

c

THE
LAW AND PRACTICE
OF
LETTERS PATENT FOR
INVENTIONS

Pennington
BY
LEWIS EDMUNDS, D.Sc., Q.C.,
OF THE INNER TEMPLE AND OF THE OXFORD CIRCUIT.

SECOND EDITION

Thomson
Office
BY
M. STEVENS, D.C.L.,
OF GRAY'S INN AND OF THE SOUTH-EASTERN CIRCUIT, BARRISTER-AT-LAW.

0

LONDON:
STEVENS AND SONS, LIMITED,
119 & 120, CHANCERY LANE,
Law Publishers and Booksellers.

1897.

UK
945.
EDM

Tk
E 244 P
ed 2

BRADBURY, AGNEW, & CO. LD., PRINTERS,
LONDON AND TONBRIDGE.

Rec. Oct. 7, 1897.

PREFACE.

It may be safely stated that at no previous period have so many important industries and undertakings rested upon the monopoly granted by letters patent for inventions. This has not unnaturally led to a corresponding increase of the volume of patent business.

The seven years which have elapsed since the publication of the first edition of this work have been fertile in judicial decisions of importance and authority.

The original object of this work (the first edition of which was published in 1890) was to provide a complete compendium of patent law and practice, and in the preparation of this the second edition every effort has been made to further secure this result, and to render the work a guide to all matters connected with the law relating to patents for inventions.

This edition has been almost entirely the work of my friend Mr. T. M. Stevens, Barrister-at-Law, and such additional merits as it exhibits, compared with

its predecessor, which I believe to be very considerable, are almost entirely due to him.

In the preparation of this edition the old matter has been thoroughly revised, and such additions made as experience and the decisions of the Courts have rendered advisable or necessary. This has involved very considerable labour. In fact, over 120 pages have been added to the text of the work, whilst the notes to the Acts and the Appendix of Forms have also been augmented. Notwithstanding this, the volume has not been enlarged, the space for new matter having been obtained by throwing into the smaller type of the notes much of the historical information, (the existence of which is one of the characteristics of the book,) and by excluding repealed statutes and some other material which formerly appeared in the Appendices.

The chapter on *Subject-matter* has been entirely re-written. The chapters on *Specifications*, *Infringement*, and the *Action of Infringement* have been re-arranged, and considerable additions have been made; those on the *Grant*, and on the *Action for Threats* have been entirely re-written. In the Appendix will be found several interesting grants made prior to the Statute of Monopolies.

The chapter on Assignments and Licences is from the pen of Mr. D. M. Kerly, Barrister-at-Law, author of *The Law of Trade Marks*.

Mr. E. W. Hulme, Librarian of the Patent Office, has, in many matters, historical and otherwise, continued the valuable assistance which he gave in the preparation of the first edition.

LEWIS EDMUNDS.

1, GARDEN COURT,

THE TEMPLE,

February, 1897.

PREFACE TO FIRST EDITION.

SINCE the publication in 1846 of the well-known work of Hindmarch on the Law of Patents, no comprehensive treatise upon the law and practice of Patents for Inventions has appeared, although there have been numerous books dealing with the subject in a more limited manner.

Hindmarch's work was written before the Patent Law Amendment Act of 1852, which made many important changes in the law. This Act has since given way to the Patents Act, 1883, and the practice as regards applications for and grants of patents is now, in almost every respect, different from the practice at the time when Hindmarch wrote. •

The simplification of the procedure and the great reduction in the Government fees, have caused an enormous increase in the number of patents annually obtained. The annual number of grants is now about 10,000, whereas before 1852 it was about 450. This great increase has correspondingly added to the importance and volume of patent law.

A large Government office, the Patent Office, is now devoted exclusively to the official business connected with patents, and a body of professional patent agents may be said to have come into existence, as the separate practice of this profession was before 1852 confined to a very few persons.

It seems, therefore, that a comprehensive treatise is called for, and it is in the hope of applying this deficiency that I have prepared the present work.

* * * * *

The Appendix of Forms has been made as complete as possible. It contains the forms under the Patents Rules, 1890, and a large number of precedents in litigation and other matters connected with patents. Many of these have been selected from forms actually used in important cases in recent years.

* * * * *

The text contains all the patent cases which are now of any importance. The dates of cases are given in the references on each

page and in the Table of Cases, where the principal contemporary references are also cited.

Much care has been bestowed on the Index, and every effort has been made to render it an efficient and convenient guide to the contents of the volume.

Although great attention has been paid to all the minute details of patent practice, which, I believe, are more completely treated here than in any other work, it has been my constant aim to present something more than a mere compilation, and to deal at convenient points with the history of this peculiarly interesting branch of the law, and to describe the difficulties which had to be surmounted, and the object of many of the statutory provisions. The work is so arranged that confusion can nowhere arise as to what is obsolete and what existing law. I hope that the contents of this volume will thereby be rendered of more interest to the very large number of persons whose professional or official life is largely devoted to the consideration of patents for inventions.

Throughout the whole progress of this work I have been indebted to my friend Mr. A. Wood Renton, Barrister-at-Law, for most able, constant, and untiring assistance; and I wish to express here my great obligations to him.

By the courtesy of the Comptroller-General of Patents, Mr. H. Reader Lack, many opportunities have been afforded me of completing the information on the details of the practice in the Patent Office. In so doing, I have met with every assistance from the officials connected with that department of the Board of Trade.

Mr. G. P. Wheeler, Barrister-at-Law, of the Judicial Department of the Privy Council, has revised the proofs of the chapters on Extension and Confirmation, and I have also to thank him for several forms which appear in the Appendix.

Mr. John Imray, M.A., and Mr. Oliver Imray, have read the whole of the proofs, and I am obliged to them for many practical observations and useful suggestions.

Mr. E. W. Hulme, of the Patent Office Library, has provided numerous references and footnotes.

L. E.

1, GARDEN COURT, TEMPLE,
May, 1890.

TABLE OF CONTENTS.

	PAGE
PREFACE	iii
TABLE OF CASES	xxi

Part I.

PATENT LAW AND PRACTICE.

CHAPTER I.

INTRODUCTION	1
------------------------	---

CHAPTER II.

EARLY HISTORY OF PATENT LAW	3—17
Sect. 1. Monopolies and the Common Law	3
2. Statute of Monopolies	11

CHAPTER III.

THE SUBJECT-MATTER OF LETTERS PATENT	18—105
Sect. 1. Interpretation of "Any manner of Manufacture"	18
(A) Process	24
(B) Products	29
(C) Combinations	35
(D) Improvements and Additions	38
(E) Application of Old Things to New Uses	42
2. Novelty	45
(1.) General	45
(2.) Anticipation	47
(3.) Publication	57
(A) Prior User	57
(B) In Books and Specifications	66
(C) To Individuals	74
(D) At Public Exhibitions	79
3. Amount of Invention	80
4. Utility, &c.	100

TABLE OF CONTENTS.

CHAPTER IV.

	PAGE
THE PATENT OFFICE	106—117
Sect. 1. Patent Offices before Act of 1852	106
2. The Great Seal Patent Office, 1852—1883	108
3. The Patent Office under Act of 1883	110

CHAPTER V.

OUTLINE PROCEDURE TO OBTAIN A PATENT	118—129
--	---------

CHAPTER VI.

SPECIFICATION OF AN INVENTION	130—212
Sect. 1. Origin and Development of Specification	130
2. The Title	135
3. Provisional Specification	141
Disconformity	146
4. Complete Specification	155
(1.) Sufficiency of the Complete Specification	155
(2.) The Claims	181
(3.) The Drawings	199
5. Construction of Complete Specification	202

CHAPTER VII.

AMENDMENT OF THE SPECIFICATION	213—238
History	213
Amendment of Clerical Errors	216
Amendment under Sect. 7 of the Act of 1883	216
Amendment under Sect. 18 of the Act of 1883	219
Amendment pending Action	233

CHAPTER VIII.

OPPOSITION TO GRANT	239—262
-------------------------------	---------

CHAPTER IX.

THE GRANT	263—280
Sect. 1. Persons to whom a Grant may be made	263
True and First Inventor	263
Persons who may apply for	268
2. Nature of the Grant.	270
3. Form and Terminology of the Grant	272
4. Extent of Grant	275
5. Co-owners	277

TABLE OF CONTENTS.

xi

CHAPTER X.

	PAGE
ASSIGNMENT AND LICENCES, &c.	281—308
Sect. 1. Assignments	281
2. Licences	300

CHAPTER XI.

THE REGISTER OF PATENTS	309—320
Sect. 1. General	309
2. The Register of Patents under the Act of 1883	311

CHAPTER XII.

THE INFRINGEMENT OF LETTERS PATENT	321—352
--	---------

CHAPTER XIII.

ACTION OF INFRINGEMENT	353—469
Sect. 1. Origin and Development of Action of Infringement	353
2. Commencement of Action	357
(1.) General	357
(2.) Parties	359
(3.) The Writ	368
(4.) The Court	369
3. Interlocutory Injunction	370
4. Consolidation of Actions	383
5. Pleadings	385
6. Particulars	392
7. Inspection	413
8. Discovery and Interrogatories	417
9. Trial	422
10. Remedies	431
(a) Perpetual Injunction	431
(b) Damages	436
(c) Profits	442
(d) Delivery up of Infringing Articles	445
11. Costs	446
(a) Certificate of Validity	449
(b) Costs of Particulars	452
(c) Apportionment of Costs of Issues	457
(d) Costs on Higher Scale	460
(e) When Defendant Submits	462
12. Stay of Execution	465
13. Appeals	466

CHAPTER XIV.

	PAGE
ACTION TO RESTRAIN THREATS	470—483
Prior to Act of 1883	470
Under Act of 1883	471
(1) The Threat	472
(2) The Action	476
(3) The Proviso	480

CHAPTER XV.

REVOCATION OF PATENTS	484—495
---------------------------------	---------

CHAPTER XVI.

PROLONGATION OR EXTENSION OF PATENTS	496—527
--	---------

CHAPTER XVII.

CONFIRMATION OF PATENTS	528—532
-----------------------------------	---------

CHAPTER XVIII.

INTERNATIONAL AND COLONIAL ARRANGEMENTS	533—542
---	---------

CHAPTER XIX.

OFFENCES AND PENALTIES	543—545
----------------------------------	---------

Part II.

PATENTS ACTS, 1883—1888, CONSOLIDATED AND
ANNOTATED.

PART I.—PRELIMINARY.

Sect. 1. Short title	548
2. Division of Act into parts	548
3. Commencement of Act	548

PART II.—PATENTS.

Application for and Grant of Patent.

4. Persons entitled to apply for patent	549
Power to grant patents to several persons jointly	549

TABLE OF CONTENTS.

	PAGE
Sect. 5. Application and specification	551
6. Reference of application to examiner	563
7. Power of comptroller to refuse application or require amendment	564
8. Time for leaving complete specification	567
9. Comparison of provisional and complete specification	568
10. Advertisement on acceptance of complete specification	572
11. Opposition to grant of patent	572
12. Sealing of patent	577
13. Date of patent	580
Specifications, &c., not to be published unless application accepted	580
<i>Provisional Protection.</i>	
14. Provisional Protection	581
<i>Protection by Complete Specification.</i>	
15. Effect of acceptance of complete specification	582
<i>Patent.</i>	
16. Extent of patent	583
17. Term of patent	583
<i>Amendment of Specification.</i>	
18. Amendment of specification	585
19. Power to disclaim part of invention during action, &c.	591
20. Restriction on recovery of damages	592
21. Advertisement of amendment	592
<i>Compulsory Licences.</i>	
22. Power for Board to order grant of licences	593
<i>Register of Patents.</i>	
23. Register of patents	595
<i>Fees.</i>	
24. Fees in schedule	597
<i>Extension of Term of Patent.</i>	
25. Extension of term of patent on petition to Queen in Council	598
<i>Revocation.</i>	
26. Revocation of patent	606
<i>Crown.</i>	
27. Patent to bind Crown	610
<i>Legal Proceedings.</i>	
28. Hearing with assessor	612
29. Delivery of particulars	613

	PAGE
Sect. 30. Order for inspection, &c., in action	617
31. Certificate of validity questioned, and costs thereon . . .	620
32. Remedy in case of groundless threats of legal proceedings	621

Miscellaneous.

