invention of a machine for raising a shag on all sorts of woollen cloths, &c. for fourteen years; and further, that he had invented considerable improvements in the said machine, for which improvements in the said machine he prayed his Majesty's letters patent for the exclusive enjoyment thereof for fourteen years pursuant to the statute; the letters patent, therefore, granted to him the sole privilege and authority to make, use, and vend his said invention, and have the whole profit thereof. The letters patent also contained a proviso, that if Harmer should not particularly describe and ascertain 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 cause the same to be enrolled in the Court of Chancery within one calendar month next and immediately after the date of the said letters patent, then they should become void. In pursuance of this proviso Harmar did in due time enroll a specification in Chancery, with drawings of the machine in the margin thereof; the introductory part of which specification is as follows:—"To all, &c., I, John Harmar of Sheffield, send greeting. Whereas his Majesty, by his letters patent dated the 29th of March, in the 34th year of his reign, hath granted to me especial licence and sole privilege, &c. that I, my executors, &c. and assigns, at all times during the term of years therein expressed, should and lawfully might make, use, and vend *the machine by me invented* and found out for raising a shag on all sorts of woollen cloths, &c. (as before) within England, &c.; and that I should enjoy the whole profit and benefit, &c. of the said invention for fourteen years from the date of the said letters patent, according to the statute, &c. And whereas in the said letters patent there is a proviso or condition, that if I, John Harmar, should not *particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed*, by an instrument in writ-

cessary to state precisely all the former known parts of the machine, and then to apply to those

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ing under my hand and seal, and cause the same to be enrolled in Chancery within one calendar month next after the date of the said letters patent, then the said letters patent, &c. should become void.—Now know you, that, in obedience to the said letters patent, and proviso, &c. I, John Harmar, do by these presents particularly describe and ascertain the nature of the said invention, referring to the drawings in the margin of these presents, which I explain as follows." The specification then proceeds, under different letters of the alphabet corresponding with similar letters on the drawing, to set forth a full description of the whole of the machine; and the specification ends with these words:—" And I, John Harmar, do hereby declare that my said invention is intended to be worked in the manner hereinbefore particularly mentioned." It was admitted by the defendants that the improvements for which the second patent was granted are included in the general description of the second or improved machine, as set forth in the specification of the second patent; and that the second specification does contain a full and proper description of *the whole machine in its improved state*. But the second specification does not in any manner point out or describe the improvements upon the former machine by any verbal description, or by any delineation or mark in the drawing; and which drawing is not a representation of the *improvements alone*, but of the *whole machine in its improved state*; nor are the improvements in any manner substantively and individually explained by the second specification; nor is the machine in the improved state contradistinguished from the state and condition of it under the former patent by any explanation whatever, nor by any delineation or mark in the drawing; but what the former machine was, and what were the said improvements thereupon, are ascertainable and appear by referring to the first specification and the drawings thereon, and comparing the second specification and the drawings thereon with the same. The defendants insisted that the second specification was not a due performance of the condition of the second patent; and the question therefore for the opinion of the Court was, whether the proviso or condition in the letters patent of the 29th of March, 1794, had been duly performed by the enrolment of the said specification thereof.

The Court took time to consider of the case; and afterwards certified to the Lord Chancellor, that they had heard the case argued by counsel, and were of opinion that the proviso or conditions in the letters patent,

the improvements: on many occasions it may be sufficient to refer generally to them. As in the instance of a common watch; it may be sufficient for the patentee to say, Take a common watch, and add or alter such and such parts; (describing them). (*u*)

8. If the patent be for a process (supposing there may be a patent for a process only) (*x*), the specification must be certain and precise in quantities, degrees, and proportions. (*y*)

9. Any improvements made upon an invention before the specification is enrolled should be stated in the specification. (*z*) At least if they be founded on the same principle, and be not excluded by the title of the patent.

Of specifications, when bad and insufficient.

Having stated what is required to be done by the specification, and given some rules which appear generally applicable to the framing of such instruments, I shall now show in what cases

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bearing date the 29th of March, 1794, had been performed by the enrolment of the specification thereof set forth in the case.

(Signed) ELLENBOROUGH.
N. GROSE.
S. LE BLANC.
J. BAYLEY.

(*u*) Per Lord Ellenborough C. J. in Harmar v. Playne, 11 East. 107.

(*x*) See suprà, p. 50. et seq.

(*y*) See per Buller J. in Turner v Winter, 1 T. R. 607.; per Dallas J. in Hill v. Thompson, 8 Taunt. 393., and per Cur. in Rex v. Wheeler, 2 B. & A. 353.

(*z*) Crossley v. Beverley, 9 Barn. & Cr. 63.; and per Lord Tenterden C. J. ibid.:—"I am at a loss to know for what reason a patentee is allowed time to disclose his invention, unless it be for the purpose of enabling him to bring it to perfection." And per Bayley J.—"It is the duty of a person taking out a patent, to communicate to the public any improvements that he may make upon his invention, before the specification has been enrolled."

specifications have been held or considered bad and insufficient, as describing an invention more extensive than the real discovery, or as not having made a fair disclosure.

Where specification is obscure or ambiguous, or gives directions which tend to mislead.

1. A specification which is obscure or ambiguous, or gives directions which tend to mislead the public, is bad.

A patent was granted for an invention of certain instruments or machines for preparing silk, cotton, flax, and wool for spinning. The specification stated ten different instruments. It was in many respects very obscure. Things were stated in the specification which were of no use, and which the patentee himself did not use; some could not be put in the machine. The specification was not consistent with the manner in which the patentee worked, particularly as to the cylinder, which upon the face of the specification appeared to be a parallel, whereas the patentee used a spiral one. The way of putting the parts together was not stated; and as to some of the different parts, it was impossible to say how they were to be made, as there was no scale to work by, no plan to go from. (*a*) On a *scire facias* to repeal this patent, one of the issues tried was on the sufficiency of the specification. The jury found a verdict generally for the Crown. Buller J. thought the specification bad.

A patent was granted for "producing yellow colour for painting in oil or water, and making white lead, and separating the mineral alkali from

(*a*) Rex v. Arkwright, cor. Buller J., Dav. Pat. Ca. 61.

common salt, all by one process." The specification was as follows:—"Take any quantity of lead, and calcine it, or minium, or red lead, litharge, lead ash, or any calx, or preparation of lead fit for the purpose; to any given quantity of the above-mentioned materials add half the weight of sea salt, with a sufficient quantity of water to dissolve it, or rock salt, or sal gem, or fossil salt, or any marine salt, or salt water proper for the purpose: mix them together by trituration till the lead becomes impalpable, or sufficiently comminuted. When the materials have been ground, let them stand for twenty-four hours, in which time the lead will be changed to a good white, and the salt decompounded; if not, the trituration must be repeated, with a further addition of salt, till the white colour be obtained: the decomposition of the salt may also be brought about by digestion, or by calcination. The materials may be suffered to remain together, before the alkali is separated by the addition of water, for a longer time than is specified above, according to the discretion of the operator, and the end he wishes to obtain. The yellow colour is produced by calcining the lead after the alkali has been separated from it till it shall acquire the colour wanted: this will be of different tints according to the continuance of the calcination, or the degree of heat employed. The white lead must be finished by repeated ablutions, and by bleaching it till the white be made perfect."

The patent colour could not be made by following the directions of the specification. For calcination was not sufficient to produce the effect intended. From the specification, persons would be led to use minium, which is lead already calcined, and is what the specification directs in the first instance. But minium would not answer the purpose unless first fused, which was not directed, and according to the terms of the specification it would seem that fusion was to be avoided. Then directing "fossil salt" to be taken was calculated to raise doubts and mislead the public; for fossil salt was a generic term, including "sal gem" as well as other species of fossil salt, and sal gem was the only species of fossil salt that would answer the purpose. These were two of the grounds on which the specification was held insufficient. (*b*)

A patent was granted for "a method of making a neutral salt or powder, possessing all the properties of the medicinal spring at Seidlitz, under the name of Seidlitz powder."

The specification set out three distinct recipes, and described the modes and proportions in which the results were to be mixed, in order to produce the "Seidlitz powder."

The three recipes, however, produced three known substances, which were known to the world before the date of the patent, and which

(*b*) Turner v. Winter, 1 T. R. 602., and see per Dallas J. in Campion v. Benyon, 3 Brod. & Bingh. 10.:—"If the instrument contain any ambiguity on a material point, that is a ground on which it may be avoided altogether."

might have been bought at any chemist's shop as separate simple parts of the compound; namely, Rochelle salts or soda tartarizata, carbonate of soda, and tartaric acid. Held, that the specification was bad, as tending to make people believe an elaborate process necessary to the production of the different ingredients, and thereby misleading them. (*c*)

2. So the patent is void, if the specification do not extend to the invention claimed by the patent, or if it show the patentee to be the inventor of a different thing from that which is there claimed.

Where specification does not extend to invention, or where it shows the patentee to be the inventor of a different thing from that claimed.

A patent was granted for "an improved method of lighting cities, towns, and villages."

From the specification it appeared that this object was intended to be effected by means of a lamp of a new and very ingenious and simple construction. In some respects the patent lamp was similar to Argand's. The atmospheric air was introduced by a tube, and brought into immediate contact with the flame; but instead of the glass chimney, which is essential to Argand's lamp, a metallic tube, called the eduction-pipe, was placed perpendicularly over the flame, and, after passing through the roof of the case communicated with the external air. The advantage of this construction was, that the heated air was forced with considerable rapidity through the eduction-pipe, and having been conveyed to the exterior of the case, could not return into the

(*c*) Savory v. Price, cor. Abbott C. J., 1 Ry. & M. 1.

case (which was termed the line of exclusion), and the flame was perpetually fed by a current of fresh atmospheric air. In Argand's lamp, a current of fresh air was also produced by means of the glass chimney placed over the flame; but this was inapplicable to the purpose of lighting a street; since, if placed in a case, the vitiated air confined in the case would again come into contact with the flame, and the combustion would in consequence be less rapid. Another advantage was, that the metallic tube of the patent lamp could be brought nearer to the flame than the glass chimney of Argand's lamp, and in consequence the draught was more rapid, and the return of the vitiated air more completely excluded. The new principle, in which the improvement consisted, was clearly exhibited by means of a figure representing the case called the line of exclusion, and the admission and eduction pipes. The application of the principle was also exhibited in many descriptions and plates, showing how the improved lamp might be used ornamentally and usefully, in lighting not only streets, but churches, theatres, &c.; of which various applications the patentee, in his specification, claimed the benefit. The use of the eduction-pipe was new, and very useful. Held that, the patent being for an improved method of lighting cities, towns, and villages, and it appearing from the specification that the invention consisted in the improvement of an old street lamp by a new combination of parts

known before, the specification did not support the title of the patent, and that the patent could not be sustained. (*d*)

A patent was obtained for the manufacture of hair brushes, described to be tapering brushes. It appeared by the specification that the mode of manufacturing the patent brushes differed from the common mode chiefly in this respect, that the hairs or bristles were to be taken of the length of an inch and a quarter, and, before their insertion in the holes in the stock of the brush, were to be mixed up together; so that, when they were collected, and drawn through the holes, and secured by a brass wire, the bristles would be of unequal lengths: whereas, according to the usual mode, the bristles were to be inserted in the stock, so as to be as nearly of the same length as possible, and were afterwards cut down, so as to be of the same length. Held, that the specification did not support the patent, which was for a tapering brush, or a brush gradually converging to a point: whereas, according to the specification, the bristles would be of unequal length, but there would be no tapering to a point. (*e*)

A patent was obtained for "a new or improved method of drying and preparing malt." The specification was as follows:—"My in-

(*d*) Lord Cochrane v. Smethurst, cor. Le Blanc J., 1 Stark. 205. Other objections were taken to the specification, besides that of the patent being too large in its terms, and not being supported by the specification.

(*e*) Rex v. Metcalf, cor. Lord Ellenborough C. J., 2 Stark. 249.

vention consists in the heating of malt to four hundred degrees and upwards of Fahrenheit's thermometer, according to a process or processes hereafter described; and, in so heating it that the greater part of the saccharine and amylaceous principles of the grain become changed into a substance resembling gum and extractive matter of a deep brown colour, readily soluble in hot or cold water." It then proceeded to state several modes of performing this operation; one of which was by a cylindrical iron machine, like a coffee-roaster, which, by its revolution, prevented the malt, when heated, both from adhering to the sides, and from being carbonized by the action of the fire. Another apparatus was a revolving hollow iron cylinder, with a screw-like channel in it, along which the malt passed, and so was exposed, in continual motion, to the action of heat; and it then added, that the process might also be performed in kilns made nearly of the ordinary construction, under proper management, and by various other contrivances. The time necessary to produce the effect, and the proper degree of heat to which the malt was to be exposed, were also stated to be variable, and to be capable of being easily learnt by experience, the colour of the internal part of the prepared grain affording the best criterion. Held that the patent could not be supported, the invention mentioned in the specification being entirely different from that mentioned in the patent. It was considered that the patentee claimed by

the patent the merit of having invented some new or improved method, either of organ or process, of preparing or at least of drying, the old and well known article malt which had been in common use before the granting of the patent, possessing qualities long and well known, and prepared or made by a process practised for many years, of which drying was one of the last stages: whereas, by the specification, he claimed to be the inventor, not of a method of drying or preparing this well known article, but of a method of giving to it, when previously prepared, some qualities which it did not possess before, or which it possessed only in a very slight degree, namely, the qualities of being soluble in water, and colouring the liquor in which it should be dissolved, which latter was the object in view. And this latter was to be effected by a second and additional process, the application of a very high degree of heat. (*f*)

A patent was granted for "a machine for an expeditious and correct mode of giving a fine edge to knives, razors, scissors, and other cutting instruments." The specification described a machine for sharpening cutting instruments by passing their edges backward and forward in an angle formed by the intersection of two circular files. It also stated, that other materials besides steel might be employed, according to the delicacy of the edge required. The machine contained two steel rollers about four inches long, formed

(*f*) Rex v. Wheeler, 2 B. & A. 345.

with bosses and recesses; the bosses, or elevated parts, of one roller passing into the recesses of the other, and by those means forming an acute angle between them. The machine, though useful in sharpening knives, would not do for scissors, if both rollers were files. For scissors, one of the rollers should be quite smooth; though it appeared if Turkey stones were used for both rollers, it would be possible to sharpen scissors. Held that the specification was insufficient, in not stating that the rollers for sharpening scissors must be one rough and the other smooth, and it being no where stated in the specification that Turkey stones used on both sides would do for scissors. (*g*)

A patent was granted for "a machine for making paper in single sheets, without seam or joining, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length." It appeared by the specification that the machine was so constructed as to be capable of producing paper of one definite width only. Held, that the specification did not support the patent, which was taken for a machine capable of making paper of different widths. (*h*)

Where the effect proposed cannot be produced in the manner specified;

3. So, if the effect proposed by the patent cannot be produced in the manner specified, (as where a patentee says in his specification he can

(*g*) Felton v. Greaves, cor. Lord Tenterden C. J., 3 Car. & P. 611.

(*h*) See Bloxam v. Elsee 6 Barn. & Cr. 169., suprà, p. 89, 90.

produce three things by one process, and he fails in any one,) the patent is void; or where it is necessary to have recourse to experiment or trial to produce the effect intended.

or where it is necessary to have recourse to experiment or trial.

A specification stated certain ingredients, which were to produce a yellow colour for painting in oil or water, to make white lead, and to separate the mineral alkali from common salt, all by one process (and for this the patent was granted); and white lead could not be produced at all. The specification on this ground, amongst others, was held bad. (*i*)

And in the above case, per Buller J. (*k*): — "Then, as to fusion: it is said that the public are directed by the words of the specification to continue the heat till the effect is produced; which must necessarily lead to fusion, though fusion is not expressly mentioned. But that is no answer to the objection: for the specification should have shown by what degree of heat the effect was to be produced. Now, it does not mention fusion; and, as one of the witnesses said, in order to produce the effect, 'you must go out of the patent;' for fusion is beyond calcination, and in some sense contrary to it; and by mentioning calcination, it should seem that fusion was to be avoided. The next objection was as to the salts. 'Fossil salt' is mentioned as a distinct species of salt, and many other salts are also mentioned as indifferent whether the one

(*i*) Turner v. Winter, 1 T. R. 602., see suprà, p. 110.

(*k*) Ibid. 607., and see per Dallas J. in Hill v. Thompson, 8 Taunt. 393.

or the other be used. But it was proved that fossil salt was a generic term, including several species, and that 'sal gem' was the only species of it which would answer the purpose; because none of the others contained a marine acid, which was essential."

One of the grounds on which Wheeler's patent (*l*) for "a new or improved method of drying and preparing malt" was avoided, was, that the patentee had not described any certain or precise process, which, admitting that there might be a patent for a process only, ought unquestionably to have been done. He did not mention the state in which the malt was to be taken, for the purpose of undergoing the process, whether in a moist or dry state: he did not say what heat beyond 400 degrees of Fahrenheit might be used: he did not furnish the operator with any means of knowing when he had this degree of heat: he did not say during what length of time the process was to be continued; but contented himself with saying that "the proper degree of heat and time of exposure will be easily learned by experience, the colour of the internal part of the prepared grain affording the best criterion:" not even mentioning what the colour was which was to be the criterion. The specification thus casting upon the public the expense and labour of experiment and trial, was held bad. (*m*)

Where only cer-

4. So if a patentee can only do what he pro-

(*l*) 2 B. & A. 345.

(*m*) Per Cur. Rex v. Wheeler, 2 B. & A. 358, 354.

fesses with two or three of certain ingredients specified, and he has inserted others which will not answer the purpose, that will avoid the patent. (*n*)

tain of the ingredients specified will answer.

5. So, if he make the article, for which the patent is granted, with cheaper materials than those which he has enumerated, although the latter will answer the purpose equally well, the patent is void; because he does not put the public in possession of his invention, or enable them to derive the same benefit which he himself does. (*o*)

Where the patentee uses cheaper materials than those specified.