33. Patent for one invention only	628
34. Patent on application of representative of deceased inventor	629
35. Patent to first inventor not invalidated by application in fraud of him	629
36. Assignment for particular places	630
37. Loss or destruction of patent	630
38. Proceedings and costs before law officer	630
39. Exhibition at industrial or international exhibition not to prejudice patent rights	631
40. Publication of illustrated journal, indexes, &c.	633
41. Patent Museum	634
42. Power to require models on payment	634
43. Foreign vessels in British waters	634
44. Assignment to Secretary for War of certain inventions . . .	635

Existing Patents.

45. Provisions respecting existing patents	638
--	-----

Definitions.

46. Definitions of patent, patentee, and invention	639
--	-----

PART V.—GENERAL.

Patent Office and Proceedings thereat.

82. Patent Office	640
83. Officers and clerks	641
84. Seal of patent office	641
85. Trust not to be entered in registers	642
86. Refusal to grant patent, &c., in certain cases	642
87. Entry of assignments and transmissions in registers	642
88. Inspection of and extracts from registers	644
89. Sealed copies to be received in evidence	644
90. Rectification of registers by court	645
91. Power for comptroller to correct clerical errors	647
92. Alteration of registered mark	647
93. Falsification of entries in registers	647
94. Exercise of discretionary power by comptroller	647
95. Power of comptroller to take directions of law officers	648
96. Certificate of comptroller to be evidence	648
97. Applications and notices by post	648
98. Provision as to days for leaving documents at office	649
99. Declaration by infant, lunatic, &c.	649

TABLE OF CONTENTS.

XV

	PAGE
Sect. 100. Transmission of certified printed copies of specifications, &c.	650
101. Power for Board of Trade to make general rules for classifying goods and regulating business of patent office	650
102. Annual reports of comptroller	652
102A. Proceedings of Board of Trade	653
<i>International and Colonial Arrangements.</i>	
103. International arrangements for protection of inventions, designs, and trade marks,	653
104. Provision for colonies and India	656
<i>Offences.</i>	
105. Penalty on falsely representing articles to be patented	656
106. Penalty on unauthorised assumption of Royal arms	657
<i>Scotland; Ireland, &c.</i>	
107. Saving for courts in Scotland	657
108. Summary proceedings in Scotland	658
109. Proceedings for revocation of patent in Scotland	658
110. Reservation of remedies in Ireland	658
111. General saving for jurisdiction of courts	658
112. Isle of Man	659
112A. Jurisdiction of Lancashire Palatine Court	660
<i>Repeal; Transitional Provisions; Savings.</i>	
113. Repeal and saving for past operation of repealed enact- ments, &c.	660
114. Former registers to be deemed continued.	661
115. Saving for existing rules	662
116. Saving for prerogative	662
<i>General Definitions.</i>	
117. General definitions	663
<i>Register of Patent Agents.</i>	
Register of Patent Agents	664
The FIRST SCHEDULE.—Forms of application, letters patent, &c.	665
The SECOND SCHEDULE.—Fees on instruments for obtaining patents and renewal	680
The THIRD SCHEDULE.—Enactments repealed.	680
<hr/>	
PATENT RULES, 1890	682
Short title	682
Commencement	682
Interpretation	682
Fees	683
Forms	683

	PAGE
PATENT RULES, 1890 (<i>continued</i>)—	
General	684
Application, with provisional or complete specification	689
Application on communication from abroad	691
International and colonial arrangements	691
Sizes and methods of preparing drawings accompanying provisional or complete specifications	694
Opposition to grant of patents	696
Certificates of payment or renewal	698
Enlargement of time	699
Amendment of specification	700
Compulsory licences	702
Register of patents	704
Power to dispense with evidence	707
Repeal	708
Patent Rules, 1892	709
FIRST SCHEDULE.—List of fees payable on and in connection with letters patent	710
SECOND SCHEDULE.—Forms. (<i>See Appendix</i>)	805
LAW OFFICERS' RULES	713
PRIVY COUNCIL RULES ON PROLONGATION AND CONFIRMATION	718
INTERNATIONAL CONVENTION AND PROTOCOL	723
ACCESSION OF HER MAJESTY'S GOVERNMENT	741
DECLARATION OF ACCEPTANCE	742
ORDER IN COUNCIL	743

APPENDICES.

APPENDIX OF STATUTES.

21 Jac. 1, c. 3. The Statute of Monopolies. (<i>Partly Repealed</i>) [A.D. 1623]	745
5 & 6 Will. 4, c. 83, s. 4. An Act to amend the law touching letters patent for inventions. (<i>Repealed</i>) [A.D. 1835]	752
7 & 8 Vict. c. 69, ss. 2 and 3. An Act to amend 3 & 4 Will. 4, c. 41 (Judicial Committee, Privy Council). (<i>Repealed in part</i>) [A.D. 1846]	753
15 & 16 Vict. c. 83, s. 25. Patent Law Amendment Act, 1852. (<i>Repealed</i>) [A.D. 1852]	754
46 & 47 Vict. c. 57. Patents, Designs, and Trade Marks Act, 1883	754
48 & 49 Vict. c. 63. Patents, Designs, and Trade Marks Act, 1885 [A.D. 1885]	793
49 & 50 Vict. c. 37. Patents Act, 1886 [A.D. 1886]	794
51 & 52 Vict. c. 50. Patents, Designs, and Trade Marks Act, 1888 [A.D. 1888]	796

APPENDIX OF FORMS.

	PAGE
1. PATENTS RULES FORMS.	
Form A.—Application for Patent	805
„ A1.—Application for Patent communicated from Abroad	806
„ A2.—Application for Patent under International and Colonial Arrangements	807
„ B.—Provincial Specification	808
„ C.—Complete Specification	808
„ D.—Opposition to Grant of Patent	809
„ E.—Application for Hearing by Comptroller	809
„ F.—Application to amend Specification or Drawings	810
„ G.—Opposition to Amendment of Specification or Draw- ings	810
„ H.—Application for Compulsory Grant of Licence	811
„ H1.—Petition for Compulsory Grant of Licences	811
„ I.—Opposition to Compulsory Grant of Licence	812
„ J.—Application for Certificate of Payment or Renewal	812
„ Certificate of Payment or Renewal	813
„ K.—Application for Enlargement of Time for Payment of Renewal Fee	813
„ L.—Request to enter Name upon the Register of Patents	814
„ M.—Request to enter Notification of Licence in Register	814
„ N.—Application for Duplicate of Letters Patent	815
„ O.—Notice of Intended Exhibition of Unpatented In- vention	815
„ P.—Request for Correction of Clerical Error	815
„ Q.—Certificate of Comptroller-General	816
„ R.—Notice for Alteration of an Address in Register	816
„ S.—Application for Entry of Order of Privy Council in Register	816
„ T.—Appeal to Law Officer	817
„ U.—Application for Extension of Time for leaving a Com- plete Specification	817
„ V.—Application for Extension of Time for Acceptance of Complete Specification	818
2. SPECIFICATIONS	818—820
3. RECTIFICATION OF REGISTER.	
Notice of Motion for Rectification of Register	821
Order expunging Entry in Register of Patents	821
Order for Rectification of Register refused	822
4. ASSIGNMENTS AND LICENCES.	
Assignment	822
Assignment of Patent to Inventor by Communicator	823
Assignment of Patent to Company at request of Inventor by Communicator	823
Agreement for Purchase	824

TABLE OF CASES.

Abe—And	PAGE
Abel's Application [1876] Johns. Pat. Man. 178	252
Action Gesellschaft, &c. v. Remus and Burgon [1895] 12 R. P. C. 94 392, 442	392, 442
Adair's Patent [1881] L. R. 6 App. Cas. 176; 50 L. J. P. C. 68	502, 503, 504, 518, 600, 603
Adair v. Young [1879] L. R. 11 Ch. D. 136; 12 Ch. D. 13	329, 337, 365, 434, 436, 466
Adam's Patent [1853] 21 L. T. 38	215
Adam's Patent [1896] 13 R. P. C. 548	548, 577
Adams v. N. B. Ry. Co. [1873] 29 L. T. N. S. 367	361, 364
Adamson's Patent, <i>In re</i> [1856] 25 L. J. Ch. 456; 6 De G. M. & G. 420	58, 66
Adie v. Clark [1876] L. R. 3 C. D. 134; 3 App. Cas. 423. <i>See</i> <i>Clark v. Adie, infra.</i>	
Ainsworth, <i>Re</i> [1885] Griffin, P. C. 269	250, 561
Ainsworth, <i>Re</i> [1896] 13 R. P. C. 76	228, 589
Aire and Calder Works, &c. [1888] 5 R. P. C. 345	257, 631
Airey, <i>Re</i> [1888] 5 R. P. C. 348	241, 260, 687
Albo-Carbon Light Co. v. Kidd [1887] 4 R. P. C. 535	454, 457, 617
Alchemists, Case of the	4
Alcock v. Cooke [1829] 5 Bing. 340; cited 1 Web. P. C. 196	274, 485
Alexander v. Henry [1895] 12 R. P. C. 360	438
Allan's Patent [1867] L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 443	513 514, 604
Allen, <i>Re</i> [1887] Griffin, A. P. C. 3	225, 229, 587, 589
Allen v. Doulton [1887] 4 R. P. C. 377	236
Allen v. Horton [1893] 10 R. P. C. 412	411, 412, 616
Allen v. Rawson [1845] 1 C. B. 551	37, 208, 265
Alliance Pure White Lead Syndicate v. MacIvor [1891] 8 R. P. C. 321; 39 W. R. 487	405, 420
Alton-Wood's Case, 1 Co. R. 49 a, 52 b, 53 a.	274
American Braided Wire Co. v. Thomson [1887—1889] 4 R. P. C. 316; 5 R. P. C. 113, 375, 538; 6 R. P. C. 518; 7 R. P. C. 152; 44 Ch. D. 274	31, 105, 418, 436, 437, 441, 442, 444, 464
American Tobacco Co. v. Guest [1892] 1 Ch. 360; 61 L. J. Ch. 242; 9 R. P. C. 218	359, 464
Amies v. Kelsey [1852] 22 L. J. Q. B. 84	414
Amory v. Brown [1869] L. R. 8 Eq. 663; 38 L. J. Ch. 593	386
Amos v. Chadwick [1877] L. R. 4 Ch. D. 869	384
Anderson and McKinnell, <i>Re</i> [1886] Griffin, A. P. C. 23	245, 258, 261, 714, 715
Anderson v. Anderson [1890] 7 R. P. C. 323	148, 262, 576

	PAGE
And—Bai	
Anderson <i>v.</i> Liebig's Extract of Meat Co. [1881] 45 L. T. N. S. 757	470
Anderson <i>v.</i> Patent Oxonite Co. [1886] 3 R. P. C. 279	287, 361
Anderton, <i>In re</i> [1886] Griffin, A. P. C. 25	250, 253, 717
Andrew <i>v.</i> Crossley [1892] 1 Ch. 492; 61 L. J. Ch. 437; 9 R. P. C. 165	223, 228, 229, 235, 590, 591
Anglo-American Brush Co. <i>v.</i> Crompton [1887] L. R. 34 Ch. D. 152; 4 R. P. C. 27; 56 L. J. Ch. 167	155, 408, 409, 571, 616
Apollinaris Co.'s Trade Mark, <i>Re</i> [1891] 2 Ch. 186; 61 L. J. Ch. 625	318, 624, 646
Apostoloff's Application [1896] 13 R. P. C. 275	122, 551, 558
Arkwright <i>v.</i> Nightingale [1785] 1 Web. P. C. 60; Dav. P. C. 55	439
Arnold, <i>Re</i> [1887] Griffin, A. P. C. 5	220, 230, 587
Arnold <i>v.</i> Bradbury [1871] L. R. 6 Ch. 706; 24 L. T. N. S. 613	40, 186, 198, 536
Ashworth, <i>Re</i> [1886] Griffin, A. P. C. 6	221, 224, 227, 228, 229, 231, 588, 589
Ashworth <i>v.</i> Law [1890] 7 R. P. C. 231	302
Ashworth <i>v.</i> Roberts [1890] 45 Ch. D. 623; 60 L. J. Ch. 27; 7 R. P. C. 451; [1892] 9 R. P. C. 309	305, 420
Atherton's Patent [1889] 6 R. P. C. 547	250
Aube's Patent [1854] 9 Moo. P. C. 43	523
Auditor Curle's Case, 11 Co. R. 4	274
Austerberry <i>v.</i> Oldham [1885] 29 Ch. D. 750	300
Automatic Weighing Machine Co. <i>v.</i> Combined Weighing Machine Co. [1889] 6 R. P. C. 121, 367	208, 336, 338, 431, 451, 461
Automatic Weighing Machine Co. <i>v.</i> Fearby [1893] 10 R. P. C. 442	446, 450
Automatic Weighing Machine Co. <i>v.</i> International Hygienic Society [1889] 6 R. P. C. 475	449, 450, 461, 621
Automatic Weighing Co. <i>v.</i> Knight [1889] 6 R. P. C. 113, 297; W. N. [1888] 250	22, 32, 33, 36, 205, 206, 341, 344, 452, 464, 621
Automatic Weighing Co. <i>v.</i> National Exhibitions Association [1892] 8 R. P. C. 345; 9 R. P. C. 41	341, 345, 350
Averys Patent [1887] 4 R. P. C. 152, 322; L. R. 36 Ch. D. 307; 56 L. J. Ch. 586, 1007	267, 491, 492, 493, 554, 609, 610
Axmann <i>v.</i> Lund [1874] L. R. 18 Eq. 330; 43 L. J. Ch. 655	376, 470, 472

B.