6. So, if any thing known by the patentee at the time of obtaining his patent, which gives an advantageous operation to the thing invented, be omitted, the specification is bad.

Where any thing omitted in specification which gives an advantageous operation to the invention.

In a case before Lord Mansfield for infringing a patent for steel trusses, it appeared that the patentee, in tempering the steel, rubbed it with tallow, which was of some use in the operation: and because this was omitted, the specification was held to be insufficient, and the patent was avoided. (*p*)

A patent had been granted for a new mode of

(*n*) Turner v. Winter, 1 T. R. 607., per Buller J.

(*o*) S. C., per Buller J. 607.

(*p*) Liardet v. Johnson, Bull. N. P. 76. cor. Lord Mansfield. But it seems not necessary to state mere incidents, with which every man acquainted with the subject is familiar. Suppose a new-invented chemical process, and the specification should direct that some particular chemical substance should be poured upon gold in a state of fusion, it would be necessary, in order to this operation, that the gold should be put into a crucible, and should be melted in that crucible; but it would be hardly necessary to state in the specification the manner in which, or the utensils with which the ope-

making verdigris, to be called British imperial verdigris. The specification stated it to be produced from certain proportions of granulated copper and oil of vitriol, boiled a certain time in a copper of a particular construction (which was described), and afterwards strained off and mixed with a solution of potash or soda. The patentee (Zinck) omitted to state in his specification aqua fortis, which he was accustomed, clandestinely and unobserved by his workmen, to put into the boiler, by means of which the copper was dissolved more rapidly. The specification, upon this ground (and another) was held insufficient. (*q*)

And in Bovill v. Moore (*r*), per Gibbs C.J.:—"A patentee who has invented a machine useful to the public, and can construct it in one way more extensive in its benefit than in another, and states in his specification only that mode which would be least beneficial, reserving to himself the more beneficial mode of practising it, although he will 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

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ration of putting gold into a state of fusion was to be performed. Per Eyre C.J. in Boulton v. Bull, 2 H. Bl. 497.; and see per Buller J., S. C., 2 H. Bl. 484.; and per Lord Tenterden C.J. in Crossley v. Beverley, 3 Car. & P. 513. In this case a patent was granted for an improved gas apparatus; and it was held not necessary to state in the specification that which every workman capable of making a gas apparatus must know he must put in, as a condenser, which is an essential part of every gas apparatus.

(*q*) Wood v. Zimmer, 1 Holt N. P. C. 58., cor. Gibbs C.J.

(*r*) Dav. Pat. Ca. 400, 401, 402.

the law, by communicating to the public the most beneficial mode he was then possessed of for exercising the privilege granted to him. (*s*) And again, in the same case, "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."

Where the specification is more extensive than the invention.

7. So if the specification be more extensive than the invention, or if a patentee seek to cover by his specification any more than he is strictly entitled to, his patent is thereby rendered ineffectual, even to the extent to which he would be otherwise fairly entitled.

A patent was granted for a new-invented manufacture of lace called French, otherwise ground, lace. The specification went generally to the invention of mixing silk and cotton thread upon the frame. Prior to the patent, silk and cotton thread had been used together, and intermixed upon the same frame. Held by Buller J. that, as the patentee had claimed the exclusive liberty of making lace composed of silk and cotton thread mixed, and as silk and cotton thread were before mixed on the same frame for lace in some mode or other, the patent was void; and that it would be to no purpose to prove that the

(*s*) And though it was inadvertent, if he actually knew and meant to practise that mode and inadvertently did not state the whole in his specification, he must answer for his inadvertence. Ibid. 414.

former method of using the silk and cotton thread, was quite inadequate to the purpose of making lace, on account of its coarseness, and that the defendant alone had invented the method of intermingling them, so as to unite strength with firmness. (*t*)

A patent was granted for improvements on the flageolet, or English flute. The specification stated that by the improvement the patentee had given new notes, when in fact he had given but one new note. Held fatal to the patent. (*u*)

A patent was granted for certain improvements in the making of umbrellas and parasols. The specification professed to set out the improvements as specified in certain descriptions and drawings annexed. The description contained a minute detail of the construction of umbrellas and parasols, partly including the usual mode of stretching the silk of the umbrella by means of metallic stretchers or rods attached to a tube moveable along the stem, and also certain improvements, which consisted chiefly in the insertion of the stretchers, which were nobbed at the end, in sockets formed in the whalebone, instead of attaching them to the whalebone in the usual way, by means of forked ligaments which

(*t*) Rex v. Else, cor. Buller J., Dav. Pat. Ca. 144., and 11 East, 108. in note. The same is stated to have been ruled in different cases by Lord Mansfield. Bull. N. P. 76., 2 Marsh. 214.

(*u*) Bainbridge v. Wigley, cor. Lord Ellenborough C. J. Sittings at Westminster after Michaelmas Term, 1810.

come in contact with the silk. Drawings were given of the umbrellas and parasols in their improved state, and one of the drawings contained a representation of the particular invention, and was confined to the exhibition of the insertion of the knobbed stretchers in the whalebone sockets; but throughout the whole specification no distinction was made between what was new and what was old. The specification was held bad, as it comprised that which was old as well as that which was new, and it could not be collected from the whole of the figures in what the improvement consisted. (*x*)

A patent was granted for a machine, "for the manufacture of bobbin lace, or twist net, similar to, and resembling, the Buckinghamshire lace net, and French lace net, as made by the hand with bobbins on pillows." The specification stated the combination of parts constituting the machine, and set out the whole as a new invention from beginning to end, whereas a combination of a certain number of those parts up to a certain point, had previously existed in former machines. The drawings or plans of the machine were divided into six different sections, each containing a part of the machine in a different stage of its progress; and as to one of them, which contained all the principle of the warp, every part of that section existed in the old machine, and a machine carried no further than that would have been a very useful invention.

(*x*) Macfarlane v. Price, 1 Stark. 199., cor. Lord Ellenborough. C. J.

The specification was held insufficient, the invention being a valuable improvement only, and the specification describing it as a new machine *in toto*.(*y*)

A patent was granted for "a method of making a neutral salt or powder, possessing all the properties of the medicinal spring at Seidlitz, under the name of Seidlitz Powder." The specification described and claimed as part of the invention, methods of producing three known substances, which were to be mixed in certain proportions in order to produce the Seidlitz Powder. Of these methods, it seems from the report that one at least was known before. This specification was held insufficient on the ground stated suprà, p. 111.; but it would appear to have been bad also as claiming more than the invention of the patentee. (*a*)

In the case of Hill v. Thompson (*b*), an action directed by the Lord Chancellor to try the validity of Hill's patent for "the invention of certain improvements in the smelting and working of iron," one of the improvements claimed by the specification consisted in the use and application of lime to iron, subsequently

(*y*) Bovill v. Moore, 2 Marsh. 211., and Dav. Pat. Ca. 361.; and see per Lord Ellenborough C. J., Huddart v. Grimshaw, Dav. Pat. Ca. 279. 294. If the invention for which the patent is granted be well described in the specification, a further statement of mere matters of intention or intimations of new projects of improvement, and not claimed as part of the subject of the patent, will not hurt, but may be rejected as superfluous. See Boulton v. Bull, 2 H. Bl. 463.; per Rooke J. 479, 480.; and per Eyre C. J. 498.

(*a*) Savory v. Price, 1 Ry. & Mood. 1.

(*b*) 8 Taunt. 375. 398., and see suprà, p. 87. n. (*o*).

to the operation of the blast furnace, whereby that quality in iron called "cold short" was prevented. The Court thought that the specification was too large in claiming as an original discovery the application of lime to iron to prevent the quality called "cold short," which was previously known and used. The specification ought to have recited such previous use, and then a different or preferable mode of application and use should have been suggested as the improvement claimed. Mr. Justice Dallas, in delivering the judgment of the Court as to the specification in this respect, says:—"First, then, consider the end to be attained; and, next, the proposed means of attaining it. The purpose is to render bar iron more tough, by preventing that brittleness which is called 'cold short,' and which renders bar iron less valuable: the means of prevention stated are the application of lime. In what way then is lime mentioned in the patent? The first part of the specification in terms alleges certain improvements in the smelting and working of iron, during the operations of the blast furnace; and then, introducing the mention of lime, it states that the application of it to iron, subsequently to the operation of the blast furnace, will prevent the quality called 'cold short.' So far, therefore, the application of lime is, in terms, claimed as an improvement, and nothing is said of any previous use, of which the use proposed is averred to be an improvement; it is, therefore, in substance, a claim of entire and

original discovery. The recital should have stated, supposing a previous use to be proved in the case, that 'whereas lime has been in part, but improperly, made use of,' &c., and then a different mode of application and use should have been suggested as the improvement claimed. But the whole of the patent must be taken together, and this objection will appear to be stronger as we proceed. And here again, looking through the patent, in a subsequent part of the specification, the word 'Discovery' first occurs, and I will state the terms made use of in this respect — 'And I do further declare, that I have discovered that the addition of lime will prevent that quality in iron from which the iron is called 'cold short,' and will render such iron more tough when cold, and that for this purpose I do add a portion of lime or limestone, to be regulated by the quantity of iron to be operated upon, and by the quality of the iron to be produced, to be added at any time subsequently to the reduction in the blast furnace, and this from whatever substance the iron may be produced, if expected to prove 'cold short.' Now this appears to be nothing short of a claim of discovery in the most extensive sense, of the effect of lime applied to iron to prevent brittleness, not qualified and restrained by what follows as to the preferable mode of applying it under various circumstances; and, therefore, rendering the patent void, if lime had been made use of for this purpose before, subject to the qualification only of

applying it subsequently to the operations in the blast furnace."

And in the same case (*c*) in Chancery, Lord Chancellor Eldon said:—"Not only must the invention be novel and useful, and the specification intelligible, but the specification must not attempt to cover more than that which, being both matter of actual discovery, and of useful discovery, is the only proper subject for the protection of a patent: and I am compelled to add, that if a patentee seeks, by his specification, any more than he is strictly entitled to, his patent is thereby rendered ineffectual, even to the extent to which he would be otherwise fairly entitled. On the other hand, there may be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of applying such materials; but in order to its being effectual, the specification must clearly express that it is in respect of such new combination or application, and of that only, and not lay claim to the merit of original invention in the use of the materials."

Where the specification in summing up the extent of an invention, confines it *to a thing* known.

8. So, if the specification, in summing up the extent of the invention, confine it to a principle known before, the patent is void.

A patent was granted for certain improvements in fire-grates or stoves. It appeared by the specification that the invention consisted in a new mode of feeding the fire in a grate by a sup-

(*c*) Hill v. Thompson, 3 Mer. 629., and see per Best J. in Brunton v. Hawkes, 4 Barn. & Ald. 555, 556.

ply of fuel from below, instead of from above in the usual way. The coals intended to be consumed in the course of the day, were to be deposited in a chamber beneath the grate, so placed, that at first the higher surface of the chamber was to be on a level with the lower surface of the grate. The fire being afterwards lighted in the grate, as the coals in the grate were gradually consumed, their place was to be supplied by winding up the coals from the chamber, by means of a rack and pinion. The coals, as long as they remained in the box, were unignited, the air being excluded from below, and did not become ignited until, by being wound up into the grate, they had been brought into contact with the coals previously ignited, and exposed to the access of the air. The amount of the patentee's claim was summed up in his specification thus: "My invention consists in this, that the fuel necessary for supplying the fire, shall be introduced at the lower part of the grate, in a perpendicular or in an oblique direction: as to the manner of performing it, it is set forth in the annexed descriptions and drawings." The principle of supplying fuel from below had been applied before to grates for cooking, and to a common grate. One for cooking was furnished with a door; when this door was open, the grate in no respect differed from an ordinary one, but when the door was shut, no part of the grate was visible except a few of the highest bars; and the whole of the grate having been

filled with coals, and the coals within the bars above the door having been lighted, the coals in the lower part of the grate were carried up, for the purpose of supplying the consumption above, by means of a rack and pinion. Another grate for cooking on nearly the same construction, was supplied with two doors, one above the other: when both were shut, the air was supplied by a ventilator from below; when the lower door was shut, and also the ventilator, and the higher door thrown open, the closed part of the grate supplied the place of a chamber, from which the coals were wound up by a rack and pinion, in order to supply the fire above as it was wanted.

It was contended that the patentee's invention went beyond that exhibited in these grates; in the latter there was no fresh introduction of fuel into the grate, so as to give a perpetual supply, there was nothing more than a means of contracting or compressing coals already within the grate, which could not be done without gradually diminishing the size of the grate itself. But by the patentee's construction, the chamber was independent of the grate, placed below it, and the fuel was gradually wound up from the chamber without at all contracting the size of the grate itself. Held, that as there was nothing predicated in the specification of raising the fuel from *below the grate*, but it was merely for elevating a supply of fuel from below, the defendant had confined himself by thus summing up the extent of his invention to the benefit of this

principle, and this principle not being new, that the patent could not be supported (*d*).

III. *Of the Rule of Construction applicable to the Patent and Specification.*

Rule of construction of patent and specification.

Respecting patents the following general rules were laid down by Lee C. J. (*e*): —

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

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

3. Although the King is mistaken in point of law or matter of fact, if that is not part of the consideration of the grant, it will not avoid it.

4. Where the King grants *ex certâ scientiâ et mero motu*, those words occasion the grant to be taken in the most liberal and beneficial sense according to the King's intent and meaning expressed in his grant.

5. Although in some cases the general words of a grant may be qualified by the recital, yet if the King's intent is plainly expressed in the body of the grant, the intent shall prevail and take place.

By the last clause in the letters patent, the King grants unto the patentee that the letters

(*d*) Rex v. Cutler, 1 Stark. 354. Lord Ellenborough C. J.

(*e*) Bull. N. P. 75.

patent, or the enrolment or exemplification thereof, shall be in all things good, valid, and effectual, and shall be taken, construed, and adjudged in the most favourable and beneficial sense for the best advantage of the patentee, &c.

This clause, however, is of no advantage to the patentee.

Letters patent are now considered as bargains or contracts between the inventor and the public, and to be construed as other bargains or contracts.

In Arkwright v. Nightingale (*f*), which was an action for the infringement of a patent, Lord Loughborough said, "There is no matter of favor can enter into consideration in a question of this nature. The law has established the right of patents for new inventions: that law is extremely wise and just."

Lord Eldon, also, when presiding in the Common Pleas, said, in a case of Cartwright v. Arnott (*g*), in Easter Term 1800 in that court, that patents were to be considered as bargains between the inventors and the public, to be judged of on the principle of keeping good faith by making a fair disclosure of the invention, and to be construed as other bargains.

In Harmar v. Playne (*h*), Lord Eldon said he adhered to the law as he had stated it in the above case.

The patent and the specification, which are to

(*f*) Dav. Pat. Ca. 55.
(*g*) Cited in Harmar v. Playne, 11 East, 105., and 14 Ves. jun. 131.
(*h*) 14 Ves. jun. 136.

be taken together and considered as one instrument, will therefore be construed according to their sense and meaning, as collected from the terms used in them; which terms are themselves to be understood in their plain, ordinary, and popular sense, unless they have generally in respect to the subject matter, as by the known usage of trade or the like, acquired a peculiar sense distinct from the popular sense of the same words, or unless the context evidently points out that they must, in the particular instance, be understood in some special and peculiar sense (*i*).

A patent was granted for an improved gas-apparatus, and it comprised four inventions: a retort, a purifying apparatus, a meter or instrument for ascertaining the exact quantity of gas supplied from a particular gasometer or to a particular purchaser, and a governor or instrument for regulating the same supply and making it uniform. In the introductory part of the specification, Clegg, the original patentee, used these words, "My improved gas-apparatus is for the purpose of extracting inflammable gas by heat from pit-coal, tar, or any other substance from which gas or gases, capable of being employed for illumination, can be extracted by heat;" and then went on to mention the other inventions. In the description of the retort, he called it "a horizontal flat retort, in which coal or other materials capable of producing inflam-

(*i*) See Robertson v. French, 4 East, 135.

mable gas, are heated, and the gas extracted by distillation:" and in the course of it, he spoke of the "coal or other substance" being "spread in a thin layer." Throughout the description of the retort, and the explanation of the drawings, he always spoke of "coal," or "coal or coke," or "coal or other substance" only. The retort was incapable of obtaining gas from oil, except very imperfectly or by considerable modifications. At the times of granting the patent and enrolling the specification, it was known, as a philosophical fact, that gas was producible from oil; but it had not been proposed to manufacture such gas for purposes of illumination. Some speculations were then going on, and a patent was obtained about the same time for making it; and the manufacture was subsequently brought into use, though not very generally. Held, that looking at the whole of the specification together, it was evident that it only represented the retort as suited to materials of the same kind as coal; and that the "other substances" mentioned must be taken to signify substances then known to be available for the purpose of illuminating with gas, and not every thing which would burn with a flame, and which, in a certain sense, would produce gas: that the patentee must be considered, as a practical man, to have spoken of things which practical men then treated as usable for the purpose specified; and that the fact that some speculations were going on at the time the patent was granted, to

produce gas from oil for the purpose of illumination, which might or might not be successful, would make no difference (*k*).

(*k*) Crossley v. Beverley, 1 Mood. & Mal. 283., S. C., 3 Car. & P. 513., cor. Lord Tenterden C. J. The infringement was on the meter. Verdict for the plaintiff; and see 9 Barn. & Cr. 63.

CHAPTER VI.

OF THE TITLE OF THE PATENTEE; OF THE ASSIGNMENT OF A PATENT, AND LICENCES TO USE THE INVENTION.

Title of the patentee.

THE right of property, which a patentee has in the sole use and exercise of a new invention, accrues to him by the king's grant or letters patent, which are matter of public record (*a*).

By virtue of such grant, a temporary property becomes vested in the patentee (*b*); the time of the enjoyment of the right may be for the term of fourteen years, or under, to be accounted from the date of the grant (*c*).

The patent right is in the nature of a personal chattel (*d*); it is assets in the hands of the executor or administrator of a deceased patentee (*e*), and is devisable and assignable (*f*).

The right, indeed, to the patent is made assignable by the grant (*g*).

Condition in letters patent restraining the assignment to not more than five persons.

But one of the conditions in the letters patent is, that if the person or persons, interested in the sole use and benefit of the invention, shall make any transfer or assignment of the liberty and privilege granted by the patent, or any share or shares of the benefit or profit thereof, or declare

(*a*) 2 Bl. Com. 346.
(*b*) Ibid. 407.
(*c*) 21 Jac. 1. c. 3. § 6. suprà, p. 5.
(*d*) 2 Bl. Com. 407. 386.
(*e*) Toller's Law of Executors, 152.
(*f*) 3 Bos. & Pull. 565. 573.
(*g*) See suprà, p. 71., and per Chambre J., 3 Bos. & Pull. 571.

any trust thereof, to or for any number of persons exceeding five, or open any book for public subscriptions to be made by more than five persons, in order to raise money under pretence of carrying on the liberty or privilege thereby granted, or receive any sum of money of more than five persons, for such or the like purposes, or presume to act as a corporate body, or divide the benefit of the letters patent into more than five shares, or in case the privilege shall become vested in, or in trust for more than the number of five persons, or their representatives at any one time, (reckoning executors and administrators, as and for the single person whom they represent, as to such interest as they are, or shall be entitled to in right of their testator, or intestate,) then, and in any of the said cases, the patent shall be void.

Stat. 6 Geo. 1. c. 18. § 18.

The 6 Geo. 1. c. 18., after securing to the two great companies, the Royal Exchange and the London Assurance Companies, the monopolies they purchased of government, for assuring ships and merchandize at sea and lending money on bottomry, and rendering invalid the policies of insurance of other corporations and persons insuring as a society or in partnership, by the 18th section, which is now repealed (*h*), provided, that all undertakings, and attempts described in the act, and all other public undertakings, and attempts, tending to the prejudice of trade,

(*h*) See 6 Geo. 4. c. 91. And see 5 Geo. 4. c. 114., repealing so much of 6 Geo. 1. c. 18. as restrained other corporations, than those named in the act, from effecting marine assurances, and lending money on bottomry.

and all public subscriptions, and other things for furthering any such undertaking, and more particularly, the presuming to act as a corporate body, the raising or pretending to raise transferable stock, the transferring or pretending to transfer any shares in such stock, without legal authority, and all acting or pretending to act under any charter formerly granted from the Crown, for particular purposes, by persons who should endeavour to use the same charters for raising stock, &c., should be deemed illegal, and void, and such undertakings were declared public nuisances.

Reason for the clause in the patent restraining the assignment of the patentee's interest.

Raising transferable shares, and the unrestricted sale and transfer of them at high premiums, thereby introducing gaming and speculation to the ruin of many, were carried on to a great extent at the time of passing the statute 6 Geo. 1. This was the reason of the enactment above mentioned; and the condition in letters patent, restraining the transfer and assignment of the patentee's interest as before mentioned, seems to have been inserted, with a view of preventing any of the mischievous consequences contemplated by the statute 6 Geo. 1. c. 18. (*i*)

Absolute transfer assignment; effect of.

Where A. by an indenture, (reciting that a suit was depending between him and B. respecting certain patents, and that the same could not be assigned without hazard of defeating the suit,) granted absolutely the said patents together with some other to C., excepting, however, until the

(*i*) See per Abbott C. J. in Bloxam v. Elsee, 6 Barn. & Cr. 175.

determination of the above mentioned suit, such patents as should be necessary to support A.'s legal title, and a covenant followed that the assignor, upon the determination of the suit, should assign the excepted patents to C., and that until such assignment the assignor should stand legally possessed of the same: held that the legal interest in the excepted patents vested in the assignee, without further assignment, immediately on the determination of the suit that was depending at the time when the indenture was executed (*j*).

Covenant for power to assign, when restrained by another covenant contained in the deed.

Where a party by deed covenants that he has good right, full power, and lawful authority to assign and convey certain shares in a patent right, and that he has not by any means, directly or indirectly, forfeited any right, or authority, he ever had or might have had over the same, the generality of the former words of the covenant is not restrained by the latter, unless a plain and irresistible inference arises from other covenants in the same deed, of an intention to restrain the former words. For the latter stipulation, though unnecessary, is not inconsistent with the former, and the general words of an independent covenant are not to be restrained, unless from other covenants in the same deed it is plainly and irresistibly to be inferred that the party could not have intended to use the words in the general sense which they import (*k*).

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

(*k*) Hesse v. Stevenson, 3 Bos. & Pull. 565.; and see Browning v. Wright, 2 Bos. & Pull. 13.

And a patentee cannot, in an action brought against himself by his assignee, show, against his own deed, that the invention was not new.

Patentee estopped by his own deed, from denying his title.

In the case of Oldham v. Langmead (*l*), the patentee conveyed his interest in a patent to the plaintiff, and yet in violation of his contract, he afterwards infringed the plaintiff's right, and then attempted to deny his having had any title to convey, but Lord Kenyon was of opinion that he was estopped by his own deed from making that defence.

Patent right passes to assignees of a bankrupt under the assignment of the commissioners.

The patent right, being assignable, will pass under the general assignment executed by the commissioners of a bankrupt patentee to the assignees.

If, therefore, an uncertificated bankrupt avail himself of his knowledge and skill, and obtain a patent for a new invention, and thereby acquire a beneficial interest which may be the subject of assignment, that interest will pass under the assignment to his assignees in the same manner as any other property acquired by his personal industry.

On the 30th June 1790, a commission of bankrupt issued against one Matthias Koops, whereupon he was duly declared a bankrupt, and assignees were duly chosen under the same. On the 17th February and the [illegible]th May 1801, Koops, being then an uncertificated bankrupt, obtained his Majesty's letters patent, granting

(*l*) Sittings after Trin. 1789, cor. Lord Kenyon C. J.; and see Hayne v. Maltby, 3 Term R. 441.

unto him, his executors, administrators, and assigns, the sole privilege of making paper from straw, hay, thistles, waste and refuse of hemp and flax, and different kinds of wood and bark, for the term of fourteen years, and fourteen years, from the respective dates of the said respective letters patent, and for the places in the said letters patent particularly and respectively mentioned. Koops, by deed of assignment of the 26th February 1801, assigned over certain shares of the said letters patent unto James Stevenson, John Forbes, John Hunter, and William Tate, their executors, administrators, and assigns. An act of parliament was passed, empowering the patentee, his executors, &c. to assign to more persons than allowed by the letters patent. Stevenson agreed to dispose of certain shares in the said letters patent to one Hesse, and assigned the same to him accordingly: and on action being brought by Hesse against Stevenson, on a deed poll, whereby he covenanted that he had good right to assign and convey the said shares in the said letters patent, and verdict being found for the plaintiff, subject to the opinion of the Court on a case, which, amongst other things not applicable to the present point, stated the above circumstances, the Court held, that the interest of Koops in the letters patent was affected by the previous assignment of the commissioners under his bankruptcy, and vested in his assignees (*m*).

(*m*) Hesse v. Stevenson, 3 Bos. & Pull. 565., and see Longman v. Tripp, 2 Bos. & Pull. New R. 71.

Where a person had a patent for an invention, and after having mortgaged his right in it became bankrupt, but continued in the notorious use of the invention until his bankruptcy, Lord Chancellor Eldon was induced to think that the right passed to the assignees under the stat. 21 Jac. 1. c. 19. s. 11., but directed a case for the opinion of the Court of King's Bench; which, however, was never argued (*n*).

A patent right in the notorious use of a bankrupt patentee until his bankruptcy passes to his assignees under the assignment of the commissioners. Semb.

The clause in the patent, by which the assignment is restrained to any number of persons not exceeding five, is confined to assignments by act of the party, and does not apply to any assignment or transfer by operation of law (*o*).

Restraining clause in the patent as to assignments, confined to assignments by act of the party.

And the assignees of a bankrupt are to be considered as the representatives of the bankrupt in relation to his property in a patent, and have the property in the patent as his representatives, and not as the representatives of the creditors. They hold it subject to the power of converting it into money; and then that money they will hold in trust for the creditors (*p*).

The interest therefore in a patent will not be determined by a transfer of it to the assignees

(*n*) Ex parte Granger (1812), Evans's Statutes, (edit. 1817,) Bankrupt, p. 67.; and see Longman v. Tripp and others, 2 New Rep. 71., where it was held, that if the printer and publisher of a newspaper assign his interest therein to a creditor as a security, but continue to print and publish as before, and no affidavit of the change of interest be delivered to the commissioners of stamps, and the printer become bankrupt, the right to the paper will pass to his assignees under the assignment of the commissioners.

(*o*) Bloxam v. Elsee, 6 Barn. & Cr. 175., per Lord Tenterden C. J.

(*p*) Ibid. 176, 177.

of a bankrupt, though in trust for more than five creditors who have proved under the commission (*q*).

If the assignees of an uncertificated bankrupt in their own names execute a deed, with other creditors, whereby they and all the creditors who may sign the second deed release the bankrupt from all actions, suits, claims, and demands against him or his estate, and such deed be not signed by all the creditors of the bankrupt, the assignees are not barred from claiming as assignees the benefit of a patent-right previously obtained by the bankrupt (*r*).

Patent right passes under the assignment executed by insolvent to provisional assignee.

The interest in a patent belonging to a prisoner petitioning to be discharged under the act for the relief of insolvent debtors (7 Geo. 4. c. 57.), will pass under the conveyance and assignment executed by him to the provisional assignee (*s*).

(*q*) Bloxam v. Elsee, 6 Barn. & Cr. 169.

(*r*) Hesse v. Stevenson, 3 Bos. & Pull. 565.

(*s*) By the new Insolvent Act, 7 Geo. 4. c. 57. *s.* 11., it is enacted, "that such prisoner shall, at the time of subscribing the said petition, duly execute a conveyance and assignment to the provisional assignee of the said court, in such form as is to this act annexed, of all the estate, right, title, interest, and trust of such prisoner, in and to all the real and personal estate and effects of such prisoner, both within this realm and abroad, except the wearing apparel, bedding, and other such necessaries of such person, and his or her family, and the working tools and implements of such prisoner, not exceeding in the whole the value of twenty pounds, and of all future estate, right, title, interest, and trust of such prisoner, in or to any real and personal estate and effects within this realm or abroad which such prisoner may purchase, or which may revert, descend, be devised or bequeathed, or come to him or her, before he or she shall become entitled to his or her final discharge in pursuance

Patent right seizable under *fieri facias*. Semble.

It would seem also that the patent-right, being in the nature of a personal chattel and capable of sale and assignment, may be seized and sold under a *fieri facias*, for, by this writ, the sheriff has authority to seize and sell every thing that is a chattel belonging to the party against whom the execution is sued out, except his necessary wearing apparel (*t*).

So, therefore, if a person be discharged under the Act for the Relief of Insolvent Debtors, and afterwards obtain a patent, his interest in such

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of this act, according to the adjudication made in that behalf, or in case such prisoner shall obtain his or her discharge from custody without any adjudication being made in the matter of his or her petition, then before such prisoner shall be at large and out of custody, and of all debts due or growing due to such prisoner, or to be due to him or her before such discharge as aforesaid; which conveyance and assignment, so executed as aforesaid, in form aforesaid, shall vest all the real and personal estate and effects of such prisoner, and all such future real and personal estate and effects as aforesaid, of every nature and kind whatsoever, and all such debts as aforesaid, in the said provisional assignee; and the same shall be made subject to a proviso, that in case the petition of any such prisoner shall be dismissed by the said court, such conveyance and assignment shall, from and after such dismission, be null and void to all intents and purposes; and the said court is hereby empowered to dismiss any such petition in the matter whereof a final adjudication shall not have been made in pursuance of this act, at any time when it shall seem fit to the said court to dismiss the same: provided always, that where in any case, by leave of the said court, any amendment shall be made in any such petition, or an amended petition shall be filed as of the date of the original petition which the said court is hereby empowered to do and authorize without dismissing such original petition, the assignment and conveyance executed in such case shall not thereby be affected, but shall stand good to all intents and purposes, notwithstanding such amendment or amended petition so filed as aforesaid."

(*t*) Tidd's Pract. 9th ed. 1001.

patent would be liable to be seized under the execution, which may, by permission of the Court, be taken out upon the judgment entered up in one of the superior Courts against such person, in the name of his assignee, upon the warrant of attorney which, before any adjudication in the matter of his petition, he is required to execute, to confess judgment for the amount of the debts stated in his schedule, or so much thereof as shall appear at the time of executing the warrant of attorney, to be due and unsatisfied (*u*).

(*u*) By the 7 Geo. 4. c. 57. s. 57., it is enacted, "That before any adjudication shall be made in the matter of the petition of any such prisoner, the said court or commissioner or justices shall require such prisoner to execute a warrant of attorney to authorize the entering up of a judgment against such prisoner in some one of the superior courts at Westminster, in the name of the assignee or assignees of such prisoner, or of such provisional assignee, if no other assignee shall have been appointed and shall have accepted such office, for the amount of the debts stated in the schedule of such prisoner so sworn to as aforesaid to be due or claimed to be due from such prisoner, or so much thereof as shall appear at the time of executing such warrant of attorney to be due and unsatisfied, and the order of the said court for entering up such judgment shall be a sufficient authority to the proper officer for entering up the same, and such judgment shall have the force of a recognizance; and if at any time it shall appear to the satisfaction of the said court that such prisoner is of ability to pay such debts, or any part thereof, or that he or she is dead, leaving assets for that purpose, the said court may permit execution to be taken out upon such judgment, for such sum of money as under all the circumstances of the case the said court shall order, such sum to be distributed ratcably amongst the creditors of such prisoner according to the mode hereinbefore directed in the case of a dividend made after adjudication; and such further proceedings shall and may be had upon such judgment as may seem fit to the discretion of the said court from time to time, until the whole of the debts due to the several persons against whom such discharge shall have

Licences by patentee to use the invention.

A patentee may license, or consent, or agree with others, to use and exercise his invention for all or any part of the term granted by the patent. Such licence, consent, or agreement, should be in writing, under the hand and seal of the patentee. (*x*)

A licence to use the invention may be as extensive as the patent; or the patentee may impose such terms as he thinks fit, both as to the manner of using and exercising the invention, and as to the places or district (within the limits of the patent) where the privilege is to be enjoyed.

Licence to more than five persons, quære, if void.

It has not been decided whether a licence granted to more than five persons comes within the prohibitory clause in the patent, restraining the assignment of the patent right to any number of persons not exceeding five. There may be a question on this point, and until it be decided, it would be advisable, for the protection of the patentee, that the licence should contain a clause making it void on alienation or transfer to more than five persons.

been obtained shall be fully paid and satisfied, together with such costs as the said court shall think fit to award; and no scire facias shall be necessary to revive such judgment on account of any lapse of time, but execution shall at all times issue thereon by virtue of the order of the said court: provided always, that in case any such application against any such prisoner shall appear to the said court to be ill-founded and vexatious, it shall be lawful for the said court, not only to refuse to make any order on such application, but also to dismiss the same with such costs against the party or parties making the same as to the said court shall appear reasonable, and the said costs shall be paid accordingly."

(*x*) See suprà, p. 139. For form of licence, see Appendix.

Where the right to use a patent invention is the consideration of a covenant, if patent void, the covenant is no estoppel.

Where A pretends to derive a right under a patent, and comes to an agreement with B, by which he covenants that B shall be at liberty to use the invention, provided he uses it in the manner therein specified, in consideration of which, B covenants not to use any other machine,—if A has no such right, B has not the consideration for which he entered into his covenant, and is not bound by it. (*y*) If, therefore, A bring an action against B on his covenant, B is not estopped from pleading in bar to the action, that the invention is not new, or that the patentee is not the inventor. (*z*)

Thus, in the case of Hayne and another *v.* Maltby (*a*), an action of covenant, on articles of agreement, — the declaration alleged that the articles recited that the plaintiffs were the assignees of T. Taylor of a patent for an engine or machine to be fixed to a common stocking-frame for making a sort of net or open work, called point net, and that the defendant had applied to the plaintiffs for their permission to use a stocking-frame to one of their patent machines, to which they had consented, on condition of his working it in the manner described in the specification; and then stated a covenant by the plaintiffs with the defendant, that he should, during the remainder of the term of the letters patent, freely use and employ one stocking-frame with their patent engine or machine

(*y*) Hayne and another v. Malthy, 3 Term R. 438.

(*z*) Ibid.

(*a*) Ibid.

thereto, in case the same should be worked only in the manner described in the specification, without any interruption by them, and also a covenant by the defendant, that he would not, during the residue of the term of the letters patent, use or employ any of the patent engines, or any engines resembling the same, except the stocking-frame and machine in the articles allowed to be employed by him; the declaration then averred enjoyment by the defendant, without any interruption from the plaintiffs; and assigned two breaches — one for using and employing patent engines or machines other than and besides that by the agreement allowed to be employed by him; the other for using engines or machines resembling the patent machines.

To this there were several pleas; the three last of which only are material here. The third plea set forth the letters patent, which stated a petition by the patentee that he was the inventor of the machine, and contained the usual proviso that they should be void, if the patentee did not enrol a specification of his invention in Chancery in four months, and then averred that the patentee did not enrol that specification; the fourth plea alleged, that the invention mentioned in the patent was not a new invention; and the fifth, that the invention was not discovered by Taylor the patentee.

The plaintiff demurred to the third, fourth, and fifth pleas; because the defendant attempted

to put in issue matters foreign to the merits of the cause, inasmuch as he was estopped by his deed from putting those matters in issue here.

But the Court held that the doctrine of estoppel did not apply here, and that the defendant was not bound by his covenant, the consideration of which was fraudulent and void. And Buller J. said:—"I think that the case of landlord and tenant is not unlike this; for the facts in this case disclosed by the pleas are equivalent to an eviction of the tenant: as long as the tenant holds under the lease, he is estopped from denying his landlord's title: but when he is evicted, he has a right to show that he does not enjoy that which was the consideration for his covenant to pay the rent, notwithstanding he has bound himself by the covenant;" and judgment was given for the defendant.