Bacon <i>v.</i> Jones [1839] 4 My. & Cr. 438	378
Bacon <i>v.</i> Spottiswoode [1839] 1 Beav. 382	444
Badeley <i>v.</i> Consolidated Bank [1888] 38 Ch. D. 238	298
Badham <i>v.</i> Bird [1888] 5 R. P. C. 238	456, 458
Badische Anilin <i>v.</i> Johnson [1896] 1 Ch. 25; 65 L. J. Ch. 174; 12 R. P. C. 535	369, 436
Badische Anilin <i>v.</i> Levinstein [1883, 1885, 1887] 2 R. P. C. 73, 143; 4 R. P. C. 449; 6 R. P. C. 387; 24 Ch. D. 156; 29 Ch. D. 366; 12 App. Cas. 710; 52 L. J. Ch. 704	21, 22, 28, 31, 32, 48, 101, 102, 104, 157, 174, 176, 177, 209, 414, 415, 417, 422, 424, 427, 428, 429, 430, 446, 448, 452, 455, 458, 560, 619, 620, 621
Bailey's Patent [1884] 1 R. P. C. 1	521, 602

TABLE OF CASES.

xxiii

Bai—Bog	PAGE
Bailey, <i>Ex parte</i> [1872] L. R. 8 Ch. 60	271, 581, 582
Bailey, <i>Re</i> [1884] Griffin, P. C. 269	246, 249, 575, 716
Bailey, <i>Re</i> [1887] Goodeve, P. C. 57	257
Bailey v. Robertson [1878] 3 App. Cas. 1055	143, 149, 150, 154, 570
Bailey v. Taylor [1825] 1 R. & M. 73	443
Bainbridge v. Wigley [1810] 1 Carp. P. C. 270	138
Baird v. Moule's Patent Earth Closet Co. [1876] L. R. 17 Ch. D. 139	411
Bairstow, <i>Re</i> [1888] 5 R. P. C. 286	246, 252, 577, 714
Baker v. Rawson [1889] 45 Ch. D. 519	316
Baker's Smalt Patent, 1 Web. P. C. 11	9, 673
Bakewell's Patent [1862] 15 Moo. P. C. 385	514, 515, 604
Ball's Patent [1879] L. R. 4 App. Cas. 171; 48 L. J. P. C. 24	508, 509, 601, 721, 722
Banlett v. Picksley [1875] Griffin, P. C. 40	27, 36, 38
Barber v. Grace [1847] 17 L. J. Ex. 122; 1 Ex. 339	336
Barber v. Walduck. <i>See below, Barker v. Shaw.</i>	
Barff-Bower Patent, <i>Re. See Bower-Barff Patent.</i>	
Barker v. Shaw [1823] Holr. Pat. 60	264, 265, 365
Barlow v. Baylis [1875] Griffin, P. C. 44	65, 66
Barnett v. Barrett's Screw Stopper Bottling Co. [1884] 1 R. P. C. 9	625
Barney v. United Telephone Co. [1885] 2 R. P. C. 173; L. R. 28 Ch. D. 394	479, 625
Barrett v. Day [1890] W. N. (1890) 36; 7 R. P. C. 54; L. R. 43 Ch. D. 435	475, 481, 623, 626, 627
<i>See Day v. Foster.</i>	
Barrett v. Vernon [1877] 25 W. R. 343	337
Barwick's Case, 5 Co. Rep. 94	274
Bate's Patent [1836] 1 Web. P. C. 739	516, 519, 520
Bateman's Patent [1854] Macr. P. C. 116	215, 227, 251
Bateman v. Gray [1853] 22 L. J. Ex. 290; Macr. P. C. 93, 116	390
Bates and Redgate, <i>Ex parte</i> [1869] L. R. 4 Ch. 577; 38 L. J. Ch. 501	134, 145, 271, 581, 582
Batley v. Kynock [1874, 1875] L. R. 19 Eq. 90, 229; 44 L. J. Ch. 89, 565; 20 Eq. 632; 31 L. T. N. S. 573; 33 L. T. N. S. 45	394, 395, 398, 416, 453, 465
Baxter's Patent [1849] 13 Jur. 593	601
Baxter v. Combe [1850, 1851] 1 Ir. Ch. R. 284; 3 <i>ibid.</i> 245	378
Beal v. Pilling, 38 L. T. N. S. 486	419
Beanland's Patent [1887] 4 R. P. C. 489	512, 602
Beard v. Egerton [1846—1849] 15 L. J. C. P. 270; 19 L. J. C. P. 36; 3 C. B. 97; 8 C. B. 165	136, 138, 162, 177, 187, 203, 208, 266, 267, 553
Beard v. Turner [1866] 13 L. T. N. S. 746	380
Beck, <i>Ex parte</i> [1784] 1 Web. P. C. 430; 1 Bro. C. C. 578	213
Beck and Justice, <i>Re</i> [1886] Griffin, A. P. C. 10	226, 587, 588
Bedells v. Massey [1844] 2 Dowl. & Lowe, 322	390
Beeston v. Ford [1830] 2 Coop. Ch. Ca. 58	373
Begbie v. Phosphate Sewage Co. [1875, 1876] L. R. 10 Q. B. 491; L. R. 1 Q. B. D. 679	304

	PAGE
Bel—Boa	
Bell's Patent [1846] 2 Web. P. C. 159	504, 509, 513, 720, 722
Bell, <i>Re</i> [1887] Griffin, A. P. C. 10	222, 223, 235, 247, 588, 589
Bell and Coleman's Patent, Griffin, P. C. 320	490
Bennett <i>v.</i> Lord Bury [1880] 5 C. P. D. 339	384
Benno Jaffé, &c., <i>Fabrik v.</i> Richardson [1893, 1894] 10 R. P. C. 136; 11 R. P. C. 261; 62 L. J. Ch. 710	34, 335, 350, 420, 422
Bentley <i>v.</i> Fleming [1844, 1845] 1 Car. & K. 587; 1 C. B. 479	61, 64, 67, 75
Bentley <i>v.</i> Keighley [1844] 13 L. J. C. P. 167; 7 M. & G. 652; 1 D. & L. 946	401
Berdan, <i>Re</i> [1875] L. R. 20 Eq. 346	213, 590
Bergmann <i>v.</i> Macmillan [1881] L. R. 17 Ch. D. 423	287, 359, 360, 362, 444
Berrington's Patent [1852] cited in Coryton, 225	515
Berry's Patent [1850] 7 Moo. P. C. 187	504, 506
Beryl, <i>The</i> [1884] 9 P. D. 137	427
Besseman <i>v.</i> Wright [1858] 6 W. R. 719	304
Bett's Patent [1862] 7 L. T. N. S. 577; 1 Moo. P. C. 49	513, 517, 518, 520, 522, 523, 603
Betts <i>v.</i> De Vitre [1864—1873] L. R. 3 Ch. 429; L. R. 5 H. L. 1; L. R. 6 H. L. 319; 34 L. J. Ch. 289, 291; 37 L. J. Ch. 325; 11 Jur. 9	364, 365, 436, 441, 445, 448, 444
Betts <i>v.</i> Gallais [1870] L. R. 10 Eq. 392	422, 433, 443
Betts <i>v.</i> Menzies [1857—1862] 27 L. J. Q. B. 154; 1 E. & E. 990; 28 L. J. Q. B. 361; 30 L. J. Q. B. 81; 10 H. L. C. 117; 31 L. J. Q. B. 233; 7 L. T. N. S. 110; 3 Jur. N. S. 358	50, 51, 54, 55, 61, 208, 211, 371, 373
Betts <i>v.</i> Neilson. <i>See</i> Neilson <i>v.</i> Betts.	
Betts <i>v.</i> Noel, Seton, 507	442
Betts <i>v.</i> Walker [1850] 14 Q. B. 363	400
Betts <i>v.</i> Willmott [1870—1871] L. R. 6 Ch. 239; 18 W. R. 946	284, 331
Bewley <i>v.</i> Hancock [1856] 4 W. R. 334; 6 De G. M. & G. 391	296
Bickford <i>v.</i> Skewes [1837—1841] 1 Web. P. C. 211; 8 L. J. Ch. 188; 10 L. J. Q. B. 302; 1 Q. B. 938	160, 162, 176, 177, 204, 207, 370, 373
Binnington <i>v.</i> Hill [1891] 8 R. P. C. 326	458
Birch <i>v.</i> Harrap [1896] 13 R. P. C. 615	346, 452
Birch <i>v.</i> Mather [1883] L. R. 22 Ch. D. 629; 52 L. J. Ch. 292	404, 419, 420, 615
Bireot's Case, 15 Eliz. 1 Web. P. C. 31 n.; 3 Inst. 184	38
Blakey <i>v.</i> Latham [1889] 6 R. C. P. 29, 184	81, 93, 95, 98, 411, 458, 459, 469
Blamond, <i>Re</i> [1860] 3 L. T. N. S. 800	215
Blanchard <i>v.</i> Hill [1742] 2 Atk. 484	355
Blank <i>v.</i> Footman [1889] 39 Ch. D. 678; 57 L. J. Ch. 909; 6 R. P. C. 653	77, 460
Bloxam <i>v.</i> Elsee [1825—1827] 1 C. & P. 558; 6 B. & C. 169; 1 Web. P. C. 132 n.	104, 138, 185, 199, 200, 264, 269, 272, 287, 360, 554, 558, 678
Boake, Roberts & Co. <i>v.</i> Stevenson [1895] 12 R. P. C. 228	457, 466, 617

TABLE OF CASES.