Money paid to patentee for the use of an invention, of which he believed himself the inventor, and from which the party has derived a benefit, cannot be recovered back, though the patent turn out to be void.

Money paid to a patentee of an invention, of which he supposed himself the inventor, for the liberty of using such invention, and from the use of which a benefit has been received, cannot be recovered back, though it turn out that the patent is void from any cause; as where the patentee is not the first inventor and the invention is not new as to the public use and exercise thereof in England, but is the invention of another, and has been publicly used in England, by the real inventor and others, before the patentee obtained his patent. (*b*)

On the 12th of September, 1791, one Richard

(*b*) Taylor v. Hare, 1 New Rep. 260.

Hare took out a patent for the invention of an apparatus for preserving the essential oil of hops in brewing. By articles of agreement, dated 5th November, 1792, and made between the said Richard Hare of the one part, and John Vickers Taylor, and his late partner Freeman Hartford, deceased, of the other part, reciting Hare's patent, and that it gave him the sole power, privilege, and authority of using, exercising, and vending his said invention for the term of fourteen years, Hare granted to Taylor and his said late partner the privilege of making, using, and exercising the said invention for the residue of the said term of fourteen years; and in consideration thereof, Taylor and his partner covenanted that they would secure to be paid to Hare, during the said term, an annuity of one hundred pounds, and would give their bond for that purpose; and a bond was accordingly given, conditioned for the payment of the said annuity. Taylor and his said late partner used the apparatus (for the making and preparing of which they paid a distinct price) from the date of the said agreement until the 25th day of March, 1797, and during all that time regularly paid the said annuity to Hare. Hare was not the inventor of the invention for which he obtained his patent; the invention was not new as to the public use and service thereof in England; but it was the invention of one Thomas Sutton Wood, and had been publicly used in England by Wood and others before Hare obtained his patent. But the

patent had never been repealed. The amount of the annuity paid was 425*l.* An action was brought by Taylor against Hare to recover the money so paid, and a verdict was found for the plaintiff for 425*l.* subject to the opinion of the Court upon a case which stated the circumstances above set forth.

The Court held, that the plaintiff was not entitled to recover. The plaintiff had had the enjoyment of what he stipulated for, and, for any thing that appeared, might have made considerable profit. And Heath J. said, "There never has been a case 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. We cannot take an account here of the profits. 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, though he has taken the fruits of the land." Judgment of nonsuit was entered.(*c*)

In the above case of Taylor v. Hare, the defendant believed that he was the first inventor of that for which he had obtained his patent, and the plaintiff had, for some time, had the benefit and enjoyment of what he stipulated for. But if there be fraud in a transaction of this nature, as if a patentee should receive money for the liberty of using an invention, after having discovered that he was not the first inventor; or

(*c*) Taylor v. Hare, 1 New Rep. 260.

if there be any thing *ex æquo et bono* which shows that the patentee ought to refund, as if the person paying the money should discover the mistake before he had derived any benefit from the contract, it would seem that money paid for the liberty of using an invention might, under such circumstances, be recovered back. (*d*)

(*d*) See per Chambre J. in Taylor v. Hare, 1 New Rep. 262.; per Lord Mansfield in Bree v. Holbech, Dougl. 630.; per Lord Ellenborough in Hudson v. Robinson, 4 Maule & Selw. 478.; Cripps v. Reade, 6 Term R. 606.; Johnson v. Johnson, 3 Bos. and Pull. 170.; Jones v. Ryde, 1 Marsh. 164., and 5 Taunt. 494.

CHAPTER VII.

OF ENLARGING THE TERM OF LETTERS PATENT, AND ENABLING THE BENEFIT OF AN INVENTION TO BE ASSIGNED TO MORE THAN FIVE PERSONS.

Term of letters patent enlarged by act of parliament, under special circumstances.

THE term for which a patent may be granted can only be enlarged by act of Parliament; and the legislature will not grant this additional protection to a patentee, except under special circumstances, as where it appears that part of the original term granted has been lost to the patentee in making experiments in bringing the invention to perfection, and the patentee has not received an adequate reward for his labour and trouble incurred, and the capital sunk or employed, and that he cannot, during the residue of the term, obtain a reward at all adequate to the expense, or to the public benefit resulting from the invention; or where a patentee has devoted a large portion of his life, and expended large sums of money, and involved himself in debt in bringing his invention to perfection, and will be unable to pay the debts so contracted by him, or to reimburse himself for the heavy expenses incurred, or to receive any remuneration for his time, study, and labour, without an extension of his term.

These and other reasons may be assigned, according to the circumstances of each particular case, for calling upon the legislature to prolong

the term of a patent, and the additional term granted will also vary with the circumstances of the case, in general, from seven to fourteen years. (*a*)

Mode of obtaining the act.

The Act of Parliament is obtained in the same manner as most private acts, and it may originate in either House of Parliament. The mode of obtaining the act, when it begins in the House of Commons, which is the usual course, is as follows: —

Notice of application.

A notice (*b*) of the intended application to Parliament, signed by the solicitor or agent of the patentee, is inserted three times in the *London Gazette* (and also three times in the *Edinburgh Gazette*, if the letters patent be under the Great Seal of Scotland; and three times in the *Dublin Gazette*, if under the Great Seal of Ireland,) in the months of August and September, or one of them, immediately preceding the session in which such application is intended to be made. (*c*)

(*a*) There is one instance of a patent having been renewed, for the benefit of the children of the inventor, by an act passed twenty-four years after the expiration of the original term. Israel Pownoll on the 3d April, 11 Anne, (1712,) had a patent for an engine for raising ballast, sullage, and sand, and for removing banks, shelves, and shoals in rivers and harbours. He completed the engine before his death; but afterwards, his children, being young, could not work it. The patent having expired, and there being no likelihood of the invention being brought into use without a new grant, an act (23 Geo. 2. c. 33.) was passed for securing the sole property of the engine to the children of Pownoll for fourteen years from the 1st of August, 1750. No specification was required either by the patent or by the act.

(*b*) See the form in Appendix.

(*c*) Order of the House of Commons, 30th of June, 1801;

Petition. A petition (*d*) to the House of Commons for leave to bring in the bill for enlarging the term granted by the patent, truly stating the case (*e*), and setting forth the reasons for the application (*f*), is then prepared. The petition should be signed by the parties who are suitors for the bill (*g*), and a copy of the patent must be annexed to it.

The petition is presented by a member, and is then referred to a select committee, who hear the witnesses (but not on oath), and examine the patent, and the Gazettes in which the notices have been advertised.

The chairman then reports to the House that the committee have examined the matter of the petition, and that the standing orders of the House relative to bills for confirming or prolonging the terms of letters patent have been complied with. Leave is then given to bring in the bill. A copy of the patent must also be annexed to the bill. (*h*)

The bill. The bill is presented to the House of Commons by a member, and read a first time, and a time is then appointed for the second reading thereof. On the second reading the bill is committed, that is, referred to a select committee, who hear the witnesses; and the chairman then reports to the House that the committee have

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and order of the House of Lords 28th of March, 1808.

(*d*) See the form in Appendix.

(*e*) Order, 26th of May, 1685.

(*f*) Order, 24th of November, 1699.

(*g*) Order, 26th May, 1685.

(*h*) Order, 13th May, 1690.

examined the allegations of the bill, and find the same to be true. The report is then agreed to by the House, and the bill ordered to be engrossed. On the third reading the bill is passed, and thereupon carried up to the House of Lords by the member who conducted the bill through the House of Commons.

But the bill cannot proceed through the House of Lords, unless it conforms to certain standing orders of that House relating to bills of this nature.

Standing orders of the House of Lords, as to bills for extending the term of letters patent.

By a standing order (*i*) of the House of Lords, no bill extending the term of any patent, shall be read a first time in that House, until a select committee shall have enquired into the expediency or inexpediency of the proposed regulations, and shall have reported to the House the result of such enquiries.

By standing orders of the House of Lords (*k*), no bill for extending the term of letters patent shall be read a third time in that House, unless it shall appear that the letters patent, the term of which it is intended by such bill to extend, will expire within two years from the commencement of the session of Parliament in which the application for such bill shall be made; and unless it shall appear that the application to Parliament for extending the term of the letters patent is made by the person, or by the representatives of the person, who himself originally discovered the invention for which

(*i*) 23d of June, 1820. (*k*) 28th of March, 1808.

such letters patent were granted by His Majesty; and that the knowledge of such invention was not acquired by such person as aforesaid by purchase or otherwise from the inventor or owner of the same, or by information that such invention was known and pursued in any foreign country. (*l*)

(*l*) These standing orders of the House of Lords operate, in effect, as a bar to the extension by Parliament of the term granted by letters patent.

It is almost hopeless to obtain an extension of the term when it is nearly expiring, and when the public are looking to the patent right being thrown open, and, indeed, it may be inexpedient that a term should be extended when nearly expired; for many persons may have been gradually altering the state of their business, with a view to the enjoyment of the invention at the expiration of the term.

Many patents for important inventions are assigned, because the inventors are incompetent to conduct a large business, which requires a great capital and number of work-people; and the assignee of a patentee is often the person who has incurred the expense and trouble of bringing the invention to perfection.

Many important inventions, for which patents are obtained in this country, come from abroad; and the grounds for enlarging the terms of such patents may be as strong as any that can be adduced in favour of enlarging the term of a patent for an invention discovered in this country.

Since the making of these standing orders of the House of Lords, no act of parliament has been passed, professedly, for enlarging the term of a patent. But the orders seem to have been dispensed with in the passing of an act (10 Geo. 4. c. cxxv.) last session; which appears to be, in effect, though not in terms, an act for enlarging the term of Mr. Langton's patent of 1825, for his improved method of seasoning timber and other wood; the patent, however, is not mentioned in the act, which is entitled, "An act for vesting and securing to John Stephen Langton, Esquire, his executors, administrators, and assigns, certain profits and emoluments, for a limited time;" and after reciting the description of Mr. Langton's method, and that the invention would be of vast importance to the public service, and of general utility, provided timber so seasoned should prove as sound and durable as wood seasoned after the usual manner, but that the ascertainment of that fact (particularly for the

When the bill comes up to the House of Lords, it there passes (subject, however, to the above standing orders) through the same forms as in the other House, except engrossing, which is already done. Proceedings in the House of Lords.

If it is agreed to, the Lords send a message by two Masters in Chancery, that they have agreed to the same, and it afterwards receives the royal assent. (*m*)

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purposes of ship-building) would require a very great outlay of capital, and a long period of time; in order to encourage the said John Stephen Langton, his executors, administrators, and assigns, to establish his invention, and in order that he may be recompensed for the same, and that the use thereof may be immediately laid open on fair and equitable terms, enacts, that certain specified profits are granted to the said John Stephen Langton, his executors, administrators, and assigns, for the term of twenty-one years from the passing of the act, from all persons throughout his Majesty's dominions, except Ireland, who shall, directly or indirectly, use his said method of seasoning timber, or shall counterfeit the same. The act grants liberty to all persons to use the said method, on giving seven days' notice thereof to Mr. Langton; such persons paying Mr. Langton in a certain specified manner.

(*m*) The following are some of the principal acts passed at different times by the legislature, for enlarging the terms of letters patent.

23 Geo. 2. c. 33. An act for securing the sole property of an engine invented by Israel Pownoll, deceased, for raising ballast, sullage and sand, and for removing banks, shelves and shoals in rivers and harbours, to the children of the said Israel Pownoll, for fourteen years from the 1st of August, 1750. See antè, p. 153. note (*a*).

15 Geo. 3. c. 52. An act for enlarging the terms of letters patent granted to William Cookworthy, chymist, for the sole use and exercise of a discovery of certain materials for making porcelain, in order to enable Richard Champion, merchant, to whom the said letters patent had been assigned, to carry the said discovery into effectual execution for the benefit of the public. This act requires a new specification to be enrolled, and is the first instance of a new specification being required by act of parliament.

The same forms are observed, *mutatis mutandis*, when the bill begins in the House of Lords.

Act to enable a patentee to assign to more than five persons.

The legislature, also, on good grounds being shown for the application, will, by Act of Parliament (which may be obtained in the manner above described), enable a patentee to make a transfer of his interest in a patent to more than five persons (the number limited by the patent); as where on account of the magnitude of the con-

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15 Geo. 3. c. 61. An act for vesting in James Watt, engineer, the sole use and property of certain steam engines (or fire engines) of his invention, described in the said act, throughout his Majesty's dominions, for a limited time. Mr. Watt had obtained a patent for England in 1769: the act vests the sole right in Mr. Watt during twenty-five years from the passing of the act, and throughout Great Britain, although the patent was only for England.

17 Geo. 3. c. 6. An act for vesting in David Hartley Esquire, the sole use and property of a method, by him invented, of securing buildings against the calamities of fire, throughout his Majesty's dominions, for a limited time. Mr. Hartley had a patent in 1773 for England and the colonies: the term is prolonged thirty-one years from the passing of the act, and the patent right extended to Great Britain and the colonies, except as to ships.

32 Geo. 3. c. 72. An act for vesting in James Turner the sole use and property of a certain yellow colour, of his invention, throughout England, Wales, and Berwick, for a limited time. Turner had a patent in 1781. The act extends the term for eleven years from June 24th 1792.

41 Geo. 3. c. cxxxiii. An act for vesting, for a limited time, in Edmund Cartwright, clerk, the sole property in certain machinery, by him invented, for wool-combing preparatory to spinning, for which patents had been granted to him. The act vests the sole right in Mr. Cartwright for fourteen years from the passing of the act.

47 Geo. 3. sess. 2. c. 131. (L. & P.) An act for prolonging the term of certain letters patent assigned to Henry Fourdrinier and Sealy Fourdrinier, for the invention of making paper by means of machinery. This act vests the sole right in H. and S. Fourdrinier, and J. Gamble, the original patentee, for fifteen years from the passing of the act, being an addition of about seven years to the terms in the patents.

cern, or the large capital required, it is impossible for five persons to use the invention.(*n*)

The legislature, too, has, in some instances, in order to prevent inventions getting to foreign countries and being used by foreigners, before the King's subjects could by law use the same, allowed specifications to be delivered to the Lord Chancellor, under certain restrictions, instead of being enrolled. (*o*)

(*n*) See Appendix, and infrà, p. 162.

(*o*) In 1792, Joseph Booth had obtained patents for England and Scotland, for a machine or apparatus, and certain chemical compositions, for making various kinds of woollen cloth, containing the usual condition of his enrolling a specification within four months after their respective dates. An act of parliament, (32 Geo. 3. c. 73.) in order to prevent the invention getting to foreign countries, allows him (instead of enrolling within four months) to deliver his specification, within eight months, to the Lord Chancellor, who shall appoint two persons to examine the process therein described, such persons making oath not to divulge the process, to which they shall attend in order to complete and perfect the specification: they shall answer all questions which shall at any time afterwards be demanded of them by the Lord Chancellor, respecting the same, and shall return the specification, altered and amended, if need be, to the Lord Chancellor, with an affidavit by them, and by Joseph Booth, that the specification fully and accurately defines and describes the whole invention and discovery, and method of using the same: the specification and affidavits shall be enclosed in a cover under seal of the Lord Chancellor, and shall be lodged in the office of one of the Masters, to be by him appointed: this packet shall not be removed, except by order of the Lord Chancellor, who may open the same, if required on account of application being made for patents for a similar invention, or on account of any trial at law: and after such use, the packet shall be sealed again, and deposited with the Master, to remain there until the end of the fourteen years' term of the patent; and then the specification shall be enrolled as directed by the patent.

In 1812, Mr. James Lee obtained patents for England, Scotland, and Ireland, for the invention of certain new methods of preparing hemp and flax, with

Construction of act of parliament for extending the term of a patent.

An act of parliament for extending the term of a patent must, like other acts of parliament, have a reasonable construction. It ought to be construed not according to the letter, but according to the intent of the parliament. (*p*)

A patent was granted by the Crown for fourteen years to J. Watt, for "his method of lessening the consumption of steam and fuel in fire engines;" and the specification, which was duly enrolled, stated "my method of lessening the consumption of steam, and consequently, fuel, in fire engines, consists of the following principles," and then described the principles of the method, and the method by which those principles were to be carried into effect. (*q*) And afterwards an act of parliament was passed to

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provisos for enrolling specifications within fifteen months. An act of parliament, 53 Geo. 3 c. 179. (L. & P.) the patentee, instead of enrolling, to deliver his specifications to the Lord Chancellor, within fifteen months from the date of the first patent, with his affidavit that the whole of the invention and method of using the same are therein described, and under regulations similar to those contained in Mr. Booth's act. Two copies of the specification to be delivered, in a certain prescribed manner, one to the Lord Chancellor for Ireland, and the other to the Lord Chief Baron of the Exchequer in Scotland, under similar regulations. The several packets so deposited to be kept as aforesaid, until the expiration of seven years from the passing of the act, and then to be enrolled by the persons having custody of the same, and by the patentee: a docquet or abstract of the letters patent, containing the date and the words in which the invention is therein described, to be, within four months from the passing of the act, enrolled in place of the specifications: in case specifications not duly enrolled, within four months after the said term of seven years from the passing of the act, the patent to become void.

(*p*) Com. Dig. Parl. R. 10. b. 10 Co. 57. b.

(*q*) See suprà, p. 35., note (*x*).

extend the term of the patentee, which was entitled, "An Act for vesting in J. Watt, engineer, his executors, administrators, and assigns, the sole use and property of certain steam engines commonly called fire engines, of his invention, described in the said act, throughout His Majesty's dominions, for a limited time;" and recited that the King had, by letters patent, granted to Watt, his executors, &c., the sole benefit and advantage of making and vending certain engines by him invented, for lessening the consumption of steam and fuel in fire engines, for fourteen years, &c., on condition that he should enrol a specification, &c.; that Watt had accordingly enrolled a specification of the said engine (which specification was set forth), and, after reciting reasons for enlarging the term, enacted that, from and after the passing of the act, the sole privilege and advantage of making, constructing, and selling the said engines thereinbefore particularly described, within Great Britain and the colonies, should be and were thereby declared to be vested in Watt, his executors, &c., for twenty-five years, and prohibited any other persons making, using, or putting in practice the said invention; with a proviso, that the act should not extend to prevent any person making any fire or steam engine, or any contrivance relating to the same, which was not the invention of Watt, or which had been publicly used by any other person before. Held, that the benefit of the patent, which

patent was considered by the Court as granted for an improvement and addition to old fire engines known and in use, was continued to the patentee by the above act of parliament; that it was obviously the intention of the legislature to confer on the patentee the sole benefit of the engines as improved in the manner stated in the specification, and not of the original fire engines. (*r*)

Act of parliament enabling patentee to assign to more than five persons, gives no better title than patentee had before the act passed.

An act of parliament enabling a patentee, his executors, administrators, and assigns, to transfer or assign the letters patent, or any part or share thereof, or any benefit to arise therefrom, to a greater number of persons than allowed by the letters patent, and declared to be a public act, will not give to the patentee, or his assigns, a better title than he or they had before the act passed.

Two patents were granted to Matthias Koops (an uncertificated bankrupt), granting unto him, his executors, administrators, and assigns, the sole privilege of making paper from straw, hay, thistles, waste and refuse of hemp and flax, and different kinds of wood and bark. M. Koops assigned over certain shares of the said letters patent to James Stevenson, John Forbes, John Hunter, and William Tate, and afterwards by an act of parliament (41 Geo. 3. c. cxxv.), declared a public act, it was (amongst other things)

(*r*) Hornblower v. Boulton, 8 T. R. 95., and see per Eyre C. J. in Boulton v. Bull, 2 H. Bl. 499.; and see suprà, p. 35. note (*x*).

enacted, that it should and might be lawful for Koops, his executors, administrators, and assigns, or any or either of them, to transfer or assign the said letters patent respectively, or either of them, or any part or share, or parts or shares thereof, or any benefit or advantage to arise therefrom, to any number of persons not exceeding sixty. James Stevenson, in consideration of 1800*l.* assigned ten 1000th parts or shares of and in the said letters patent to one Hesse: Held, that the interest in the patents passed under the assignment executed by the commissioners to the assignees of Koops the bankrupt, and that the act of parliament gave no authority to James Stevenson to assign, which he had not before the passing of that act, except as to the number of persons to whom he was permitted to assign, and that though the act were public, it was of a private nature, and derived no additional weight or authority from the proviso which made it a public act; the only object of the proviso was, that the act might be judicially taken notice of without being specially pleaded, and to save the expense of proving an attested copy. (*s*)

Clause in act of parliament for extending the term, making the privileges granted by the act void, if

A clause in an act of parliament for enlarging the term of a patent, whereby all privileges vested by the act in the patentee are rendered void, in case the power, privilege, or authority granted by the patent should at any time become vested in or in trust for more than five

(*s*) Hesse v. Stevenson, 3 Bos. & Pull. 565., and suprà, p. 141.

patent assigned to more than five persons, applies only to assignments by act of the party.

persons, or their representatives, at any one time, otherwise than by devise or succession, (reckoning executors and administrators as and for the single persons they represent, as to such interest as they are or shall be entitled to in right of such their testators or testator,) applies only to an assignment by act of the party, and not to an assignment by operation of law.

A patent, dated 20th April, 1801, was granted to one Gamble, for a machine for making paper in single sheets, without seam or joining, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length. Afterwards another patent, dated 7th June, 1803, was granted to Gamble for certain improvements on the machine for which the first patent was granted. On the 7th January, 1804, Gamble assigned all his interest in these patents to H. Fourdrinier and S. Fourdrinier. By an act of parliament passed in 1807, reciting that H. Fourdrinier and S. Fourdrinier and Gamble had made, used, and continued to make use of the improved machine in a very extensive trade, in part whereof H. Fourdrinier and S. Fourdrinier and Gamble were jointly concerned as co-partners, and that they had been put to great expense, &c., it was enacted, that the sole privilege, right, and authority of making, using, and vending the said improved machine within Great Britain and Ireland, and in the colonies, should from and after the passing of the act be and the same was thereby vested in

H. Fourdrinier, S. Fourdrinier, and Gamble, their executors, administrators, and assigns, for fifteen years, being an addition of seven years, or thereabouts, to the term granted by the said letters patent. By the 7th section of the act it was provided, that if H. Fourdrinier, S. Fourdrinier, and Gamble, their executors, &c., or any person or persons who should at any time during the said term of fifteen years have or claim any right, title, or interest in law or equity in or to the power, privilege, or authority of the sole making, using, and vending the said improved machine, should make any transfer or assignment, or pretended transfer or assignment of the said liberty or privilege thereby vested in H. Fourdrinier, S. Fourdrinier, and Gamble, their executors, &c., or any share or shares of the benefit or profits thereof, or should declare any trusts thereof to or for any number of persons *exceeding the number of five*, or should divide the benefit of the liberty or privileges thereby vested in H. Fourdrinier, S. Fourdrinier, and Gamble, their executors, administrators, and assigns, into any number of shares exceeding the number of five, or should do, or procure to be done, any act whatsoever, during such time as such person or persons should have any right or title either in law or equity, which should be contrary to the true intent and meaning of the 6 Geo. 1. c. 18. § 18., or in case the said power, privilege, or authority should at any time become vested in or in trust for more than the number

of five persons or their representatives at any one time, otherwise than by devise or succession, (reckoning executors and administrators as and for the single persons they represent, as to such interest as they are or shall be entitled to in right of such their testators or testator,) then and in every of the said cases all liberties and advantages whatsoever thereby vested in H. Fourdrinier, S. Fourdrinier and Gamble, their executors, administrators, and assigns, should utterly cease, determine, and become void, any thing therein contained to the contrary thereof notwithstanding. On the 8th November, 1810, a commission issued under which H. & S. Fourdrinier were declared bankrupts, and assignees were duly chosen, and more than twenty creditors proved under the commission.

In an action brought by the assignees for an infringement of the second patent, it was objected, that the property in the patent having become vested in the assignees of the bankrupt in trust for more than five creditors, the interest of the patentees, by the seventh section of the act of parliament had ceased and determined. Lord Tenterden C. J. was of opinion that an assignment under a commission of bankrupt was not within the meaning of the act of parliament, and over-ruled the objection. A verdict having been found for the plaintiffs, afterwards on motion for a new trial upon this among other points made at the trial, the Court held that the clause in the act of parliament was confined to assignments

by act of the party, and did not apply to any assignment or transfer by operation of law, and consequently that it would not apply to an assignment under a commission of bankrupt.

And Bayley J. said: — "'There are not only the words 'the number of five persons,' but there are the words 'or their representatives;' and those words, 'or their representatives,' are entitled to have some meaning; and the words 'otherwise than by devise or succession' will apply to the words 'or their representatives,' as well as 'the number of five persons.' Now the question in my mind is, what does the act mean by 'their representatives?' If the assignees of a bankrupt are the representatives of a bankrupt this patent is not vested in them, otherwise than this act of parliament says it may be vested; it was vested in the Fourdriniers, the bankrupts, if they did not exceed the number of five: the bankruptcy, by a statutable transfer, has made the assignees of the bankrupt the representatives of the bankrupt, and that is the construction which, in my opinion, these words are entitled to receive." (*t*)

Act of parliament for extending the term, when void.

If a patent be granted for an invention, and such patent be void for failure of the consideration on which it was granted, an act of parliament extending the term of such patent must also be void, as having nothing to support it. (*u*)

(*t*) Bloxam v. Elsee, 6 Barn. & Cr. 169., and 1 Car. & P. 558.

(*u*) Bloxam v. Elsee, 6 Barn. and Cr. 180.; and see suprà, p. 95.

CHAP. VIII.

OF THE REMEDIES FOR AN INFRINGEMENT OF A PATENT; AND WHAT IS AN INFRINGEMENT.

Remedies for infringement of patent—action at law, or bill in equity.

Remedy by action at law.

THE remedies which a patentee has for an infringement of his patent are by action at law, or by bill in equity for an injunction.

1st. Of the remedy by action at law. If the king grant a patent for the sole use of a new invention, and the patent is good in law, an action lies against any person who infringes it. (*a*)

(*a*) Bull. N. P. 75. Where a person intends to take out a patent for a new invention, and another person, desirous of being made acquainted with it, agrees, in consideration of the nature of the invention being communicated to him, not to avail himself or take any advantage of such communication, he is liable to be sued on such agreement, should he afterwards avail himself, or take any undue advantage of the communication made to him. Smith v. Dickenson, 3 Bos. & Pull. 630.

It will be remembered that the clause in the patent, which prohibits any others from using the invention, subjects persons infringing the patent to such pains and penalties as may be justly inflicted on such offenders for their contempt of the royal commend, and further, to be answerable, according to law, for damages thereby occasioned. There is no mode at the present day of inflicting pains and penalties for contempt of the king's grant, upon infringers of patents. Formerly, however, when patent rights were determined in the Star Chamber, some mode of summary punishment might have been adopted. Indeed that court, "the very name whereof," as observed by Mr. J. Yates, in Millar v. Taylor, "is sufficient to blast all precedents brought from it," considered all infringements of patents and grants of the Crown, as contempts of royal authority; and, on that idea, they supported any patent the Crown thought proper to grant. For, as Lord Coke observes, (3 Inst. 182, 183.) "such boldness the monopolists took, that often at the council table, star

Form of action, and by whom to be brought.

The action is in form a special action on the case, and it is founded upon the mere justice and conscience of the plaintiff's case. It should be brought by the person or persons having the legal interest in the patent.

If, however, one alone of several persons who ought to join, bring the action, the defendant can only avail himself of the objection by pleading the nonjoinder in abatement. (*b*)

But if several persons join in bringing the action, and it appear that some of the plaintiffs are not entitled to support the action, it will be a ground of nonsuit: they must recover, if at all, in respect of a general joint damage, for the Courts will not take notice of separate and distinct injuries, in one and the same action. (*c*)

The patentee, and an assignee of part of the patentee's interest in a patent, may join in an action for an infringement. For though the

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chamber, and exchequer chamber, petitions, informations and bills were preferred, pretending a contempt for not obeying the commandments and clauses of the said grants of monopolies, and of the proclamations concerning the same." For preventing which mischief, Lord Coke says, that branch of the statute was added which directs that all grants of monopolies shall be tried and determined by and according to the common law. In the stat. 21 Jac. 1. c. 3., a proviso was contained, that it should not extend to any patent of privilege concerning printing. Therefore, as to these patents, the Star Chamber continued the same usurped power of enjoining obedience, and punishing contempts. See 4 Burr. 2374, 2375.

(*b*) 1 Saund. 291. k.; Dockwray v. Dickenson, Skinn. 640.; Addison v. Overend, 6 T. R. 766.; Sedgworth v. Overend, 7 T. R. 279.; Bloxam v. Hubbard, 5 East, 420.

(*c*) 2 Saund. 116. a.; 2 Wils. 423.

interest be several, yet the infringement is an entire joint damage to both, for which they shall have their joint action. (*d*)

The venue, transitory, but cannot be changed on application of defendant.

The venue is transitory, and may be laid in any county; but it cannot be changed by the defendant from one county to another: for the patent being at Westminster, the defendant cannot make the necessary affidavit that the cause of action arose wholly in a particular county, and not elsewhere. (*e*)

The declaration.

The declaration states, by way of inducement, the grant by the letters patent of the sole use and exercise of the invention, the clause in the patent prohibiting other persons from using the invention, and the condition as to enrolling the specification. It then states that the plaintiff 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 cause the same to be enrolled in the Court of Chancery, within the time limited by the proviso. Then follows the statement of the gravamen, or the manner in which the defendant has infringed the patent, and the declaration concludes with a general statement of the damage thereby sustained by the plaintiff. If the action be brought by an assignee of the patentee, or by an assignee

(*d*) 2 Saund. 115, 116.; 2 Wils. 423.

(*e*) Cameron v. Gray, 6 Term R. 363.; Brunton v. White, 7 Dow. & Ry. 103, 104.; and see 1 East, 115. a.; 2 Chitty's R. 418.; Rex v. Haine, 2 Cox, 235.

and patentee jointly, the assignment is stated just before the statement of the gravamen, or complaint. (*g*)

It is usual to make a profert of the letters patent, or of an exemplification of the enrolment thereof, in the declaration; but this seems unnecessary, because the letters patent are only inducement to the action, the substance is the infringement. (*h*) Where, however, a profert is unnecessary, the making profert is but surplusage, and the court will not compel the party to give oyer. (*i*) Letters patent, too, are matters of record. and oyer is not grantable of a record, though pleaded with a profert. (*k*)

The defendant may plead the general issue, Plea.
which is, that he is not guilty of the premises wherewith he is charged. By this plea all the allegations contained in the declaration are put in issue, and the plaintiff must prove so much of the averments therein as constitutes a good ground of action. And under this plea, whatever will, in equity and conscience, according

(*g*) For precedents of declarations, see Boulton v. Bull, 2 H. Bl. 463.; Chitty on Pleading, ii. 764. to 767.; 8 Wentw. 481., and id. Index xxxii.

(*h*) See Company of Stationers v. Marlow, Lill. Ent. 63., and the case of monopolies, 11 Co. 84. b. where no profert is made; Com. Dig. Pleader, O. 15.; Dagg v. Pentrevon, 2 Cro. 70.; Banfill v. Leigh, 8 Term R. 573, 4.; Stoddart v. Palmer, 3 Barn. & Cr. 2. In what cases a profert should be made when a man pleads and justifies under letters patent. See 1 Saund. 189., note (2).; 2 Salk. 497.; Com. Dig. Pl. O. 13.

(*i*) 1 Saund. 9. a. note (*d*); Com. Dig. Pl. P. 2., citing Bro. Oyer, 29., and Stoddart v. Palmer, 3 Barn. & Cr. 2.

(*k*) 1 Saund. 9. a. note (*d*); 9. b. note (1); 92. a. note (3).; and Rex v. Amery, 1 Term R. 149.

to the circumstances of the case, bar the plaintiff's recovery, may be given in evidence by the defendant, because the plaintiff must recover upon the justice and conscience of his case, and that only. (*l*) Therefore any justification or excuse, as a release, satisfaction, licence, or a former recovery for the same cause of action, may be given in evidence. But a former recovery, though admissible in evidence under the general issue for the consideration of the jury (*m*), will not be conclusive. To be conclusive, it must be properly pleaded by way of estoppel. So, under the general issue, a former verdict and judgment in the defendant's favour may be given in evidence, and will undoubtedly operate as pregnant evidence to guide the jury who try the second case to a conclusion in the defendant's favour; but it will not, unless properly pleaded as such, operate as an estoppel, and prevent the jury from finding a verdict for the plaintiff, if notwithstanding the prior verdict and judgment they think the case is with the plaintiff. (*n*)

If an infringement of the patent has been in fact committed by the defendant, but the remedy is barred by the statute of limitations, that defence must be specially pleaded. And if the defendant plead the statute of limitations, viz. that the cause of action did not accrue within six years next before the commencement of the suit,

(*l*) 3 Burr. 1353.

(*m*) Stafford v. Clark, 2 Bing. 377.

(*n*) Vooght v. Winch, 2 Barn. & Ald. 662.

the issue is on the plaintiff to prove a cause of action, (that is, an infringement of the patent,) within that period; and evidence of an acknowledgment made by the defendant, within six years before the commencement of the action, of a liability, will not be sufficient for this purpose. (*o*)

Evidence to support an action at law.

The nature of the evidence necessary to support an action at law for the infringement of a patent, is as follows: —

Proof of the letters patent by the production of them, or by an exemplification of the enrolment of them (*p*):

Proof that the invention is new, and useful to the public; that the patentee is the first inventor; that a specification, supporting and agreeing with the title of the patent in the description of the invention, has been duly enrolled, for which purpose an examined copy of the specification enrolled should be produced; that the nature of the invention, and the manner in which the same is to be performed, are particularly described and ascertained in the specification:

Proof of an infringement of the patent by the defendant.

Damages.

In general, in an action of this nature, the

(*o*) Hurst v. Parker, 1 Barn. & Ald. 92.

(*p*) 1 Phill. on Ev. 463. By stat. 3 & 4 Ed. 6. c. 4., explained by stat. 13 Eliz. c. 6., patentees, and persons claiming under them, may make title in pleading by showing forth an *exemplification of the enrolment* of the letters patent, as if the letters patent themselves were pleaded and shown forth. And *now they are to be given in evi*dence in the same manner as if they were pleaded. Olive v. Gwyn, Hard. 119.

question being on the mere right, damages are not asked, and, in such a case, if the verdict be in the plaintiff's favour, nominal damages only are given. But the plaintiff is by law entitled to recover in proportion to the loss or injury he can prove himself to have suffered.

In what respects the specification would be considered insufficient, or the patent invalid, has been already considered. (*q*)

Construction of patent or specification, question of law.

If questions arise upon the construction of the patent or specification, as to their being defective in attempting to cover too much, or as to the one supporting and agreeing with the other, or not, these being questions on the construction of written instruments, are properly questions of law to be decided by the judge. (*r*)

Novelty and utility of invention—description in specification—infringement—questions of fact.

Whether the invention be new and useful, and be described in the specification so as to enable a skilful workman to make it by following the directions therein given, and whether the patent has been infringed by the defendant, are questions of fact for the jury. (*s*)

As to evidence of novelty.

With respect to the novelty of the invention, whatever may be the number of witnesses who prove that they never saw or heard of it before, that (though good *primâ facie* evidence of the novelty) is of no avail, if it be proved by one witness, to the satisfaction of a jury, that he had seen and practised it before the date of the

(*q*) Suprà, chapter 5.

(*r*) Rex v. Wheeler, 2 B. & A. 348.; Hill v. Thompson, 3 Mer. 630.