XXV

Boč.—Bri	PAGE
Bodmer's Patent [1838—1840] 1 Web. P. C. 740; 2 Moo. P. C. 471; 15 Lond. Journ. Arts.	498
Bodmer's Patent [1849] 6 Moo. P. C. 468	504, 507, 525
Bodmer's Patent [1853] 8 Moo. P. C. 282	523, 525, 526, 604
Bolivian Republic <i>v.</i> Bolivian Navigation Co., 34 W. R. 361	426
Bond <i>v.</i> Rosling [1861] 1 B. & S. 371	285
Booth <i>v.</i> Kennard [1856, 1857] 26 L. J. Ex. 23, 305; 1 H & N. 527; 2 H. & N. 84	27, 28, 54, 89, 187, 208
Boskett <i>v.</i> Cunningham [1762] 2 Eden, 137	382
Boult's Application [1893] 10 R. P. C. 275.	257
Boulton <i>v.</i> Bull [1795] 2 H. Bl. 463, 482, 493; 3 Ves. 140	19, 20, 21, 26, 37, 38, 100, 199, 205, 360, 375, 558
Bovill's Patent [1863] 1 Moo. P. C. N. S. 348	513, 524
Bovill <i>v.</i> Crate [1865] L. R. 1 Eq. 388	358, 378, 379
Bovill <i>v.</i> Finch [1870] L. R. 5 C. P. 523; 39 L. J. C. P. 277	524, 658
Bovill <i>v.</i> Goodier [1865—1871] L. R. 1 Eq. 35; L. R. 2 Eq. 195; 35 L. J. Ch. 174; 36 L. J. Ch. 360; Griffin, A. P. C. 47	358, 374, 411
Bovill <i>v.</i> Hadley [1864] 10 L. T. N. S. 650; 17 C. B. N. S. 435	451
Bovill <i>v.</i> Keyworth [1857] 7 E. & B. 725; 29 L. T. 194	333
Bovill <i>v.</i> Moore [1815, 1816] 2 Coop. 56 n.; Dav. P. C. 361; 2 Marsh. 211; reported as Brown <i>v.</i> Moore, 3 Bligh, 178	168, 184, 200, 413, 559
Bovill <i>v.</i> Pimm [1856] 11 Exch. 718	347
Bovill <i>v.</i> Smith [1866, 1867] L. R. 2 Eq. 459; W. N. (1867) 240	374 379, 420
Bower <i>v.</i> Hodges [1853] 22 L. J. C. P. 194	301, 307
Bower-Barff Patent [1895] A. C. 675; 12 R. P. C. 383	506, 599, 602
Bowman <i>v.</i> Taylor [1834] 2 Ad. & E. 278; 1 Web. P. C. 292	375
Bown <i>v.</i> Centaur Cycle Co. [1891] 8 R. P. C. 109	465
Bown <i>v.</i> Humber [1889] 6 R. P. C. 9	303
Bown <i>v.</i> Sansom [1888] 5 R. P. C. 510	418
Boyd <i>v.</i> Farrar [1888] 5 R. P. C. 33; W. N. (1887), 157	406, 407, 615
Boyd <i>v.</i> Horrocks [1886—1889] 3 R. P. C. 285; 5 R. P. C. 557; 6 R. P. C. 152, 528; 9 R. P. C. 77	38, 95, 209, 210, 336, 344, 405, 408, 428, 430, 454, 455, 456, 459, 615, 616
Boyd <i>v.</i> Tootal, Broadhurst, &c., Co. [1894] 11 R. P. C. 175	436, 437, 438, 450, 452
Bracher <i>v.</i> Bracher [1890] 7 R. P. C. 420	381
Bramah <i>v.</i> Hardcastle [1789] 1 Carp. P. C. 168; Holroyd, 81; 1 W. P. C. 44 n.	66, 212
Brand, <i>Re</i> [1895] 12 R. P. C. 102	243, 697
Brandon's Patent [1884] 1 R. P. C. 154; 53 L. J. P. C. 84; L. R. 9 App. Cas. 589	276, 499, 501, 507, 530, 599, 600, 638, 661
Bratt <i>v.</i> Electric Telegraph Co. [1847] Times, 24th May	74
Bray <i>v.</i> Gardner [1887, 1888] 4 R. P. C. 40, 400; 5 R. P. C. 151; 34 Ch. D. 668; 56 L. J. Ch. 497	51, 174, 236
Brereton <i>v.</i> Richardson [1883, 1884] Griffin, P. C. 54; 1 R. P. C. 165	58, 326
Bridson's Patent [1852] 7 Moo. P. C. 499	527, 607
Bridson <i>v.</i> Benecke [1849] 12 Beav. 1	358, 375, 377, 378

	PAGE
Bri—Car	
Bridson <i>v.</i> McAlpine [1846] 8 Beav. 229	375, 378
Briggs <i>v.</i> Lardeur [1884, 1885] 1 R. P. C. 126, 192; 2 R. P. C. 13	330, 365, 373, 644
Britain <i>v.</i> Hirsch [1888] 5 R. P. C. 74, 226	412, 469
British Dynamite Co. <i>v.</i> Krebs [1875—1879] Goodeve, P. C. 88; 13 R. P. C. 190	161, 163, 176, 177, 189, 191, 193, 559, 560, 563
British Rubber Co. <i>v.</i> Macintosh [1894] 11 R. P. C. 447	427, 620
British Tanning Co. <i>v.</i> Groth [1890] 7 R. P. C. 1; 8 R. P. C. 113; 60 L. J. Ch. 235	372, 378, 542, 655
Briton, &c., Life Insurance Co. <i>v.</i> Jones [1889] 60 L. T. N. S. 637	385
Brook <i>v.</i> Aston [1857—1859] 27 L. J. Q. B. 145; 28 L. J. Q. B. 175; 8 E. & B. 478	42, 89, 91
Brown, <i>In re</i> [1887] Griffin, A. P. C. 1	136, 566
Brown <i>v.</i> Annandale [1841, 1842] 1 Web. P. C. 433	57
Brown <i>v.</i> Jackson [1896] 12 R. P. C. 311; L. R. A. C. 446	200, 341
Brownhill's Patent [1889] 6 R. P. C. 136	244, 250, 258
Brunton <i>v.</i> Hawkes [1820, 1821] 1 Carp. P. C. 405; 4 B. & Ald. 541	37, 46, 81, 137, 200, 274, 485, 558, 673
Bulnois <i>v.</i> Mackenzie [1837] 1 Web. P. C. 260; 4 Bing. N. C. 127	401
Burgess <i>v.</i> Hately [1859] 26 Beav. 249	359
Burgess <i>v.</i> Hills [1859] 26 Beav. 244, 247; 28 L. J. Ch. 356	359
Burland's Trade Mark, <i>Re</i> [1889] 41 Ch. D. 542	369, 436
Burnett <i>v.</i> Tak [1882] 45 L. T. N. S. 743	470
Burnett <i>v.</i> Tate [1883] Johns. Pat. Man. 260	350
Burt <i>v.</i> Morgan [1887] 4 R. P. C. 278; W. N. (1887) 123	475
Bush <i>v.</i> Fox [1852—1856] Macr. P. C. 152, 166, 178; 23 L. J. Ex. 257; 25 L. J. Ex. 251; 5 H. L. C. 707	43, 54, 88, 208, 389
Butler's Case, 2 Vent. 344	489

C.

C.'s Application [1890] 7 R. P. C. 250	122, 145, 218, 557, 564, 566
Calcraft <i>v.</i> West [1845] 2 Jones & Lat. 128	355
Caldwell <i>v.</i> Vanvliisingen [1851] 21 L. J. Ch. 97; 9 Hare, 415; 16 Jur. 115	325, 333, 367, 368, 371, 635, 677
Californian Syrup Co., <i>Re</i> [1889] 40 Ch. D. 620; 58 L. J. Ch. 341; 6 R. P. C. 126	542, 655
Calvert <i>v.</i> Ashburn, Johns. Pat. Man. 49	44
Campion <i>v.</i> Benyon [1821] 6 B. Moo. 71	137
Cannington <i>v.</i> Nuttall [1871] L. R. 5 H. L. 205; 40 L. J. Ch. 739	53, 55, 215, 221, 228, 328
Cardiff S. S. Co. <i>v.</i> Barwick [1885] 53 L. T. 56	460
Card's Patent [1848] 6 Moo. P. C. 207; 2 W. P. C. 161	528, 529
Cardwell's Patent [1856] 10 Moo. P. C. 488	511, 514, 604
Carez, <i>Re</i> [1889] 6 R. P. C. 552	269, 541, 550, 654, 655
Carpenter's Patent [1854] 2 Moo. P. C. N. S. 191 n.	524
Carpenter <i>v.</i> Smith [1841, 1842] 1 Web. P. C. 530, 540; 11 L. J. Ex. 213; 9 M. & W. 300	58, 65, 167, 560

TABLE OF CASES.

xxvii

Car—Coc	PAGE
Carpenter <i>v.</i> Walker, 1 Web. P. C. 268 n.	401
Carr's Patent [1873] L. R. 4 P. C. 539	519, 603, 604
Carter's Trade Mark, <i>Re</i> [1892] 9 R. P. C. 401	542, 655
Cartsburn Sugar, &c., Co. <i>v.</i> Sharp [1884] 1 R. P. C. 181	169, 171, 323, 428
Cartwright <i>v.</i> Amatt [1799] 2 B. & P. 43	282
Cartwright <i>v.</i> Eamer [1890] cited 14 Ves. 131, 136	559
Cassel Gold Co. <i>v.</i> Cyanide Gold Co. [1895] 12 R. C. P. 232, 303	52, 56, 144, 151, 193, 194, 196, 406, 455, 457, 562, 570, 617
Chadburn <i>v.</i> Mechar [1895] 12 R. P. C. 120	154, 445, 446, 571
Challender <i>v.</i> Royle [1887] 4 R. P. C. 363; L. R. 36 Ch. D. 425; 56 L. J. Ch. 995	472, 473, 475, 477, 478, 479, 481, 482, 622, 623, 624, 625, 626, 627
Chambers <i>v.</i> Crichley [1864] 33 Beav. 374.	376
Chandler, <i>Re</i> [1896] Griffin, P. C. 273	245, 576, 714
Chanter <i>v.</i> Dewhurst [1844] 13 L. J. Ex. 198; 12 M. & W. 823	289
Chanter <i>v.</i> Leese [1838, 1839] 4 M. & W. 295; 5 M. & W. 698; 9 L. J. Ex. 327	291
Charter <i>v.</i> Johnson [1845] 14 M. & W. 411	308
Chatwood's Patent [1873] L. R. 5 P. C. 88 n.	509
Cheavin <i>v.</i> Walker [1877] L. R. 5 Ch. D. 850; 46 L. J. Ch. 265; 35 L. T. 757	268, 543, 657
Cheesbrough, <i>Re</i> [1884] Griffin, P. C. 303	228, 230
Cheetham <i>v.</i> Nuthall [1893] 10 R. P. C. 321	295, 303, 304, 307
Cheetham <i>v.</i> Oldham [1888] 5 R. P. C. 617, 622, 624	394, 395, 399, 415, 416, 417, 614
Chollett <i>v.</i> Hoffinan [1857] 26 L. J. Q. B. 249; 7 E. & B. 686	361, 401, 644
Cholmley's Case, 2 Co. R. 54	274
Church's Patent [1886] 3 R. P. C. 95	507, 509, 522, 525, 526, 527, 599, 601, 604, 606
Church (Walter C.) Engineering Co. <i>v.</i> Wilson [1886] 3 R. P. C. 123	393, 394, 395, 397, 399, 614
Claridge's Patent [1851] 7 Moo. P. C. 394	504
Clark's Patent [1870] L. R. 3 P. C. 421; 7 Moo. P. C. N. S. 255	502, 510, 517, 600, 603
Clark <i>v.</i> Adie [1873] L. R. 10 Ch. 667; 3 Ch. D. 134; 2 App. Cas. 315; 46 L. J. Ch. 585; 21 W. R. 456	36, 189, 190, 200, 203, 205, 206, 305, 350, 351, 560, 563
<i>See also Adie v. Clark, supra.</i>	
Clark <i>v.</i> Ferguson [1859] 1 Giff. 184	374
Clarke <i>v.</i> Nichols [1895] 12 R. P. C. 310	372
Clayton <i>v.</i> Percy [1854] Higgins' Dig. 1044	434
Cliff, <i>Re</i> [1895] 2 Ch. 21; 64 L. J. Ch. 423	487, 645
Clothworkers of Ipswich Case [1615] Godbolt's R. 252; 1 Roll. R. 4	8, 46, 266
Cochrane, <i>Re</i> [1885] Griffin, P. C. 304	223, 224, 591
Cochrane <i>v.</i> Macnish [1896] A. C. 225	554
Cochrane <i>v.</i> Smethurst [1816] Dav. P. C. 354	137
Cocking's Patent [1885] 2 R. P. C. 151	522, 523, 524, 602