(*s*) Hill v. Thompson, 3 Mer. 630.; Boulton v. Bull, 2 H. Bl. 480.; Hornblower v. Boulton, 8 Term R. 99. 101. 108.

patent; because the fact that witnesses on the one side have never heard of an invention, may be quite consistent with evidence of previous knowledge and previous use by others; there may be positive testimony against negative testimony, leaving a result of perfect consistency. (*t*)

Evidence in an action.

If a patent be obtained in terms for improvements on a machine for which another person has obtained a patent before, in an action for the infringement of the patent for the improvements, in order to show what are the improvements contained in the plaintiff's patent, it will be necessary to produce the specification enrolled under the first patent.

A patent, dated 15th January, 1818, was granted to Lewis and another, for "improvements of a machine for shearing and cropping woollen cloths, the same being improvements on a machine for which John Lewis had obtained a patent on the 27th July, 1815." In an action by Lewis and the other, for an infringement of their patent; Held, that it was necessary to produce the specification of the first patent. And per Lord Tenterden C. J.: "I cannot say what are improvements upon a given thing, without knowing what that thing was before; for aught I know, all the things mentioned in the plaintiff's specification may have been included in the former specification." (*u*)

(*t*) Rex v. Arkwright, Dav. Pat. Ca. 135., per Buller J.; Manton v. Manton, ibid. 350., per Gibbs C. J.; Hill v. Thompson, 8 Taunt. 396, 397., per Dallas J.

(*u*) Lewis v. Davis, 3 Car. & P. 502.

In order to show that a machine, for which a patent is granted, is not new, a witness, who has, before the date of the patent, constructed a machine for similar purposes, may be shown a drawing (though not made by himself), and asked, whether he has such a recollection of the machine he made, as to be able to say, that that is a correct drawing of it. (*x*)

Evidence of infringement.

As to the infringement, a manufacture will be considered the same in substance as the patentee's, if the principle be the same in effect, though the form of the machine be different. (*y*)

A slight departure from the specification, for the purpose of evasion only, would be a fraud upon the patent; and therefore the question as to infringement is, whether the mode of working by the defendant be or be not substantially the same with that of the patentee. (*z*)

(*x*) Rex v. Hadden, 2 Car. & P. 184., Coram Bayley J.

(*y*) Bovill v. Moore, Dav. Pat. Ca. 405., per Gibbs C. J. "I remember that that was the expedient used by a man in Cornwall, who endeavoured to pirate the steam-engine. He produced an engine which, on the first view of it, had not the least resemblance to Boulton and Watt's: where you looked for the head, you found the feet, and where you looked for the feet, you found the head: but it turned out that he had taken the principle of Boulton and Watt's: it acted as well one way as the other; but if you set it upright, it was exactly Boulton and Watt's engine. So here I make the observation, because I observe it is stated that one acts upwards and the other downwards; one commences from the bottom, and produces the lace by an upward operation; the other acts from above, and produces it by an operation downwards: but that, if the principle be the same, must be considered the same in point of invention."

(*z*) Hill v. Thompson, 8 Taunt. 391, 2, 3., per Dallas J.; and see Lewis v. Davis, 3 Car. & P. 504., cor. Lord Tenterden C. J.

If the thing made by the defendant agree in all its qualities with the invention of the patentee, this is *primâ facie* evidence, till the contrary be shown, that it was made on his method; and as against the defendant, supposing the plaintiff's patent in full force and a valid one, a jury might fairly presume, upon such evidence, in the absence of evidence to the contrary, that it was made in that way. (*a*)

A patent for an invention granted for England does not extend to Ireland, but the right under a patent for one country is confined to that country, and will not enable the patentee to bring the article for sale into the other country, where a patent is in force for the same thing. If any of the King's subjects buy an article in Ireland, he cannot bring it here, where there is a patent for it, for the purpose of trading (*b*); though it might, perhaps, be sold as part of his effects here, for that belongs to the necessities of the habits of life. (*c*)

It is, in many cases, difficult to establish in evidence how the defendant has infringed the plaintiff's invention, as in the case of a machine in the defendant's possession. In such cases it will be necessary to seek the assistance of a court of equity. (*d*)

(*a*) See Huddart v. Grimshaw, Dav. Pat. Ca. 288., per Lord Ellenborough C. J.

(*b*) Case of the Universities of Oxford and Cambridge v. Richardson, 6 Ves. Jun. 708., per Lord Eldon.

(*c*) 6 Ves. Jun. 708., per Lord Eldon.

(*d*) See infrà, p. 181.

II. *Of the Remedy by Bill in Equity for an Injunction.*

Remedy by bill in equity.

A court of equity extends relief to patentees of alleged inventions, by restraining the use of them.

The bill filed for this purpose usually prays an account of the profit arising from the use of the invention, and it is generally made a part of the prayer of the bill that the right, if disputed, and capable of trial in a court of common law, may be there tried and determined under the direction of a court of equity; the final object of the bill being a perpetual injunction to restrain the infringement of the right claimed by the plaintiff. (*e*)

It is not necessary to establish the right at law before filing the bill, the right appearing on record by the letters patent for the new invention. (*g*)

Separate bills for distinct infringements.

Separate bills must be filed upon every distinct invasion of a patent by different parties. (*h*)

Injunction, motion for, deposition, &c.

When an injunction is applied for, *ex parte*, on the ground of violation of a right to an invention, it is incumbent on the party making the application to swear, at the time of making it, as to his belief, that he is the original inventor, and in what the alleged infringement the patent consists. (*i*)

(*e*) Mitf. Eq. Pl. 138. 4th ed.
(*g*) Ibid. 147.
(*h*) Per Lord Thurlow in Dilly v. Doig, 2 Ves. Jun. 486.
(*i*) Hill v. Thompson, 3 Mer. 624, 625., per Lord Eldon.

An injunction is usually moved for and obtained on the filing of the bill, until answer or further order.

The defendant, on the coming in of his answer, may move to dissolve the injunction.

Principle on which Court of Equity acts in interposing by injunction, where there has been exclusive possession of some duration.

The principle on which a court of equity acts in such cases is this: — Where a patent has been granted, and there has been an exclusive possession of some duration under it, the Court will interpose its injunction, without putting the party previously to establish the validity of his patent by an action at law (*k*), and will continue that interposition until the apparent right has been displaced (*l*); and this, although the validity of the patent be subject to considerable doubt. (*m*)

For where the Crown, on behalf of the public, grants letters patent, the grantee entering into a contract with the Crown, the benefit of which contract the public are to have, and the public have permitted a reasonably long and undisputed possession under colour of the patent, the Court has thought, upon the fact of that possession proved against the public, that there is less inconvenience in granting the injunction until the legal question can be tried, than in dissolving it at the hazard that the grant of the Crown may prove to have been valid. Unless the injunction be granted, any person might violate the patent,

(*k*) Hill v. Thompson, 3 Mer. 624., per Lord Eldon.

(*l*) Hill v. Thompson, 3 Mer. 628., per Lord Eldon.

(*m*) Harmar v. Playne, 14 Ves. Jun. 130.

and the consequence would be that the patentee must be ruined by litigation. (*n*)

Where grant of the patent recent.

But when 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. (*o*)

If injunction dissolved, and issue or action directed.

If the injunction be dissolved, and the Court direct an issue, or that the party applying for the injunction shall bring his action, it will sometimes add to its more general directions, a direction that the party, against whom the application is made, shall keep an account pending the discontinuance of the injunction, in order that, if it shall finally turn out that the plaintiff has a right to the protection he seeks, amends may be made for the injury occasioned by the resistance to his just demands. (*p*)

Where patentee

If the patentee succeed on the trial, he may

(*n*) Harmar v. Playne, 14 Ves. Jun. 132., per Lord Eldon; and see Boulton v. Bull, 3 Ves. Jun. 140.; and S. P. per Lord Lyndhurst, in Beeston v. Ford, 1830.

(*o*) Hill v. Thompson, 3 Mer. 624, 625., per Lord Eldon.

(*p*) Hill v. Thompson, 3 Mer. 629., per Lord Eldon.

apply to revive the injunction; but if the defendant intend to move for a new trial, and the Court see enough of difficulty and uncertainty in the specification, and enough of apparent repugnance between the specification and the patent itself, to say, that it is impossible the Court can arrive at such a conclusion respecting it as to be satisfied that there is no ground for granting a new trial, the Court will not revive the injunction until the result of that application be known. (*q*) But the Court will order the matter to stand over till the result of the application for a new trial may be known; the account to be taken in the mean time as before. (*r*)

succeeds on trial, application to revive, &c.

If the patentee fail on the trial at law, the other party may come before the Court, and say, "I have displaced all his pretensions, and am entitled to have my costs and the expenses I have sustained by being brought here upon an allegation of right which cannot be supported." (*s*)

If patentee fail at law.

Where a court of equity directs an action at law, it will, if necessary, compel the defendant to show his machinery, and order witnesses to examine it, for the purpose of better elucidating the case, as was done in Bovill v. Moore and others. (*t*)

Action at law, when directed on terms.

If an injunction be granted that the question as to the validity of the patent may be tried in

(*q*) Hill v. Thompson, 3 Mer. 631. per Lord Eldon.
(*r*) Ibid. per Lord Eldon.
(*s*) Hill v. Thompson, 3 Mer. 629., per Lord Eldon.
(*t*) Dav. Pat. Ca. 361. 370.

an action, and the patentee obtain a verdict in the action, subject to the opinion of the Court upon a case stated, upon which the Court are equally divided, the patentee must bring another action. But the verdict obtained, though it has failed of its effect, is not to be disregarded; the injunction, therefore, will be continued, and the patentee will not be put under any terms in bringing the action. (*u*)

(*u*) Boulton v. Bull, 3 Ves. jun. 140.

CHAPTER IX.

OF THE REPEAL AND SURRENDER OF A PATENT.

THE mode of repealing letters patent is by *scire facias*.

Repeal of a patent by scire facias. What it is, and out of what court it issues.

The *scire facias* is an original writ issuing out of Chancery (*a*), directed to the sheriff, and returnable in the petty-bag office; or it may be brought in the King's Bench, and if returnable there, the King's Bench only has jurisdiction to examine the irregularity of the issuing, return, &c. (*b*)

Foundation of the writ.

The writ is founded on some matter of record, and therefore ought to be in Chancery where the patent is upon record, or in a court where a forfeiture or other cause of repeal appears by office, or other matter upon record in the same court. (*c*) But the patent itself is a sufficient record upon which a *scire facias* may be founded for repealing it. (*d*) The writ being founded on matter of record, should be brought in the county where the record is; viz. in Middlesex. (*e*)

By whom, and for what it may be sued.

If the King grant a thing not grantable, he, *jure regio*, for the advancement of justice and right, may have a *scire facias* for repealing his own letters patent. (*g*)

(*a*) 4 Inst. 88. 3 Lev. 223. 2 Saund. 72. o.
(*b*) 4 Inst. 72. 6 Mod. 229.
(*c*) 3 Lev. 223. 6 Mod. 229.
(*d*) 3 Lev. 223.
(*e*) Rex v. Haine, 2 Cox, 235.
(*g*) 4 Inst. 88.

So if the grant be founded upon a fraud or a false suggestion in a thing material, the King, *jure regio*, may have a *scire facias* for repealing it. (*h*)

So if the patent be forfeited by an abuse of it (*i*), or by the non-compliance on the part of the patentee with any of the conditions upon which it is granted (*k*), a *scire facias* will lie for repealing it.

If the King grant the same thing to several persons, a *scire facias* may be brought by the first patentee for repealing the last patent. (*l*)

So if a patent be made to the prejudice of another, he may have a *scire facias* to repeal it; and where a patent is granted to the prejudice of the subject, the King is of right to permit him upon his petition to use his name for the repeal of it in a *scire facias* at the King's suit, and to hinder multiplicity of actions on the case. (*m*)

The Scire Facias.

Manner of suing by a subject.

In suing a *scire facias* by a subject, the course is to present a petition or memorial to His Majesty, and to obtain a warrant thereon to the Attorney-General, who will grant his fiat for suing it out. (*n*)

(*h*) 4 Inst. 88. Bull. N. P. 75, 76. 6 Mod. 229. Dy. 197, 198. 211. a. 2 Saund. 72. o.

(*i*) 1 Ves. jun. 118.

(*k*) See the King v. Arkwright, Dav. Pat. Ca. 61.

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

(*m*) 4 Inst. 88. Dy. 197. b. 198. a. 276. b. 277. a. 2 Ventr. 344. 10 Mod. 354. 2 Saund. 72. o.

(*n*) 2 Rich. Pr. C. P. 391, 392. 395.

Form of the writ.

The writ recites so much of the patent as relates to the grant of the sole benefit of the invention, the clause prohibiting other persons to use it, and the provisoes making it void in case it should appear that the grant is contrary to law, or prejudicial or inconvenient to the King's subjects in general, or that the invention is not a new invention, or not invented or found out by the patentee, or if the patentee, &c. assign the interest in the patent to more than five persons, or for want of a proper specification; and then states the grounds on which it is concluded that the letters patent are and ought to be void, and of no force or effect in law; and commands the sheriff to give notice to the patentee that he be before the King in his Chancery, to show if he hath or knoweth of any thing to say for himself why the said letters patent and the inrolment ought not to be cancelled, vacated, and disallowed, and restored into the King's Chancery there to be cancelled. (*o*)

The usual allegations in the writ impeaching the validity of the patent are, that the invention, at the time of granting the letters patent, was not a new invention as to the public use and exercise thereof in England; —

That the same was not invented and found out by the patentee; —

That the patentee had not, by an instrument in writing under his hand and seal, inrolled in

(*o*) See Lill. Entr. 411. Tidd's Practical Forms, 426. 2 Rich. Pract. C. P. 391—398. Rex v. Arkwright, printed report.

the High Court of Chancery, particularly described and ascertained the nature of his said invention, and in what manner the same was to be performed.

If the validity of the patent be disputed on the ground of its being prejudicial or inconvenient to the King's subjects in general, it should be stated in the writ in what respect it was so, so that issue may be taken on the fact that is relied upon to avoid the patent.

In the King v. Arkwright (*p*) one of the allegations in the writ of *scire facias* was, that the grant was prejudicial and inconvenient to the King's subjects in general, and upon that issue was taken. But Buller J. would not permit any evidence to be given with respect to that issue, upon the ground of its being merely a consequential issue. His Lordship said, it was a question of law, "whether the grant is prejudicial or not?" that it should have been stated in what respect it was so, and then the fact would have been put in issue; and that this was such a surprise upon the party, he could never come prepared to answer it.

Summons to appear, plea, &c.

Upon the writ being issued, the defendant is warned by summons to appear, upon which he either makes default or appears, and in the latter case pleads either in abatement or in bar; or if the matter alleged in the writ be insufficient in point of law, demurs thereto. (*q*)

(*p*) Dav. Pat. Ca. 61. 79.; but see Rex v. Eyre, 1 Stra. 43.

(*q*) 3 Lev. 221.

If the defendant after appearance can say nothing for maintaining the patent, judgment may be for annulling the patent upon his confession (*r*), and judgment shall be in the same manner, if the defendant, being returned warned, makes default (*s*), or if the default be upon two nihils returned. (*t*)

If the writ be returnable in the petty-bag office and issue be joined, or there be a demurrer to part and issue on the residue, the record is made up in Chancery, and is delivered by the Lord Chancellor through the medium of his officer the clerk of the petty-bag, to the Court of King's Bench, to be tried there by a jury. (*u*) Making up record.

The issue is usually tried at Nisi Prius, though it may be at bar. (*x*) Where tried.

The evidence necessary to be prepared with on the part of the prosecution, or of the defendant, must depend on the allegations in the writ, and the issues thereupon taken. Evidence.

The judgment for repealing a patent, which is given in the King's Bench, is "that the said letters patent of our said Lord the King be revoked, cancelled, vacated, annulled, void, and invalid, and be altogether had and held for nothing, and also that the inrolment thereof be cancelled, quashed, and annulled." (*y*) Judgment for repealing a patent.

(*r*) Dy. 197. b.

(*s*) Ibid.

(*t*) Dy. 198. a., and see Rex v. Amery, 2 Term R. 554. 557.

(*u*) 21 Jac. 1. c. 3. s. 2. Rex v. Arkwright, Bull. N. P. 61. Eq. Ca. Abr. 128, 129. Latch. 3.

(*x*) Cro. Car. 313. Eyres v. Taunton.

(*y*) 4 Inst. 88. Dy. 197. b.

The patent is then delivered up to be cancelled, and a *vacatur* is entered on the inrolment. (*z*)

Costs on scire facias.

The prosecutor on a *scire facias* is not entitled to costs, as the stat. 8 & 9 W. 3. c. 11. s. 3., which gives costs in all suits upon any writ or writs of *scire facias*, refers merely to civil suits, and does not extend to a *scire facias* to repeal a patent, prosecuted in the name of the King: this falls within the general rule that no costs are either paid or received where the Crown is the prosecutor, unless in some particular cases by the special provision of the legislature. (*a*)

Surrender of patent.

If a man surrender his patent, and it be cancelled, and a note thereof indorsed, and afterwards the surrender be inrolled, the patent is vacated; but the surrender must be inrolled. (*b*)

Demise of the Crown, effect of on patents.

Letters patent for an invention, which have passed the great seal previously to a demise of the Crown, will not be affected by it: but it is otherwise where they have not passed the great seal at that time. In this case, the proceedings must be commenced *de novo*.

(*z*) Lord Coke says, in his 4th Inst. 87., "Hereof our Lord Chancellor (for foreign chancellors, it may be, have not the like authority,) is called Cancellarius, a cancellando, *i. e.* a digniori parte, being the highest point of his jurisdiction, to cancel the King's letters patent under the great seal, and damming the inrolment thereof, by drawing strikes through it, like a lettice."

(*a*) Rex v. Miles, 7 Term R. 367., and see 9 Ann. c. 20. s. 5., which gives costs in certain cases of informations in the nature of a quo warranto.