Cod—Cro	PAGE
Codd, <i>Re</i> [1884] Griffin, P. C. 305; 1 R. P. C. 209	222, 228, 234, 701
Codd <i>v.</i> Bratby [1884] 1 R. P. C. 209	236
Colbourne <i>v.</i> Sims [1843] 12 L. J. Ch. 338; 2 Ha. 543	462
Cole <i>v.</i> Saqui [1888, 1889] 5 R. P. C. 489; 6 R. P. C. 41; 53 L. J. Ch. 237; L. R. 40 Ch. D. 132	43, 54, 83, 100, 104, 105, 162, 331, 410, 440, 449, 454, 455, 616, 617, 620
Coleman <i>v.</i> Rawlinson [1858] 1 F. & F. 330	271
Coles <i>v.</i> Baylis [1886] 3 R. P. C. 178	163, 166, 373, 559
Collard <i>v.</i> Allison [1839] 4 My. & Cr. 487	375
Colley <i>v.</i> Hart [1889] 6 R. P. C. 17; 7 R. P. C. 101; 44 Ch. D. 179; 38 W. R. 501; 62 L. T. 424	476, 480, 481, 482, 625, 626
Colonial Securities Trust <i>v.</i> Massey [1896] 1 Q. B. 38; 65 L. J. Q. B. 100	53, 467
Combined Weighing Co. <i>v.</i> Automatic Weighing Co. [1889] 6 R. P. C. 502; 38 W. R. 233; 61 L. T. 474; L. R. 42 Ch. D. 665; 58 L. J. Ch. 709	475, 477, 480, 481, 482, 622, 625, 626, 627
Conniff's Application [1872] Johns. Pat. Man. 174	255
Cook <i>v.</i> Pearce [1843, 1844] 12 L. J. Q. B. 187; 13 L. J. Q. B. 189; 8 Q. B. 1044, 1054	136, 137
Cooper and Ford, <i>Re</i> [1885] Griffin, P. C. 275	259, 714
Cooper <i>v.</i> Sraington [1895] 10 R. P. C. 264	460
Cooper <i>v.</i> Whittingham [1880] L. R. 15 Ch. D. 501; 49 L. J. Ch. 752 358, 462	
Copeland <i>v.</i> Webb [1862] 11 W. R. 134	382
Cornish <i>v.</i> Keene [1835—1837] 1 Web. P. C. 501, 513; 6 L. J. C. P. 225; 3 Bing. N. C. 570	37, 46, 54, 55, 63, 66, 67, 73, 101, 103, 104, 178, 263, 333, 553
Couchman <i>v.</i> Greener [1884] 1 R. P. C. 197	336
Crampton <i>v.</i> Patents Investment Co. [1888, 1889] 5 R. P. C. 382; 6 R. P. C. 287	53, 150, 451, 462, 620, 622, 627
Crane <i>v.</i> Price [1842] 1 Web. P. C. 393; 4 M. & G. 580; 12 L. J. C. P. 81	21, 27, 36, 40, 87, 96, 100, 260, 334
Crompton <i>v.</i> Anglo-American Brush Corporation [1887] 4 R. P. C. 197; L. R. 35 Ch. D. 283; 56 L. J. Ch. 802	408, 616
Crompton <i>v.</i> Ibbotson [1828] 1 Web. P. C. 83	161
Croll <i>v.</i> Edge [1847—1850] 19 L. J. C. P. 261; 9 C. B. 479	139, 561
Cropper <i>v.</i> Smith [1884, 1885] 1 R. P. C. 81, 254; 24 Ch. D. 305; 26 Ch. D. 700; 28 Ch. D. 148; 2 R. P. C. 17, 61; 53 L. J. Ch. 891; 54 L. J. Ch. 287; 55 L. J. Ch. 12; L. R. 10 App. Cas. 249	97, 190, 191, 196, 204, 205, 207, 234, 235, 272, 377, 410, 591, 616
Crosskill <i>v.</i> Ivory [1848] 10 L. T. 459	374
Crossley <i>v.</i> Beverley [1829] 1 Web. P. C. 106, 112; 3 C. & P. 513; 9 B. & C. 63	150, 178, 180, 380, 433, 560, 570
Crossley <i>v.</i> Derby Gas Light Co. [1834—1838] 4 L. J. Ch. 25; 3 My. & Cr. 428; 1 W. P. C. 120	443, 444
Crossley <i>v.</i> Dixon [1863] 10 H. L. C. 293; 32 L. J. Ch. 617	301, 303, 376
Crossley <i>v.</i> Potter [1853] Maer. P. C. 240	21, 105
Crossley <i>v.</i> Stewart [1863] 1 N. R. 426	422
Crossley <i>v.</i> Tomey [1876] L. R. 2 Ch. D. 533	404, 420, 421
Crossthaite <i>v.</i> Steel [1888, 1889] 5 R. P. C. 220; 6 R. P. C. 190	299 305, 306

Cro—Del	PAGE
Croysdale <i>v.</i> Fisher [1884] 1 R. P. C. 17	58, 67
Cumming, <i>Re</i> [1884] Griffin, P. C. 277	241, 256, 258, 574
Cunningham <i>v.</i> Colling [1864] Seton, 567	442
Curtis <i>v.</i> Cutts [1839] 8 L. J. Ch. 184; 2 Coop. C. C. 60 n. .	370, 373, 386
Curtis <i>v.</i> Pape [1888] 5 R. P. C. 146	434
Curtis <i>v.</i> Platt [1863—1866] L. R. 3 Ch. D. 135 n.; 8 L. T. N. S. 657; 10 L. T. N. S. 383; 11 L. T. N. S. 245; 33 L. J. C. P. 255; 35 L. J. Ch. 852; L. R. 1 H. L. 337; Good. P. C. 102; 10 Jur. N. S. 823	31, 105, 197, 322, 323, 335, 341, 342, 343, 347, 350, 393, 406, 453, 616
Cutlan <i>v.</i> Dawson & Sons [1896] 13 R. P. C. 710	303
Cutler, <i>Re</i> [1839] 1 Web. P. C. 418; 4 My. & Cr. 510	48, 100, 253
Cutler <i>v.</i> Bower [1848] 17 L. J. Q. B. 217; 11 Q. B. 973	304, 376

D.

Dairy <i>v.</i> Bailey [1891] 8 R. P. C. 166	456
Dangerfield <i>v.</i> Jones [1865] 13 L. T. N. S. 142	21
Daniel, <i>In re</i> [1888] 5 R. P. C. 413	241, 257
Darby's Patent [1891] 8 R. P. C. 380	303, 517, 526, 602
Darcy <i>v.</i> Allin [1602] 1 Web. P. C. 1; Moor. 675; Noy, R. 182; An. 44 Eliz. 11; 11 Co. R. 84	4, 6, 7, 9, 12, 14, 26, 46, 100, 266, 553
Darrah <i>v.</i> Purser [1889] 6 R. P. C. 365	411
Dart's Patent, Griffin, P. C. 307	140, 141, 217, 218, 219, 561
Davenport <i>v.</i> Goldberg [1865] 2 H. & M. 282	374
Davenport <i>v.</i> Jepson [1862] 1 N. R. 173, 307; 4 De G. F. J. 446	371, 374, 415
Davenport <i>v.</i> Richards [1860] 3 L. T. N. S. 503	360
Davenport <i>v.</i> Rylands [1865] L. R. 1 Eq. 302; 35 L. J. Ch. 204	359, 440, 441, 442, 443, 448, 450
David and Woodley, <i>Re</i> [1886] Griffin, A. P. C. 26	255, 265, 553
Davies' Patent [1894] 11 R. P. C. 28	520, 603
Davies <i>v.</i> Davies [1887] 56 L. J. Ch. 481	461
Davis <i>v.</i> Davis [1894] 1 Ch. 393	298
Daw <i>v.</i> Eley [1865—1867] L. R. 1 Eq. 38; L. R. 3 Eq. 496; 36 L. J. Ch. 482; 2 H. & M. 725	48, 197, 200, 411, 421, 435, 558, 616
Day <i>v.</i> Foster [1890] W. N. (1890) 36; L. R. 43 Ch. D. 435; 7 R. P. C. 54 <i>See</i> Barrett <i>v.</i> Day.	
Deacon's Patent [1887] 4 R. P. C. 119	518, 603
Deeley's Patent, <i>Re</i> [1895] 1 Ch. 687; 64 L. J. Ch. 480; 12 R. P. C. 75, 192; [1896] A. C. 496; 65 L. J. Ch. 912; 75 L. T. 233; 13 R. P. C. 581	465, 488, 493, 495, 591, 610
Deeley <i>v.</i> Perkes. <i>See</i> Deeley's Patent.	
Dege's Patent [1895] 12 R. P. C. 448	489, 493, 609, 610
De la Rue <i>v.</i> Dickinson [1857] 29 L. T. 194; 7 E. & B. 738; 3 K. & J. 388	333, 335, 418, 420, 421

Del—Dun	PAGE
Dellwick, <i>Re</i> [1896] 2 Ch. 705; 13 R. P. C. 591; 65 L. J. Ch. 905	227, 232, 495
Delta Metal Co. <i>v.</i> Maxim Nordenfelt Co. [1821] 8 R. P. C. 169, 247	421, 450
Denley <i>v.</i> Blore [1851] 38 Lond. Journ. 224	364
Dent <i>v.</i> Turpin [1861] 30 L. J. Ch. 495; 2 J. & H. 139	279, 359, 360
Dering's Patent, <i>In re</i> [1879] L. R. 13 Ch. D. 393	271, 582
Derosne, <i>In re</i> [1835] 1 Carp. P. C. 698	215
Derosne's Patent [1844] 2 Web. P. C. 2; 4 Moo. P. C. 416	501, 511, 512, 516, 599, 720
Derosne <i>v.</i> Fairie [1835] 1 Web. P. C. 154	162, 180, 207, 362
Deutsche Nähmaschinen Fabrik, &c. <i>v.</i> Pfaff [1890] 7 R. P. C. 16, 251	60, 469
De Vitre <i>v.</i> Betts. <i>See</i> Betts <i>v.</i> De Vitre.	
Devonshire's Case, 11 Co. R. 89	274
Dick <i>v.</i> Tullis [1896] 13 R. P. C. 149	65
Dicks <i>v.</i> Brooks [1880] L. R. 15 Ch. D. 23; 49 L. J. Ch. 812	471, 622
Dietz, <i>Re</i> [1889] 6 R. P. C. 297	250
Dilly <i>v.</i> Doig [1794] 2 Ves. Jun. 487	384
Direks <i>v.</i> Mellor [1845] 26 Lond. Journ. 268.	376
Dismore's Patent [1853] 18 Beav. 538	215
Dixon, <i>Re</i> [1881] Eng. Rep. Jan. to Mar. xvi.	215, 216
Dixon <i>v.</i> London Small Arms Co. [1875] L. R. 10 Q. B. 130; L. R. 1 App. Cas. 632; 44 L. J. Q. B. 63; 46 L. J. Q. B. 617	325, 326, 368, 526, 612
Doe <i>v.</i> Shelton [1835] 4 L. J. K. B. 167; 3 A. & E. 265	295
Dolbear's Patent [1896] 13 R. P. C. 203	514
Dollond's Patent [1776] 1 Web. P. C. 43; 2 H. Bl. 470, 487	61, 63, 264, 553
Douglass <i>v.</i> Pintsch's Patent Lighting Co. [1896] 11 R. P. C. 673; 65 L. J. Ch. 919; 75 L. T. 332; 45 W. R. 108	475, 476
Dowling <i>v.</i> Billington [1890] 7 R. P. C. 191	97, 329, 434, 618
Downton's Patent [1839] 1 Web. P. C. 565	504, 516, 527, 604, 606
Dowson Taylor <i>v.</i> Drosophore Co. [1894] 11 R. P. C. 536; 12 R. P. C. 95	477, 627
Drake <i>v.</i> Muntz's Metal Co. [1886] Griffin, P. C. 79; 3 R. P. C. 43	414, 619
Driffield, &c., Co. <i>v.</i> Waterloo, &c., Co. [1886] 3 R. P. C. 46; 31 Ch. D. 638; 55 L. J. Ch. 391	474, 475, 479, 622, 624
Drummond's Patent [1889] 6 R. P. C. 576; L. R. 43 Ch. D. 80; 59 L. J. Ch. 102	487
Duckett <i>v.</i> Whitehead [1895] 12 R. P. C. 376	51, 55, 97, 98, 466, 487, 609, 645
Dudgeon <i>v.</i> Thomson [1877] 3 App. Cas. 34; 30 L. T. N. S. 244	105, 205, 237, 337, 340, 351, 370, 372, 374, 376, 432, 618
Dudley's Iron Patent, 1 W. P. C. 14	10
Duncan and Wilson's Patent [1884] 1 R. P. C. 257	518
Dundon, <i>Re</i> [1885] Griffin, P. C. 278	243, 575

	PAGE
Dun—Ell	
Dunncliff <i>v.</i> Mallett [1859] 29 L. J. C. P. 70; 7 C. B. N. S. 209	278, 284, 360
Duvergier <i>v.</i> Fellows [1828—1832] 10 B. & C. 826; 1 C. & F. 89	272, 281

E.