(*b*) Dy. 167. a. 176. 195. a.

APPENDIX.

APPENDIX.

I.

21 James 1. c. 3.

An Act concerning Monopolies and Dispensations with Penal Laws, and the Forfeitures thereof.

All monopolies, &c. shall be void.

'Forasmuch as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God 1610, publish in print to the whole realm, and to all posterity, that all grants *of* monopolies (*a*), and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm: and whereas your Majesty was further graciously pleased, expressly to command, that no suitor should presume to move your Majesty for matters of that nature; yet nevertheless upon misinformations, and untrue pretences of public good, many such grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of your Majesty's subjects, contrary to the laws of this your realm, and contrary to your Majesty's most royal and blessed intention so published as aforesaid:' for

(*a*) In the "Statutes of the Realm, printed in pursuance of an address of the House of Commons," the words are "grants *of* monopolies." In other printed copies of the statute, the words are "grants *and* monopolies," which is incorrect.

avoiding whereof, and preventing of the like in time to come, may it please your excellent Majesty, at the humble suit of the Lords spiritual and temporal, and the Commons, in this present parliament assembled, that it may be declared and enacted; and be it declared and enacted by authority of this present parliament, that all monopolies, and all commissions, grants, licences, charters, and letters patents heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of any thing within this realm, or the dominion of Wales, or of any other monopolies, or of power, liberty, or faculty, to dispense with any others, or to give licence or toleration to do, use, or exercise any thing against the tenor or purport of any law or statute; or to give or make any warrant for any such dispensation, licence, or toleration to be had or made; or to agree or compound with any others for any penalty or forfeitures limited by any statute; or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute before judgment thereupon had; and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same or any of them, are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect, and in no wise to be put in ure or execution.

Monopolies, &c. shall be tried by the common laws of this realm.

2. And be it further declared and enacted by the authority aforesaid, that all monopolies, and all such commissions, grants, licences, charters, letters patents, proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things tending as aforesaid, and the force and validity of them, and of every of them, ought to be and shall be for ever hereafter examined, heard, tried, and determined, by and accord-

ing to the common laws of this realm, and not otherwise.

All persons disabled to use monopolies, &c.

3. And be it further enacted by the authority aforesaid, that all person and persons, bodies politic and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and uncapable to have, use, exercise, or put in ure any monopoly, or any such commission, grant, licence, charter, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, or any liberty, power, or faculty, grounded or pretended to be grounded upon them, or any of them.

The party grieved by pretext of a monopoly, &c. shall recover treble damages and double costs.

4. And be it further enacted by the authority aforesaid, that if any person or persons at any time after the end of forty days next after the end of this present session of parliament, shall be hindered, grieved, disturbed, or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken, carried away or detained, by occasion or pretext of any monopoly, or of any such commission, grant, licence, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises; that then and in every such case, the same person and persons shall and may have his and their remedy for the same at the common law, by any action or actions to be grounded upon this statute; the same action and actions to be heard and determined in the Courts of King's Bench, Common Pleas, and Exchequer, or in any of them, against him or them by whom he or they shall be so hindered, grieved, disturbed or disquieted, or against him or them by whom his or their goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained; wherein all and every such person and persons which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained, shall recover three

times so much as the damages which he or they sustained by means or occasions of being so hindered, grieved, disturbed, or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away, or detained, and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid, prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than one imparlance: and if any person or persons shall, after notice given, that the action depending is grounded upon this statute, cause or procure any action at the common law, grounded upon this statute, to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the Court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of or upon any such judgment to be stayed or delayed by colour or means of any order, warrant, power, or authority, save only by writ of error or attaint; that then the said person and persons so offending shall incur and sustain the pains, penalties, and forfeitures, ordained and provided by the Statute of Provision and Præmunire made in the sixteenth year of the reign of King Richard the Second.

He that delayeth an action grounded upon this statute incurs a præmunire.

16 R. 2. c. 5.

Letters patents to use new manufactures, saved.

5. Provided nevertheless, and be it declared and enacted, that any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of one and twenty years or under, heretofore made, of the sole working or making of any manner of new manufacture within this realm, to the first and true inventor or inventors of such manufactures, which others at the time of the making of such letters patents and grants did not use, so they be not contrary to the law, nor mischievous to the state, by raising of the prices of commodities at home, or hurt of trade, or generally inconvenient, but that the same shall be of such force

as they were or should be if this act had not been made, and of none other: and if the same were made for more than one and twenty years, that then the same for the term of one and twenty years only, to be accounted from the date of the first letters patents and grants thereof made, shall be of such force as they were or should have been, if the same had been made but for term of one and twenty years only, and as if this act had never been had or made, and of none other.

6. Provided also, and be it declared and enacted, that any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patents and grants shall not use, so as also they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient: the said fourteen years to be accounted from the date of the first letters patents, or grant of such privilege hereafter to be made, but that the same shall be of such force as they should be if this act had never been made, and of none other.

7. Provided also, and it is hereby further intended, declared, and enacted by authority aforesaid, that this act or any thing therein contained shall not in anywise extend, or be prejudicial to any grant or privilege, power, or authority whatsoever, heretofore made, granted, allowed, or confirmed by any act of parliament now in force, so long as the same shall so continue in force.

Warrants granted to justices, saved.

8. Provided also, that this act shall not extend to any warrant or privy seal, made or directed, or to be made or directed by His Majesty, his heirs or successors, to the justices of the Courts of the King's Bench or Common Pleas, and Barons of the Exchequer, jus-

tices of assize, justices of oyer and terminer and gaol delivery, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute, depending in suit and question before them, or any of them respectively, after plea pleaded by the party defendant.

Charters granted to corporations, saved.

9. Provided also, and it is hereby further intended, declared, and enacted, that this act or any thing therein contained shall not in any wise extend or be prejudicial unto the city of London, or to any city, borough, or town corporate within this realm, for or concerning any grants, charters, or letters patents, to them or any of them made or granted, or for or concerning any custom or customs used by or within them or any of them; or unto any corporations, companies, or fellowships of any art, trade, occupation, or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade of merchandize; but that the same charters, customs, corporations, companies, fellowships, and societies, and their liberties, privileges, powers, and immunities, shall be and continue of such force and effect as they were before the making of this act, and of none other; any thing before in this act contained to the contrary in any wise notwithstanding,

Letters patent that concern printing, saltpetre, gunpowder, great ordnance, shot, or offices, saved.

10. Provided also, and be it enacted, that this act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before mentioned, shall not extend to any letters patents or grants of privilege heretofore made, or hereafter to be made, of, for, or concerning printing, nor to any commission, grant, or letters patents, heretofore made, or hereafter to be made, of, for, or concerning the digging, making, or compounding of saltpetre or gunpowder, or the casting or making of ordnance, or shot for ordnance, nor to any grant or letters patents heretofore made, or hereafter to be made, of any office or offices heretofore erected, made,

or ordained, and now in being and put in execution, other than such offices as have been decried by any His Majesty's proclamation or proclamations; but that all and every the same grants, commissions, and letters patents, and all other matters and things tending to the maintaining, strengthening, and furtherance of the same, or any of them, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this act, as if this act had never been had nor made, and not otherwise.

This act shall not extend to commissions for alum mines;

11. Provided also, and be it enacted, that this act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before mentioned, shall not extend to any commission, grant, letters patents or privilege heretofore made, or hereafter to be made, of, for, or concerning the digging, compounding, or making of alum or alum mines, but that all and every the same commissions, grants, letters patents and privileges, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this act, as if this act had never been had nor made, and not otherwise.

Nor to the liberties of Newcastle-upon-Tyne, nor to licences of keeping taverns;

12. Provided also, and be it enacted, that this act, or any declaration, provision, penalty, forfeiture, or other thing before mentioned, shall not extend or be prejudicial to any use, custom, prescription, franchise, freedom, jurisdiction, immunity, liberty, or privilege, heretofore claimed, used, or enjoyed by the governors and stewards, and brethren of the fellowship of the Hoast-men of the town of Newcastle-upon-Tyne, or by the ancient fellowship, guild, or fraternity, commonly called Hoast-men, for or concerning the selling, carrying, lading, disposing, shipping, venting, or trading of or for any sea-coals, stone-coals, or pit-coals, forth or out of the haven and river of Tyne; or to any grant made by the said governor and stewards, and brethren of the fellowship of the said Hoast-men, to the late Queen

Elizabeth, of any duty or sum of money to be paid for or in respect of any such coals as aforesaid; nor to any grants, letters patents, or commission, heretofore granted, or hereafter to be granted, of, for, or concerning the licensing of the keeping of any tavern or taverns; or selling, uttering, or retailing of wines to be drunk or spent in the mansion house or houses, or other place in the tenure or occupation of the party or parties so selling or uttering the same; or for or concerning the making of any compositions for such licences, so as the benefit of such compositions be reserved and applied to and for the use of His Majesty, his heirs or successors, and not to the private use of any other person or persons.

Nor to letters patents granted to Sir Robert Mansel, Knt., or to James Maxewell, Esq.;

13. Provided also, and be it enacted, that this act, or any declaration, provision, penalty, forfeiture, or other thing before mentioned, shall not extend or be prejudicial to a grant or privilege for or concerning the making of glass, by His Majesty's letters patents under the great seal of England, bearing date the two and twentieth day of May, in the one and twentieth year of His Majesty's reign of England, made and granted to Sir Robert Mansel, Knight, Vice-Admiral of England; nor to a grant or letters patents, bearing date the twelfth day of June, in the thirteenth year of His Majesty's reign of England, made to James Maxewell, Esquire, concerning the transportation of calves skins; but that the said several letters patents last mentioned shall be and remain of the like force and effect, and as free from the declarations, provisions, penalties, and forfeitures beforementioned, as if this act had never been had nor made, and not otherwise.

Nor to those granted to Abraham Baker, or Lord Dudley.

14. Provided also, and be it declared and enacted, that this act, or any declaration, provision, penalty, forfeiture, or other thing before mentioned, shall not extend or be prejudicial to a grant or privilege for or concerning the making of smalt, by His Majesty's letters patents under the great seal of England, bearing date the sixteenth day of February, in the sixteenth

year of His Majesty's reign of England, made or granted to Abraham Baker; nor to a grant or privilege for or concerning the melting of iron ewer, and of making the same into cast-works or bars with sea-coals or pit-coals, by His Majesty's letters patents under the great seal of England, bearing date the twentieth day of February, in the nineteenth year of His Majesty's reign of England, made or granted to Edward Lord Dudley; but that the same several letters patents and grants shall be and remain of the like force and effect, and as free from the declarations, provisions, penalties, and forfeitures before mentioned, as if this act had never been had nor made, and not otherwise.

II.

Form of Petition for a Patent - -	ante, p. 65	Petition.
—— Affidavit in support thereof - -	64	Affidavit.

III.

Whitehall, ——, 1830.

His Majesty is graciously pleased to refer this petition to Mr. Attorney or Mr. Solicitor-General to consider thereof, and report his opinion what may be properly done therein, whereupon his Majesty will declare his further pleasure. Reference of petition to attorney or solicitor-general. (*b*)

(*c*) ——————.

IV.

To the King's Most Excellent Majesty.

May it please your Majesty,

In humble obedience to your Majesty's commands, signified to me by one of your Report thereon:

(*b*) Written on the back, or in the margin of the petition.

(*c*) Signed by the Secretary of State for the Home Department.

Majesty's principal Secretaries of State, referring to me the annexed petition of A. B. of [*&c.*] to consider thereof, and report my opinion what may be properly done therein, which petition sets forth, that the petitioner [*according to the allegations and prayer of the petition*],

I humbly beg leave to certify unto your Majesty, that in support of the allegations contained in the said petition, the affidavit of the said petitioner hath been laid before me, whereby he maketh oath and saith, that [*according to the affidavit*].

Upon consideration of all which, 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 your Majesty to encourage all arts and inventions which may be for the public good, I am humbly of opinion that your Majesty may, by your royal letters patent, under the great seal of Great Britain, grant unto the petitioner, his executors, administrators, and assigns, the sole use, benefit, and advantage of his said invention, within that part of your Majesty's United Kingdom of Great Britain and Ireland called England, your dominion of Wales, and town of Berwick-upon-Tweed (*and also in all your Majesty's colonies and plantations abroad*) (*d*) for the term of fourteen years, according to the statute in that case made and provided, if your Majesty shall be graciously pleased so to do.

Provided the said petitioner doth, within such reasonable time as shall be limited in the said letters patent, to be computed from the date thereof, cause a particular description of the nature of the said invention, and in what manner the same is to be performed, under his hand and seal, to be enrolled in your Majesty's High

(*d*) These words are inserted when the patent is to extend to the colonies.

Court of Chancery, otherwise the said letters patent to be void.

All which is humbly submitted to your Majesty's royal wisdom.

(c) ————.

V.

GEORGE R.

Warrant for the bill.

Whereas A. B. of [*&c.*], hath by his petition humbly represented to us that [*according to the allegations and prayer of the petition*], 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; our will and pleasure, therefore, is, that you prepare a bill for our royal signature to pass our great seal of Great Britain, containing our grant unto him the said A. B., his executors, administrators, and assigns, of the sole use, benefit, and advantage of his said invention, within that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed (*and also in all our colonies and plantations abroad*) (*f*), for the term of fourteen years, according to the statute in that case made and provided: provided that the petitioner does, within the space of (g), to be computed from the date of our intended grant, cause a particular description of the nature of his said invention, and in what manner the same is to be performed, by writing under his hand and seal, to be enrolled in our High Court of Chancery, otherwise our said intended letters patent to be void; and you are to insert in the said bill all such clauses, prohibitions, and provisos, as are

(e) Signed by the Attorney or Solicitor-general, and dated.

(f) These words are inserted, when the patent is to extend to the colonies.

(g) See suprà, p. 68.

usual and necessary in grants of the like nature, and as you shall judge requisite; and for so doing this shall be your warrant.

Given at our Court [*&c.*]

By his Majesty's command,

To our Attorney or Solicitor-General. } (*h*) ——————.

VI.

Bill for the patent.

George the Fourth, by the Grace of God, &c. To all to whom these Presents shall come, greeting.

Whereas A. B. (*here the patent is set out.*) In witness, &c. Witness, &c.

Examined. (*i*) ——————.

May it please your Most Excellent Majesty,

This contains your Majesty's grant unto A. B., of, (*&c.*) of the sole use, benefit, and advantage of his invention of (*the title of the invention*), to hold to him, his executors, administrators, and assigns, within England, Wales, and the town of Berwick upon Tweed (*and also in all your Majesty's colonies and plantations abroad,*) (*k*) for the term of fourteen years, pursuant to the statute in that case made and provided: Provided that he does within (*l*) from the date of the grant hereby intended, cause a particular description of the nature of his said invention, and in what manner the same is to be performed, by writing under his hand and seal, to be enrolled in your High Court of Chancery, otherwise your Majesty's said grant to be void. And all such clauses, prohibitions, and provisos, are therein inserted, as are

(*h*) Signed by the Secretary of State for the Home Department.

(*i*) Signed by the Attorney or Solicitor-General.

(*k*) These words are inserted, when the patent is to extend to the colonies.

(*l*) See suprà, p. 68.

usual and necessary in grants of the like nature. And this bill is prepared

By warrant under your Majesty's royal sign manual.

Countersigned by (*m*) ——————.

(*n*) ——————.

VII.

Is a copy of the bill, under the King's signet, and signed by one of the clerks of the signet. Warrant to the privy seal.

VIII.

George the Fourth, by the grace of God, &c. to our right trusty and well-beloved cousin and councillor, John, Baron Lyndhurst, our Chancellor of that part of our said United Kingdom called Great Britain, greeting: — We will and command that under our great seal of our said United Kingdom, remaining in your custody, you cause these our letters to be made forth patent in form following: — George the Fourth [*here the patent is set out*]. Warrant to the great seal.

Given under our privy seal at our palace of Westminster, the day of , in the year of our reign.

Examined.

(*o*) —————— Deputy.

On the Label.

To our right trusty and well-beloved cousin and councillor, John, Baron Lyndhurst, our Chancellor of that part of our United Kingdom of Great Britain and Ireland called Great Britain.

(*m*) The Secretary of State for the Home Department.

(*n*) Signed by the Attorney or Solicitor-General, and dated.

(*o*) Signed by one of the deputy clerks to the Privy Seal.

IX.

Caveat. Form of Caveat. - - - - - - - - ante, p. 69.

X.

Patent. George the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these presents shall come, greeting:—Whereas A. B. of [*&c.*], hath, by his petition, humbly represented unto us that [*as in the petition*]; the petitioner therefore most humbly prayed, that we would be graciously pleased to grant [*as in the prayer of the petition*]: and we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request. KNOW ye, therefore, that we, of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents for us, our heirs and successors, do give and grant unto the said A. B., his executors, administrators, and assigns, our especial 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 deputies, servants or agents, or such others as he the said A. B., his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter, during the term of years herein expressed, shall and lawfully may make, use, exercise, and vend his said invention within that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed (*and also in all our colonies and plantations abroad*) (*p*), in such manner as to him the said A. B., his executors, administrators, and assigns, or any of them, shall, in his or their discretions, seem meet; and that

(*p*) These words to be inserted, when the patent is to extend to the colonies.