Eadie, <i>Re</i> [1885] Griffin, P. C. 279	254, 574
East India Co. <i>v.</i> Kynaston [1821] 3 Bligh, 153	6
Easterbrook <i>v.</i> G. W. Ry. Co. [1885, 1886] 2 R. P. C. 201; 3 R. P. C. 94	103, 104, 196, 211, 265, 561
Eastern Archipelago <i>v.</i> Reg. [1853] 2 E. & B. 857; 23 L. J. Q. B. 82	6
Edelsten <i>v.</i> Edelsten [1863] 1 De G. J. & S. 203	359
Edge <i>v.</i> Harrison [1891] 8 R. P. C. 74	491
Edge <i>v.</i> Johnson [1892] 9 R. P. C. 134	465
Edgeberry <i>v.</i> Stephens [1691] 1 Web. P. C. 35	266, 553
Edison, <i>Re</i> , Lawson, 64	229
Edison and Swan Co. <i>v.</i> Holland [1886, 1888, 1889] 55 L. J. Ch. 943; 3 R. P. C. 395; 5 R. P. C. 213, 459; L. R. 41 Ch. D. 28; 6 R. P. C. 243; 33 Ch. D. 497	34, 54, 101, 102, 105, 156, 176, 178, 179, 208, 328, 366, 367, 386, 417, 431, 432, 441, 450, 458, 465, 618
Edison and Swan Co. <i>v.</i> Woodhouse [1886, 1887] 3 R. P. C. 167, 183; 4 R. P. C. 79, 99; L. R. 32 Ch. D. 520	41, 44, 162, 165, 176, 179, 194, 198, 209, 211, 458, 461, 466, 560
Edison Co. <i>v.</i> Hough [1894] 11 R. P. C. 594	381
Edison Electric Light Co. <i>v.</i> Shippey [1887] 4 R. P. C. 471	468
Edison Telephone Co. <i>v.</i> India Rubber Co. [1881] L. R. 17 Ch. D. 137	411, 616
Edison-Bell Phonograph Co. <i>v.</i> Edison Phonograph Co. [1894] 11 R. P. C. 33	450
Edison-Bell Phonograph Co. <i>v.</i> Smith [1894] 11 R. P. C. 389	83, 93, 98, 183, 184, 186, 196, 198, 206, 209, 447, 562
Edlin <i>v.</i> Pneumatic Tyre Co. [1893] 10 R. P. C. 311	479, 482, 624, 626
Edmond's Patent [1888, 1889] W. N. (1888) 234; 6 R. P. C. 355	430, 487, 494
Edmund's, <i>Re</i> [1886] Griffin, P. C. 281	251, 252, 256, 266, 268, 554, 574
Edward's Patent [1894] 11 R. P. C. 461	148, 262, 576
Ehrlich <i>v.</i> Ihlee [1887, 1888] 4 R. P. C. 115; 5 R. P. C. 37, 198, 437	49, 55, 73, 103, 104, 105, 197, 334, 338, 399, 411, 616
Electric Telegraph Co., cited Goodeve, P. C. 554	507
Electric Telegraph Co. <i>v.</i> Brett [1851] 20 L. J. C. P. 123; 10 C. B. 838	20, 21, 28, 42, 333, 360
Electric Telegraph Co. <i>v.</i> Nott [1847] 11 Jur. 273; 16 L. J. C. P. 174; 2 Coop. 41; 4 C. B. 462	371, 372, 377, 378, 392
Elgie <i>v.</i> Webster [1839] 5 M. & W. 518	305
Elias <i>v.</i> Grovesend Tinsplate Co. [1890] 7 R. P. C. 455	66, 94, 95, 97, 100, 212, 265, 554
Ellington <i>v.</i> Clark [1888, 1889] 5 R. C. P. 135, 319; 58 L. T. 818	336, 461, 462
Elliott <i>v.</i> Aston [1840] 1 Web. P. C. 222	175

	PAGE
Ell—Flo	
<i>Elliott v. Turner</i> [1845] 15 L. J. C. P. 49; 2 C. B. 446	208
<i>Ellwood v. Christy</i> [1864, 1865] 34 L. J. C. P. 130; 17 C. B. N. S. 754; 18 C. B. N. S. 494	287, 311, 444, 445
<i>Elmer v. Creasy</i> [1873] L. R. 9 Ch. 69; 43 L. J. Ch. 166.	419
<i>Elmslie v. Boursier</i> [1869] L. R. 9 Eq. 217; 39 L. J. Ch. 328	323, 324, 436, 443
<i>Elsas v. Williams</i> [1884] 1 Times R. 145	434
<i>Elsey v. Butler</i> [1884] 1 R. P. C. 189	397, 399
<i>Emperor of Austria v. Day</i> [1861] 3 De G. F. & J. 217	445
<i>English and American Machine Co. v. Gare Machinery Co.</i> [1894] 11 R. C. P. 627	481, 482, 625, 627
<i>English and American Shoe Co. v. Union Boot Co.</i> [1894] 11 R. P. C. 367	406
<i>Erard's Patent</i> [1835] 1 Web. P. C. 557	501, 510, 511, 522, 601, 602
<i>Evans and Otway, Re</i> [1884] L. R. 9 Ch. 279; Griffin, 279	253, 254
<i>Evans v. Rees</i> [1842] 2 Q. B. 334	306
<i>Everitt's Patent</i> [1888] Griffin, A. P. C. 28	256, 540, 655, 693

F.

<i>Fairburn v. Household and Roshier</i> [1884—1886] 1 R. P. C. 109; 2 R. P. C. 140, 195; 3 R. P. C. 128, 263	156, 157, 170, 200, 430, 558, 627
<i>Fairelough v. Marshall</i> [1878] 4 Ex. D. 37	362
<i>Farbenfabriken vorm. Fr. Bayer & Co. v. Bowker</i> [1891] 8 R. P. C. 389	221, 232, 235, 430, 461, 588, 590, 591
<i>Farbenfabriken, &c., v. Dawson</i> [1891] 8 R. P. C. 397	374
<i>Farina's Trade Mark, Re</i> [1881] 44 L. T. N. S. 99; 29 W. R. 391	317
<i>Farrand v. Yorkshire Banking Co.</i> [1888] 40 Ch. D. 182	288
<i>Farrar v. Farrar</i> , 59 L. T. 619	461
<i>Fawcett, Re</i> [1889] Goodeve, P. P. 10, 11	241
<i>Feather v. Reg.</i> [1865] 35 L. J. Q. B. 200; 6 B. & S. 257	325, 612
<i>Felton v. Greaves</i> [1829] 3 C. & P. 611	138, 485
<i>Fenner v. Wilson</i> [1893] 2 Ch. 656; 62 L. J. Ch. 984; 10 R. P. C. 283; 68 L. T. 748; 42 W. R. 57	479
<i>Fennessy v. Rabbits</i> [1887] 56 L. T. N. S. 138	441
<i>Fiechter, Re</i> [1882] Griffin, P. C. 284	252
<i>Finnegan v. James</i> [1874] L. R. 19 Eq. 72; 44 L. J. Ch. 185	393, 404
<i>Fisher v. Dewick</i> [1838] 7 L. J. C. P. 279; 1 Web. P. C. 551 n.; cited 8 Q. B. 1056	139, 400, 401, 402
<i>Fletcher, Re</i> [1888] Griffin, A. P. C. 31.	250, 717
<i>Fletcher's Patent, Re</i> [1893] 62 L. J. Ch. 938; 69 L. T. 129; 10 R. P. C. 252	286, 301, 315, 596, 642
<i>Fletcher v. Arden</i> [1888] 5 R. P. C. 46	48, 60
<i>Fletcher v. Glasgow Gas Commissioners</i> [1887] 4 R. P. C. 386	204, 210, 328, 464
<i>Flower v. Lloyd</i> [1876, 1877] W. N. (1876) 230; W. N. (1877) 71, 132; 45 L. J. Ch. 746; 20 S. J. 860.	350, 401, 403, 413, 615

TABLE OF CASES.

xxxiii

Foa—Get	PAGE
Foarde's Patent [1855] 9 Moo. P. C. 376	316
Ford v. Foster [1872] L. R. 7 Ch. 611	380
Forsyth v. Riviere [1819] 1 Web. P. C. 97; 1 Carp. P. C. 401	20. 28, 264
Fowler v. Gaul [1886] 3 R. P. C. 247	406
Fox, <i>Ex parte</i> [1812] 1 Web. P. C. 431; 1 V. & B. 67	40, 200. 253, 260, 333
Fox v. Dellestable [1866] 15 W. R. 194	40, 260, 442, 443
Foxwell v. Bostock [1863, 1864] 9 L. T. N. S. 362, 528; 10 L. T. N. S. 144; 4 De G. J. & S. 77, 298	42, 169, 170, 171, 172, 173, 189, 200, 215, 350, 558, 560, 563
Foxwell v. Webster [1863] 9 L. T. N. S. 362, 528	384
Fradella v. Weller [1831] 2 Russ. & My. 247	462
Fraser v. Brescia Steam Tramways Co. [1887] 56 L. T. 771; 3 Times R. 587	460, 461
Frearson v. Loe [1878] L. R. 9 Ch. D. 48; 26 W. R. 138	102, 326. 329, 370, 378, 433, 618
Fritz v. Hobson [1880] L. R. 14 Ch. D. 542	441
Fullwood v. Fullwood [1878] L. R. 9 Ch. D. 176	380
Furness' Patent [1885] 2 R. P. C. 175	319
Fusee Vesta Co. v. Bryant and May [1887, 1888] L. R. 34 Ch. D. 458; 37 Ch. D. 120; 4 R. P. C. 73; 56 L. J. Ch. 187	236, 480, 626

G.

Gadd v. Mayor of Manchester [1892] 9 R. P. C. 259, 516	42, 51, 54. 94, 95, 96, 97, 98, 142, 149, 150, 151, 154, 210, 428, 461, 570, 571
Gale's Patent [1891] 8 R. P. C. 438	494, 610
Galloway's Patent [1843] 1 Web. P. C. 724	513, 519, 520, 521, 522, 603
Galloway v. Bleden [1839] 1 Web. P. C. 268 n., 521	55, 64, 66. 156, 401
Gamble v. Kurtz [1846] 3 C. B. 425	185
Gandy v. Reddaway [1885] 2 R. P. C. 49	157, 210, 559
Gardner v. Broadbent [1856] 4 W. R. 767; 2 Jur. N. S. 1041	374
Gare, <i>Re</i> [1844] L. R. Ch. D. 105	216
Garrard v. Edge [1889] 44 Ch. D. 224; 6 R. P. C. 372, 563; W. N. (1890), 43, 68; 58 L. J. Ch. 397; 759 L. J. Ch. 379; 7 R. P. C. 139	336, 417, 457
Garthwaite, <i>Re</i> [1886] Griffin, P. C. 284	254, 574
Gate's Patent [1891] 8 R. P. C. 439	491
Gaulard and Gibbs' Patent, Griffin, P. C. 320; 34 Ch. D. 396; W. N. (1887) 211; (1888) 168; (1889) 60; 56 L. J. Ch. 606; 57 L. J. Ch. 209	490, 494
<i>See</i> Goulard and Gibbs' Patent, <i>infra</i> .	
Geary v. Norton [1846] 1 De G. & S. 9	359, 382, 432, 462, 464
George v. Beaumont [1815] 27 Rep. Arts., 2nd Ser. 252; Carp. P. C. 295	362
Germ Milling Co. v. Robinson [1884—1886] 1 R. P. C. 217; 3 R. P. C. 11, 254, 399; 55 L. J. Ch. 287	54, 60, 62, 297, 414, 415, 416, 454, 457, 617, 619, 620
Gething, <i>In re</i> [1874] L. R. 9 Ch. 633	630