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 licence, powers, privileges, and advantages hereinbefore granted, or mentioned to be granted, unto the said A. B., his executors, administrators, and assigns for and during, and unto the full end and term of fourteen years from the date of these presents next and immediately ensuing, and fully to be complete and ended, according to the statute in such case made and provided. And to the end that he the said A. B., his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention, according to our gracious intention hereinbefore declared, we do, by these presents, for us, our heirs, and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within that said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed (*and also in all our colonies and plantations abroad*) (*q*) aforesaid, that neither they nor any of them, at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly do make, use, or put in practice the said invention, or any part of the same, so attained unto by the said A. B. as aforesaid, nor in any wise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, with-

(*q*) These words to be inserted when the patent is to extend to the colonies.

out the licence, consent, or agreement of the said A. B., his executors, administrators, or assigns, in writing under his or their hands and seals first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command, and further to be answerable to the said A. B., his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned. And moreover we do, by these presents for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers whatsoever of us, our heirs and successors, for the time being, that they, or any of them, do not nor shall, at any time hereafter during the said term hereby granted, in any wise molest, trouble, or hinder the said A. B., his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents in or about the due and lawful use, or exercise of the aforesaid invention, or any thing relating thereto. Provided always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted, it shall be made appear to us, our heirs or successors, or any six or more of our or their privy council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof in that said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed (*and also in our colonies and plantations abroad*) (*r*) aforesaid, or not invented and found out by the said A. B. as aforesaid, then upon signification or declaration thereof to be made by us, our heirs or successors, under our or their signet or privy seal, or by the lords and others of our or their

(*r*) These words to be inserted, when the patent is to extend to the colonies.

privy council, or by any six or more of them, under their hands, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. Provided also, that these our letters patent, or any thing herein contained, shall not extend, or be construed to extend, to give privilege unto the said A. B., his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever, which hath heretofore been found out or invented by any other of our subjects whatsoever, and publicly used or exercised in that said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, or town of Berwick-upon-Tweed (*or our colonies and plantations abroad*) (*s*) aforesaid, unto whom like letters patent or privileges have been already granted for the sole use, exercise, and advantage thereof; it being our will and pleasure that the said A. B., his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions by them invented 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., his executors or administrators, or any person or persons who shall or may, at any time or times hereafter, during the continuance of this grant, have or claim any right, title, or interest in law or equity of, in, or to the power, privilege, and authority of the sole use and benefit of the said invention hereby granted, shall make any transfer or assignment, or any pretended transfer or assignment of the said liberty and privilege, or any share or shares of the

(*s*) These words to be inserted when the patent is to extend to the colonies.

benefit or profit thereof, or shall declare any trust thereof to or for any number of persons exceeding the number of five, or shall open, or cause to be opened any book or books for public subscription, to be made by any number of persons exceeding the number of five, in order to the raising any sum or sums of money under pretence of carrying on the said liberty or privilege hereby granted, or shall by him or themselves, or his or their agents or servants, receive any sum or sums of money whatsoever of any number of persons exceeding in the whole the number of five, for such or the like intents or purposes, or shall presume to act as a corporate body, or shall divide the benefit of these our letters patent, or the liberty and privileges hereby by us granted, into any number of shares exceeding the number of five; or in case the said power, privilege, or authority shall, at any time hereafter, become vested in, or in trust for, more than the number of five persons, or their representatives, at any one time (reckoning executors or administrators as and for the single person whom they represent, as to such interest as they are or shall be entitled to in right of such their testator or intestate), that then and in any of the said cases, these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. Provided also, that if the said A. B. shall not particularly describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be inrolled in our High Court of Chancery within (*t*) next, and immediately after the date of these our letters patent, that then these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing herein-

(*t*) See suprà, p. 68.

before contained to the contrary thereof in any wise notwithstanding. And, lastly, we do, by these presents, for us, our heirs and successors, grant unto the said A. B., his executors, administrators, and assigns, that these our letters patent, or the inrolment or exemplification thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense for the best advantage of the said A. B., his executors, administrators, and assigns, as well in all our Courts of Record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in that part of our said United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed (*and all our colonies and plantations abroad*) (*u*) aforesaid, and amongst all and every the subjects of us, our heirs and successors, whatsoever and wheresoever, notwithstanding the not full and certain describing the nature or quality of the said invention, or of the materials thereto conducing and belonging. In witness whereof we have caused these our letters to be made patent. Witness ourself at our Palace at Westminster, this

day of , in the year of our reign.

By Writ of Privy Seal,

(*x*) ——.

XI.

To all to whom these presents shall come, I, A. B. of [*&c.*], send greeting:—Whereas I did, by petition, represent unto His most Excellent Majesty King George the Fourth, that I had invented [*here state the invention as in the patent*]; and His said Majesty being willing to encourage all useful inventions, did issue his letters patent, Specification.

(*u*) These words to be inserted, when the patent is to extend to the colonies.

(*x*) Signed by the clerk of the letters patent.

under the great seal of Great Britain, bearing date at Westminster, the day of , in the year of his reign, whereby His said Majesty did for himself, his heirs and successors, give and grant unto me, the said A. B., his especial licence, that I, the said A. B., my executors, administrators, and assigns, or such others as I, the said A. B., my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times, during the term of years therein expressed, should and lawfully might make, use, exercise, and vend, within England, Wales, and the town of Berwick-upon-Tweed (*and also in all His Majesty's colonies and plantations abroad*) (*y*), my said invention, in which said letters patent there is contained a proviso obliging me, the said A. B., by an instrument in writing under my hand and seal, particularly to describe and ascertain the nature of my said invention, and in what manner the same is to be performed, and to cause the same to be enrolled in His Majesty's High Court of Chancery, within next and immediately after the date of the said letters patent, as in and by the same, reference being thereunto had, will more fully and at large appear. Now know ye, that in compliance with the said proviso, I, the said A. B., do hereby declare, that the nature of my said invention, and the manner in which the same is to be performed, are described and ascertained in manner following; (that is to say,) [*here the nature of the invention, and the manner in which the same is to be performed, must be described, in the clearest and most explicit manner.* See *supra*, p. 100. *et seq.*]

In witness whereof, I, the said A. B., have hereunto set my hand and seal, the day of , in the year of our Lord .

A. B. [L. S.]

Taken and acknowledged by the above-named A. B., at the Public Office, South-

(*y*) To be inserted when the patent extends to the colonies.

ampton Buildings, Chancery Lane, this day of , before me,

(z) ——.

XII.

Inrolled in the Petty Bag Office, in His Majesty's High Court of Chancery, the day of , in the year of the reign of King George the Fourth.

Certificate of the inrolment of the specification. (a)

(b) ——.

XIII.

This indenture made the day of , in the year of our Lord , between A. B. of the one part, and C. D. of the other part: Whereas, by His Majesty's letters patent, under the great seal of Great Britain, bearing date at Westminster, on or about the day of , in the year of his reign, after reciting, amongst other things, that J. S. had invented and found out a new method of refining sugars, His said Majesty did give and grant unto the said J. S., his executors, administrators, and assigns, His said Majesty's special licence, full power, and sole privilege and authority, at all times thereafter, during the term of fourteen years therein mentioned, to use, exercise, and vend his said invention within that part of His Majesty's United Kingdom of Great Britain and Ireland called England, his dominion of Wales, and town of Berwick-upon-Tweed, and also in all His Majesty's colonies and plantations abroad; but subject nevertheless to the provisoes and conditions therein contained. And whereas, by indenture, bearing date the day of , and made between the said J. S. of the one part, and

Licence by indenture, by assignee of a patent to use invention.

(z) A master in Chancery.
(a) Indorsed on the specification.
(b) Signed by one of the clerks of the Petty Bag Office.

the said A. B. of the other part, for the considerations therein mentioned, the said J. S. did assign, transfer, and set over the said letters patent unto the said A. B., his executors, administrators, and assigns. And whereas the said A. B. hath agreed to grant unto the said C. D. his licence and authority to erect, set up, have, use, and employ in his manufactories or sugar-houses, situate in , two chaudiers, pans, vessels, or boilers, of the size or dimensions hereinafter mentioned, in the refining of sugar upon the principle and in the manner described in the specification of the said invention enrolled in His Majesty's High Court of Chancery, at or for the price or sum of pounds. Now this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the said sum of pounds by the said C. D. to the said A. B. in hand, at or before the executing of these presents, well and truly paid, the receipt whereof is hereby acknowledged, he the said A. B. hath given and granted, and by these presents doth give and grant unto the said C. D., his executors, administrators, and assigns, full power, licence, liberty, and authority to erect, set up, have, use, and employ in his said manufactories or sugar-houses two chaudiers, pans, vessels, or boilers for refining sugar according to the invention or discovery of the said J. S., and upon the principle and in the manner mentioned and described in the specification of the said invention enrolled in the Court of Chancery, to have, hold, exercise, and enjoy the said licence, privilege, and authority unto the said C. D., his executors, administrators, and assigns, during all the residue and remainder now to come and unexpired of the said term of fourteen years granted by the said letters patent, but subject nevertheless to the proviso or condition hereinafter contained; (that is to say,) provided always, and it is hereby declared and agreed, that in case the chaudiers, pans, vessels, or boilers to be erected, set up, used, or employed as aforesaid, shall at any time be of a size to contain any larger or greater

quantity of moist or raw sugar than pounds weight; or if the said C. D., his executors, administrators, or assigns, shall at any time hereafter do any act, matter, or thing whatsoever contrary to the true intent and meaning of the said letters patent, and of the provisoes and conditions therein contained, then the power, licence, liberty, privilege, and authority hereby granted shall cease, determine, and be absolutely void, any thing herein contained to the contrary thereof notwithstanding. And it is hereby declared and agreed by and between the said parties hereto, that it shall be lawful for the said A. B., his executors, administrators, and assigns, or any of them, twice in each and every year during the continuance of the said licence or authority, at any reasonable hour in the day-time, to enter into the said premises, and into every part thereof, and there to view and examine the chaudiers, pans, vessels, or boilers there erected, set up, used, or employed, and to ascertain the size and admeasurement thereof.

In witness whereof, &c.

Received, the day and year first within written, of and from the within-named C. D., the sum of , being the consideration within mentioned to be paid by him to me,

£

A. B.

XIV.

London, , 1830.

INVENTION OF A. B. OF, &c. FOR

(*c*) Notice is hereby given, that application is intended to be made to Parliament, in the next session, by the

Notice of application to parliament for an act to extend the term of patent.

(*c*) The notice must have prefixed to it, in capital letters, the name by which the invention is usually distinguished. And it must contain a distinct description of the invention, and also an account of the term of the duration of the patent. Order, June 30. 1801.

above-named A. B., for leave to bring in a bill for vesting in him, his executors, administrators, and assigns, for a term of years to be limited by such act, the sole privilege, right, and authority of making, using, and vending a certain by him invented for [*as in the patent*], for the exclusive right to make, use, and vend which within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales, and town of Berwick-upon-Tweed, the said A. B. obtained His Majesty's letters patent, bearing date the day of , in the year of his reign, for the term of fourteen years from the date of the said letters patent; and for the exclusive right to practise, exercise, and make use of which said within Ireland, the said A. B. obtained His said Majesty's letters patent, bearing date the day of , in the year of his reign, for the term of fourteen years from the date of the said last-mentioned letters patent; and for the exclusive right to make, use, and vend which said within that part of the United Kingdom of Great Britain and Ireland called Scotland, the said A. B. likewise obtained His said Majesty's letters patent, bearing date the day of , in the year of his reign, for the term of fourteen years from the date of the said last-mentioned letters patent.

C. D.
Solicitor and Agent for the
above-named A. B.

XV.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

Petition to the House of Commons for leave to bring in the bill.

The humble Petition of A. B. of, &c.

Sheweth,

That your petitioner, after considerable labour and expence, invented [*describe the invention as in the patent*].

That His Majesty, by letters patent dated the day of , in the year of his reign, granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said invention within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales, and town of Berwick-upon-Tweed, for the term of fourteen years from the date of the said letters patent.

That His said Majesty, by letters patent dated the day of , in the year of his reign, likewise granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said invention within Ireland, for the term of fourteen years from the date of the said last-mentioned letters patent.

That His said Majesty, by letters patent dated the day of , in the year of his reign, likewise granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said invention within that part of the United Kingdom of Great Britain and Ireland called Scotland, for the term of fourteen years from the date of the said last-mentioned letters patent.

That [*here state the special reasons upon which the application is grounded.* See *ante*, p. 152.]

Your petitioner, therefore, humbly prays, that leave may be given to bring in a bill to prolong the several terms granted by the aforesaid letters patent to your petitioner, and to vest in your petitioner, his executors, administrators, and assigns, the sole privilege, right, and authority of making, using, and vending the aforesaid for such term of years, in such manner, and under such regulations, as to this Honourable House shall seem meet.

(*d*) ———.

(*d*) To be signed by the party or parties who are suitors for the bill.

XVI.

Forms of acts of parliament.

For the form of an act of parliament for extending the term of letters patent, see the acts stated, *ante*, p. 157. note (*m*).

For the form of an act of parliament for enabling a patentee to assign to more than five persons, see 41 *G.* 3. *c.* cxxv., and *ante*, p. 162.

For the form of an act of parliament for dispensing with the enrolment of the specification under certain restrictions, see 32 *G.* 3. *c.* 73. and 53 *G.* 3. *c.* 179. (L. & P.), and *ante*, p. 159.

XVII.

27 *H.* 8. c. 11. § 1, 2, 3, 4.

For Clerks of the Signet.

27 H. 8. c. 11. § 1, 2, 3, 4.

"Whereas the King's clerks of His Grace's signet and privy seal, giving their daily attendance for the passing and writing of His Majesty's great and weighty affairs, and the causes of this his realm, having for their entertainment, and their clerks, no fees nor wages certain for those offices, other than such fees as cometh and groweth of the said signet and privy seal; to the intent that from henceforth they should not by any manner of means be defeated of any part or portion of the same their fees:" Be it therefore ordained, established and enacted, by the consent and assent of the Lords Spiritual and Temporal, and the Commons, in this present parliament assembled, and by authority of the same,

The King's grants shall be brought to the secretary or clerk of the signet.

That all and every gift, grant, and other writing, which shall be made or given in writing by the King's Highness, or any his most noble posterity, to any person or persons, signed with His Grace's sign, or the sign or signs manual of any of them, to be passed under any His Grace's great seals of England, Ireland, duchy of Lancaster, or any of His Highness's counties palatines, or principality of Wales, or by other process out of the Exchequer, after the fifteenth day of April in the twenty-

seventh year of his most noble reign, and that all and every gifts, grants and other writings, of what name or names, quality or qualities soever the same be, or hereafter shall be named, deemed or called, which the master of the King's wards, or general surveyors of the King's lands, for the time being, or any other officer or officers that now be, or hereafter shall be made, shall, by virtue of an act of parliament, or any the King's grants to them or any of them, made or hereafter to be made in that behalf, give, grant, or make, after the aforesaid fifteenth day of April, to any person or persons in the King's name, to be passed under any of His Majesty's seals, be in any wise first, and before the same grant, or any of them, be passed under any the King's said seals, or other process made of the same, brought and delivered to the King's principal secretary, or to one of the King's clerks of His Grace's signet for the time being, to be at the said office of the signet passed accordingly.

A warrant by the clerk of the signet to the lord keeper of the privy seal.

§ 2. And be it also ordained and enacted by the authority aforesaid, That one of the clerks of the said signet, to whom any of the said writings, signed with the King's most gracious hand, or the hand of any other aforesaid, or any of them, fortune to be delivered, may and shall, by warrant of the same bills and every of them, within the space of eight days next after he shall have received the same, unless he have knowledge, by the said secretary or otherwise, of the King's pleasure to the contrary, make or cause to be made, in the King's name, letters of warrant subscribed with the hand of the same clerk, and sealed with the King's signet, to the lord keeper of the King's privy seal, for further process to be had in that behalf; and that one of the King's clerks of the said privy seal, upon due examination had by the said lord keeper of the said privy seal, of the said warrant to him addressed from the office of the said signet as afore, may and shall, within the space of eight days next after he shall have received the same, unless the lord keeper of the privy seal do give them com-

A warrant from the privy seal to the great seal.

mandment to the contrary, make or cause to be made, by warrant of the foresaid warrant to the said lord keeper of the privy seal, address from the office of the signet aforesaid, other letters of like warranty, subscribed with the name of the same clerk of the privy seal, to the lord chancellor of England, lord keeper of the great seal, chancellor of the duchy of Lancaster, chancellor of the King's land of Ireland, treasurer and chamberlains of the exchequer, and chamberlains of any of his counties palatines, or principality of Wales, or other officer, and to every of them, for the writing and enseuling with such seals, as remain in their custody, of letters patent or closed, or other process making, due and requisite to be had or made upon any the said grants, according to the tenor of the warrant to them or any of them directed from the officer of the privy seal, as is afore specified.

The penalty for altering of the course aforesaid.

§ 3. And also be it enacted by the authority aforesaid, That no manner clerk or clerks, or other person or persons, do write or make any manner of writing, warrant or warrants upon any manner, gift, or grant made by the King's Highness, or by any other His Grace's officers as aforesaid, or procure the same, or any of the same, to be passed under any the seals aforesaid, after any other sort, manner or fashion, or by any other warrant or warrants than as before is specified and declared, upon pain to forfeit, for every bill, warrant, or writing passed contrary to the order before limited and prescribed, the sum of *x. li.* sterling, the one half thereof to be to our sovereign lord the King, and the other half to him that shall first sue for the same, by action of debt, writ, bill, plaint, or information in any the King's courts; in which action or suit, no essoin, protection, privilege, nor wager of law shall be admitted; any manner act, statute, provision, proclamation, or other ordinance heretofore had or made, contrary to this present act, or any article of the same, in any wise notwithstanding.

§ 4. And nevertheless be it also enacted, That every of the said clerks, or other person, which shall pass in writing, or procure to be passed in writing, any grant or grants by immediate warrant, wherefore fees be paid at the great seal, shall of the parties receive for the offices of the said signet and privy seal, as well such fees as in this act is taxed for writing of any such grant or other writings, as also the fees for the seal of the same; which fees, and every part and portion thereof, the same clerk or clerks, by whom any grant shall pass in writing by immediate warrant, shall, upon a bill of the hand of one of the said clerks of the said signet or privy seal, deliver unto one of the same clerks of the signet or privy seal, within the space of three months next and immediately ensuing after the passing and sealing of any of the said grant or grants by immediate warrant, upon pain of *x. li.* sterling, to be by every such of the said clerks, or other person as shall offend, forfeited, to be levied in form aforesaid, as often as he or they shall offend contrary to the meaning of this act.

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