Gib—Gwy	PAGE
Gibson <i>v.</i> Brand [1841, 1842] 1 Web. P. C. 627; 4 M. & G. 179; 11 L. J. C. P. 177	25, 46, 185, 263, 332, 333
Gillett <i>v.</i> Green [1841] 10 L. J. Ex. 124; 1 Web. P. C. 271; 7 M. & W. 347	446
Gillett <i>v.</i> Wilby [1839] 1 Web. P. C. 270; 9 C. & P. 334	333, 402, 447
Gittins <i>v.</i> Symes [1854] 24 L. J. C. P. 48; 15 C. B. 362	357
Glazbrook <i>v.</i> Gillatt [1840] 9 Beav. 492.	488, 609
Glossop, <i>Re</i> [1884] Griffin, P. C. 285	223, 247, 577
Goddard <i>v.</i> Lyon [1894] 10 R. P. C. 334; 11 R. P. C. 354	21, 23, 56, 81, 95, 97, 98, 187, 563
Goerz and Heegh's Patent [1896] 12 R. P. C. 370	487, 609, 645
Goodhart <i>v.</i> Hyett [1883] L. R. 25 Ch. D. 182	359
Gosnell <i>v.</i> Bishop [1888] 5 R. P. C. 41, 151	55, 336
Goucher's Patent [1865] 2 Moo. P. C. N. S. 532	523
Goucher <i>v.</i> Clayton [1865] 34 L. J. Ch. 239; 13 L. T. N. S. 115; 11 Jur. N. S. 462	305, 323, 376
Goulard <i>v.</i> Gibbs [1888] 5 R. P. C. 189	236
Goulard <i>v.</i> Lindsay [1888] 4 R. P. C. 189; 5 R. P. C. 192; L. R. 38; Ch. D. 38; 57 L. J. Ch. 687	235, 236, 592
Goulard and Gibbs' Patent [1888—1890] 5 R. P. C. 526; 6 R. P. C. 215; 7 R. P. C. 367	53, 105, 149, 154, 233, 494, 571
<i>See Goulard and Gibbs' Patent.</i>	
Gozney, <i>Re</i> [1888] 5 R. P. C. 597	260
Grace <i>v.</i> Newman, 19 Eq. 623; 44 L. J. Ch. 298.	463
Grafton <i>v.</i> Watson [1884] 51 L. T. 141	460, 462
Graham <i>v.</i> Fanta [1892] 9 R. P. C. 164	665, 685
Granger, <i>Ex parte</i> [1812] Godson, 225	287.
Graydon, <i>Re</i> [1896] 1 Q. B. 417; 65 L. J. Q. B. 328	272
Greaves <i>v.</i> Eastern Counties Rail. Co. [1859] 28 L. J. Q. B. 290; 1 E. & E. 961	453
Green's Patent [1885] Griffin, P. C. 286	240, 575
Green, <i>Re</i> [1857] 24 Beav. 145	316, 319, 646
Greenlees' Trade Mark, <i>Re</i> [1892] 9 R. P. C. 93	317
Greer <i>v.</i> Bristol Tanning Co. [1885] 2 R. P. C. 268	378
Grenfell's and MacEvoy's Patent [1890] 7 R. P. C. 151.	146, 552, 557
Gridley <i>v.</i> Swinborne [1894] Law Journal, 683	543, 657
Griffin's Application [1889] 6 R. P. C. 296	252
Griffin <i>v.</i> Feaver [1889] 6 R. P. C. 396	454
Grover and Baker Sewing Machine Co. <i>v.</i> Millard [1862] 8 Jur. N. S. 714	306
Grover and Baker Sewing Machine Co. <i>v.</i> Wilson [1870] W. N. (1870) 78	413
Guest and Barrow, <i>Re</i> [1888] 5 R. P. C. 313	227, 259, 260
Guilbert-Martin <i>v.</i> Kerr [1887] 4 R. P. C. 18	326, 458
Guitermann's Design, <i>Re</i> [1886] 55 L. J. Ch. 309.	317, 646, 647
Guyot <i>v.</i> Thompson [1894] 3 Ch. 388; 64 L. J. Ch. 32; 11 R. P. C. 541; 71 L. T. 416	294, 303, 305, 306, 308, 332, 389
Gwynne <i>v.</i> Drysdale [1885, 1886] 2 R. P. C. 160; 3 R. P. C. 65	332

H.

Had—Hay	PAGE
Haddan, <i>Re</i> [1885] Griffin, A. P. C. 12	220, 228, 229, 231, 587, 589, 631
Haddan's Patent [1884, 1885] 54 L. J. Ch. 126	357, 494, 610
Haddan's Patent [1885] 2 R. P. C. 218	493, 494
Hadden's Application [1853] Johns. Pat. Man. 177	252
Hague's Patent, cited at p. 553.	
Hall, <i>Re</i> [1888] 21 Q. B. D. 137; 5 R. P. C. 307; 57 L. J. Q. B. 494; 59 L. T. 37; 36 W. R. 892	233, 234, 586, 591
Hall and Hall, <i>Re</i> [1888] 5 R. P. C. 283	257, 258, 714
Hall v. Conder [1857] 26 L. J. C. P. 138, 288; 2 C. B. N. S. 22, 533.	291
Hall v. Jarvis [1822] 1 Web. P. C. 100	26, 85, 304
Halsey v. Brotherhood [1880, 1881] L. R. 15 Ch. D. 514; 19 Ch. D. 386; 49 L. J. Ch. 514	470, 471, 472, 622
Hampton and Facer, <i>Re</i> [1887] Griffin, A. P. C. 13	227, 230
Hancock v. Bewley [1860] 1 Johns. 601	278
Hancock v. Moulton [1852] Johns. Pat. Man. 254	339, 371, 379
Hancock v. Somervell [1851] 39 Newt. Lond. Journ. 158	60, 63
Harbord v. Monk, 9 Ch. D. 616	419
Hardy's Patent [1849] 6 Moo. P. C. 441	507, 518, 525, 605
Harley v. Harley, 11 Ir. Ch. Rep. 451	271
Harman v. Jones [1841] 1 Cr. & Ph. 299	355
Harnar v. Playne [1809] Dav. P. C. 311; 11 East, 101	174, 176
Harmer v. Playne [1807] 14 Ves. 130	334, 370, 372
Harper v. Wright [1895] 12 R. P. C. 492	55
Harris v. Rothwell [1886—1888] 3 R. P. C. 383; 4 R. P. C. 225; L. R. 35 Ch. D. 416; 56 L. J. Ch. 459	67, 71, 72, 73, 74, 407, 408
Harrison, <i>Ex parte</i> [1874] L. R. 9 Ch. 631	581
Harrison, <i>In re</i> [1853] Macr. P. C. 32	32, 228, 590
Harrison v. Anderston Foundry Co. [1876] 1 App. Cas. 574	167, 170, 171, 172, 205, 350, 351, 560
Harrison v. Taylor [1865] 11 Jur. N. S. 408	380
Hartley's Patent, 1 Web. P. C. 54	20
Harwood v. G. N. Rail. Co. [1860—1865] 2 B. & S. 194; 29 L. J. Q. B. 193; 31 L. J. Q. B. 198; 11 H. L. C. 654; 35 L. J. Q. B. 27; 12 L. T. N. S. 771; 14 W. R. 1	42, 43, 81, 90, 91, 93, 98, 189
Haslam Co. v. Goodfellow [1888] L. R. 37 Ch. D. 118; 57 L. J. Ch. 245; 5 R. P. C. 28	236, 238
Haslam Co. v. Hall [1887, 1888] 4 R. P. C. 203; 5 R. P. C. 1, 144; L. R. 20 Q. B. D. 491	50, 55, 66, 394, 399, 417, 449, 452, 455, 466, 617, 620
Haslett v. Hutchinson [1891] 8 R. P. C. 457	286, 293, 315, 316, 642, 644
Hassall v. Wright [1870] L. R. 10 Eq. 509; 40 L. J. Ch. 145	361
Hastings' Patent [1561] 1 Web. P. C. 6; Noy, R. 182	6, 14, 46, 266, 553
Hastings v. Brown [1853] 22 L. J. Q. B. 161; 1 E. & B. 450	157, 200, 558
Hathfield, <i>Re</i> [1884] Griffin, P. C. 288	253
Haworth v. Hardcastle [1834] 1 Web. P. C. 483; 1 Bing. N. C. 122; 1 M. & Sc. 732; 3 L. J. C. P. 311	102, 202, 207
Haydock v. Bradbury [1887] 4 R. P. C. 74	621
Hayne v. Maltby [1789] 3 T. R. 438	376

	PAGE
Hay--Hil	
Haythornethwaite's Application [1890] 7 R. P. C. 70	148, 258
Hayward's Trade Marks [1885] 54 L. J. Ch. 1003	661
Hayward v. Hamilton [1881] Johns. Pat. Man. 245; Griffin, P. C. 115	37, 84, 92, 93, 97, 563
Hayward v. Pavement Light Co. [1884, 1885] 1 R. P. C. 207	337, 374
Hazlehurst v. Rylands [1891] 9 R. P. C. 1	289, 291, 304
Heald's Patent [1891] 8 R. P. C. 429	255, 265, 553, 577
Healey's Application [1872] Johns. Pat. Man. 174	255
Heap v. Hartley [1888, 1889] 5 R. P. C. 603; 6 R. P. C. 495; L. R. 42 Ch. D. 461; 58 L. J. Ch. 790; 41 L. T. 538; 38 W. R. 136	285, 300, 301, 308, 312, 331, 363, 429
Hearson's Patent [1884] Griffin, P. C. 309; 1 R. P. C. 213	228, 588, 661
Hearson's Patent [1885] Griffin, P. C. 266	120, 628
Heath's Patent [1853] 2 Web. P. C. 247; 8 Moo. P. C. 217	504, 513, 516, 517, 603
Heath and Frost, <i>Re</i> [1886] Griffin, P. C. 288, 312	223, 224, 247, 257, 576, 577
Heath v. Smith [1854] 2 Web. P. C. 268; 23 L. J. Q. B. 166; 3 E. & B. 256	62
Heath v. Unwin [1842—1855] 1 Web. P. C. 551; 12 L. J. Ex. 46; 2 Web. P. C. 216, 221; 14 L. J. Ex. 153; 16 L. J. Ch. 283; 22 L. J. C. P. 7; 2 Web. P. C. 236; 5 H. L. C. 505; 25 L. J. C. P. 8; 10 M. & W. 684; 13 M. & W. 583	48, 176, 187, 198, 322, 323, 337, 348, 400, 401
Heathfield v. Braby, Seton, 561	417
Heathfield v. Greenway [1894] 11 R. P. C. 17	407, 408, 409, 616
Hedge's Application [1895] 12 R. P. C. 136	257, 258, 575
Heinrichs v. Bastendorff [1893] 10 R. P. C. 160	78
Henderson v. Mostyn Copper Co. [1868] L. R. 3 C. P. 202	306
Hennessy v. Bohmann [1877] W. N. (1877) 14	415
Henry's Patent. <i>In re</i> [1872] L. R. 8 Ch. 167	250, 253, 582
Henser v. Hardie [1894] 11 R. P. C. 421	340, 389
Herbert's Patent [1867] L. R. 1 P. C. 399; 4 Moo. P. C. N. S. 300	514, 525, 604
Herrburger v. Squire [1888, 1889] 5 R. P. C. 581; 6 R. P. C. 194	41, 73, 472, 477, 481, 482, 625, 626
Hesse v. Stevenson [1808] 3 B. & P. 565	272, 287
Heugh v. Chamberlain [1877] 25 W. R. 742	376
Heugh v. Magill [1877] W. N. (1877) 62	373
Heurteloup's Patent [1836] 1 Web. P. C. 553	71, 72, 530
Hicks v. Raincock [1715] 2 Dick. 647	356
Higgins, <i>Re</i> [1892] 9 R. P. C. 74	251, 252, 574
Higgs v. Goodwin [1858] 27 L. J. Q. B. 421; E. B. & E. 529	326, 328
Hill, <i>Re</i> [1888] 5 R. P. C. 599	230, 245, 259, 715
Hill's Patent [1863] 9 L. T. N. S. 101; 1 Moo. P. C. N. S. 258	517, 520, 522, 527, 603
Hill v. Adams [1893] 10 R. P. C. 102	409, 412
Hill v. Thompson [1817, 1818] 1 Web. P. C. 229; 3 Mer. 622; 2 B. Moo. 424; 8 Taunt. 375	24, 37, 46, 61, 63, 67, 100, 104, 168, 170, 177, 181, 185, 207, 270, 333, 370, 372, 375, 378, 383, 485, 673

Hil—How	PAGE
Hill <i>v.</i> Tombs [1881] Johns. Pat. Man. 48	44
Hills <i>v.</i> Evans [1862] 31 L. J. Ch. 457; 4 De G. F. & J. 288	50, 53, 54, 208, 209, 431, 443, 618
Hills <i>v.</i> Laming [1853] 23 L. J. Ex. 60	304
Hills <i>v.</i> Liverpool Gas Co. [1863] 32 L. J. Ch. 28	334
Hills <i>v.</i> London Gas Light Co. [1857—1860] 27 L. J. Ex. 60; 29 L. J. Ex. 409; 5 H. & N. 312	50, 61, 64, 136, 203
Hinde <i>v.</i> Osborne [1884, 1885] 1 R. P. C. 221; 2 R. P. C. 45, 64	333, 337, 468
Hinks <i>v.</i> Safety Lighting Co. [1876] L. R. 4 Ch. D. 607; 46 L. J. Ch. 185	92, 97, 163, 164, 182, 203, 204, 561
Hocking <i>v.</i> Fraser [1886] 3 R. P. C. 3	442, 443, 458, 466
Hocking Co. <i>v.</i> Hocking [1886—1889] 3 R. P. C. 291; 4 R. P. C. 255, 434; 6 R. P. C. 69	197, 207, 389
Hoffman, <i>Re</i> [1890] 7 R. P. C. 92	260
Hoffman <i>v.</i> Postill [1869] L. R. 4 Ch. 673	421
Holland <i>v.</i> Fox [1853, 1854] 1 W. R. 448; 23 L. J. Q. B. 211, 357; 3 E. & B. 977	356, 444
Holliday <i>v.</i> Heppenstall [1889] 6 R. P. C. 320; L. R. 41 Ch. D. 109; 58 L. J. Ch. 829	48, 403, 406, 407, 615
Holmes <i>v.</i> L. & N. W. Rail. Co. [1852] 22 L. J. C. P. 57; Macr. P. C. 13	168
Holroyd <i>v.</i> Marshall [1864] 10 H. L. C. 191; 36 L. J. Ch. 193; 11 W. R. 171	282
Holste <i>v.</i> Robertson [1876] L. R. 4 Ch. D. 9; 46 L. J. Ch. 1; 33 L. T. N. S. 457; 25 W. R. 35	411
Homan, <i>Re</i> [1889] Goodeve, P. P. 33; 6 R. P. C. 104	252
Honiball's Patent [1855] 2 Web. P. C. 201; 9 Moo. P. C. 378	511, 526, 529
Honiball <i>v.</i> Bloomer [1854] 24 L. J. Ex. 11; 10 Ex. 538; 2 Web. P. C. 199	453
Hookham, <i>Re</i> [1886] Griffin, A. P. C. 32	247, 248
Hopkinson's Patent [1896] 13 R. P. C. 114	501, 719
Hopkinson <i>v.</i> St. James Electric Light Co. [1893] 10 R. P. C. 46	178, 434, 592
Hornblower <i>v.</i> Boulton [1799] 8 T. R. 95; Dav. P. C. 230	19, 21, 24, 29, 39, 137, 168, 176, 561
Hornby's Patent [1853] 7 Moo. P. C. 503	526, 606
Horrocks <i>v.</i> Stubbs [1886] 3 R. P. C. 221	149, 571
Horse's Patent [1884] 1 R. P. C. 225	502, 503
Horsley and Knighton, <i>Re</i> [1869] L. R. 8 Eq. 475; 39 L. J. Ch. 157; L. R. 4 Ch. 784	278, 279, 311, 319, 646
Horton <i>v.</i> Mabon [1862—1864] 31 L. J. C. B. 255; 12 C. B. N. S. 437; 16 C. B. N. S. 141	43, 91
Hoskins, <i>Re</i> [1884] Griffin, P. C. 291	260, 575
Houghton's Patent [1871] L. R. 3 P. C. 461; 7 Moo. P. C. N. S. 309	506, 517
Househill Co. <i>v.</i> Neilson [1842, 1843] 1 Web. P. C. 673; 9 C. & F. 783	21, 31, 65, 66, 68, 73, 180, 203, 210, 388, 390, 444, 553
Household <i>v.</i> Fairburn. <i>See</i> Fairburn <i>v.</i> Household.	
How <i>v.</i> McKernan [1862] 30 Beav. 847	422

How—Jon	PAGE
Howard <i>v.</i> Tweedale [1895] 12 R. P. C. 519	332
Howe <i>v.</i> Lloyd [1876] W. N. 230	619
Howes <i>v.</i> Webber [1895] 12 R. P. C. 468	342, 345, 466
Hudd Smith, <i>Re</i> [896] 13 R. P. C. 200	256, 258
Huddart <i>v.</i> Grimshaw [1803] 1 Web. P. C. 85 ; Dav. P. C. 265	37, 100, 184, 428
Hudson <i>v.</i> Osgerby [1884] W. N. (1884) 83 ; 32 W. R. 566	460
Hughes' Patent [1879] L. R. 4 App. Cas. 174 ; 48 L. J. P. C. 20	326, 514, 526, 604, 605, 722
Hull <i>v.</i> Bollard [1856] 25 L. J. Ex. 304 ; 1 H. & N. 134	412, 616
Hullett <i>v.</i> Hague [1831] 2 B. & Ad. 370	202
Hume <i>v.</i> Beale, Seton, 630	434
Humpherson <i>v.</i> Syer [1887] 4 R. P. C. 184, 407	65, 74, 75, 76, 77, 466
Humphrey's Patent, 1 Web. P. C. 7 ; Noy, R. 183	6, 46, 553
Hunt <i>v.</i> Stevens [1878] W. N. 79	75
Hutchinson's Patent [1861] 14 Moo. P. C. 364	502, 720, 721
Hutchison <i>v.</i> Pattullo [1888] 4 R. P. C. 332 ; 5 R. P. C. 351	154, 471
Huth's Patent [1884] Griffin, P. C. 292	574, 716
Hyde <i>v.</i> Trent, Johns. Pat. Man. 45	44

I.

Incandescent Light Co., Ltd. <i>v.</i> Cantelo [1895] 12 R. P. C. 262	285, 301, 331
Incandescent Light Co. <i>v.</i> De Mare Incandescent Syndicate [1896] 13 R. P. C. 301, 559	337, 341, 342, 350, 351, 449, 620

J.

Jablochkoff's Patent [1891] App. Ca. 293 ; 8 R. P. C. 281 ; 60 L. J. P. C. 61	490, 507, 522, 530, 600, 661
Jackson <i>v.</i> Napper [1887] 35 Ch. D. 162	661
Jackson <i>v.</i> Needle [1884] 1 R. P. C. 174 ; 2 R. P. C. 191	372
Jardine <i>v.</i> King, Mendham & Co. [1896] 13 R. P. C. 411	346, 455
Jenkins <i>v.</i> Hope [1896] 13 R. P. C. 57	383, 433, 464
Jensen <i>v.</i> Smith [1885] 2 R. P. C. 249	60
Johnson and Atkinson's Patent [1873] L. R. 5 P. C. 87	509, 517, 602, 720
Johnson's Patent [1871] L. R. 4 P. C. 75 ; 8 Moo. P. C. N. S. 291	502, 503, 504, 518, 600, 606
Johnson's Patent [1881] Lawson, 78	215
Johnson's Patent [1896] 13 R. P. C. 659	588
Johnson, <i>Re</i> [1877] L. R. 5 Ch. D. 503 ; 46 L. J. Ch. 555	216
Johnson <i>v.</i> Edge [1892] 2 Ch. J ; 61 L. J. Ch. 262 ; 9 R. P. C. 142	475, 476, 480, 481, 623, 624, 626
Johnson <i>v.</i> Wyatt [1863] 2 De G. J. & S. 18, 25	380
Jones' Patent [1840] 1 Web. P. C. 577	511
Jones' Patent. Griffin, P. C. 313	217, 218, 221, 561, 571, 586, 587, 588

Jon—Kur	PAGE
Jones' Patent [1854] 9 Moo. P. C. 41	527
Jones' Patent, Griffin, P. C. 265	120, 628
Jones, <i>Re</i> [1885] Griffin, A. P. C. 33	241, 243, 249, 256, 257, 258
Jones <i>v.</i> Berger [1843] 1 Web. P. C. 544, 718 n.; 12 L. J. C. P. 179; 5 M. & G. 208	67, 73, 400, 401, 402, 404, 405, 615
Jones <i>v.</i> Heaton, 1 Web. P. C. 404 n.	165
Jones <i>v.</i> Lees [1856] 25 L. J. Ex. 241; 26 L. J. Ex. 9; 1 H. & N. 189	305, 395, 396
Jones <i>v.</i> Pearce [1832] 1 Web. P. C. 122	65, 66
Jordan <i>v.</i> Moore [1866] L. R. 1 C. P. 624; 35 L. J. C. P. 268	44, 91, 186, 195
Joy's Patent [1893] 10 R. P. C. 89	529
Jupe <i>v.</i> Pratt [1837] 1 Web. P. C. 145	21, 31, 33, 390, 391, 422

K.

Kay's Patent [1839] 1 Web. P. C. 568; 3 Moo. P. C. 24	46, 520, 522, 523, 603
Kay's Patent [1894] 11 R. P. C. 279; 70 L. T. 756	487, 609, 645
Kay <i>v.</i> Marshall [1836—1841] 2 Web. P. C. 39, 71, 79; 1 My. & Cr. 373; 5 Bing. N. C. 492; 1 Keen, 190; 8 L. J. C. P. 261; 8 Cl. & Fin. 245	43, 168, 183, 198, 336, 673
Kaye <i>v.</i> Chubb [1888] 4 R. P. C. 23, 289; 5 R. P. C. 641	66, 173, 210, 212, 459, 466
Keeler <i>v.</i> Standard Folding Bed Co. [1895] 157 U. S. 659	331
Kelly <i>v.</i> Batchelar [1893] 10 R. P. C. 289	332
Kelly <i>v.</i> Heathman [1890] 45 Ch. D. 256; 7 R. P. C. 343; 60 L. J. Ch. 22	170, 173, 189, 212, 225, 560, 563, 587
Kenny's Button-holing Co. <i>v.</i> Somerville [1878] 26 W. R. 787	280
Kensington Electric Lighting Co. <i>v.</i> Lane-Fox Co. [1891] 2 Ch. 573: 8 R. P. C. 277	286, 476, 481, 624, 625
Kettlewell <i>v.</i> Watson [1884] 26 Ch. D. 501	288
Kinahan <i>v.</i> Kinahan [1890] 45 Ch. D. 78; 59 L. J. Ch. 705	369
King <i>v.</i> Anglo-American Brush Co. [1889] 6 R. P. C. 414; [1892] App. Ca. 367; 9 R. P. C. 313	52, 65, 73, 154, 210
King <i>v.</i> Oliver [1884] 1 R. P. C. 23, 42	292, 467
King & Co.'s Trade Mark, <i>Re</i> [1892] 2 Ch. 462; 62 L. J. Ch. 153; 9 R. C. P. 350	319, 320, 369, 487, 609, 645, 659
Knight, <i>Re</i> [1886] Griffin, A. P. C. 35	250
Knowles <i>v.</i> Bovill [1870] 22 L. T. N. S. 70	282, 304
Kollman's Patent [1839] 1 Web. P. C. 564	515
Koops, <i>Ex parte</i> [1802] 6 Ves. 595	133
Kurtz <i>v.</i> Spence [1886—1888] 3 R. P. C. 368; 4 R. P. C. 427; 5 R. P. C. 161; 33 Ch. D. 579; 36 Ch. D. 770; 55 L. J. Ch. 919; 57 L. J. Ch. 238	163, 255, 264, 265, 271, 451, 473, 474, 475, 477, 478, 479, 554, 620, 622, 623, 624, 625

L.

LaC—Lia	PAGE
La Compagnie Générale D'Eaux Minérales et de Bains de Mer [1891] 3 Ch. 451; 8 R. P. C. 446	320, 487, 609, 645
Lacy, <i>In re</i> , 1 Web. P. C. 431	132
Laird's Patent, cited p. 531.	
Lake, <i>Re</i> [1887] 5 R. P. C. 415; Griffin, A. P. C. 16	225, 227, 251, 589, 631
Lake, <i>Re</i> [1887] Griffin, A. P. C. 35	241, 688
Lake's Patent [1889] 6 R. P. C. 548	246, 258
Lake's Patent [1891] A. C. 240; 60 L. J. P. C. 57; 8 R. P. C. 230	516, 518, 603
Lamb <i>v.</i> Nottingham Manufacturers Co., Seton, 557	395, 399, 614
Lanenaude's Patent [1850] 2 Web. P. C. 164	529, 553
Lancashire Explosives Co. <i>v.</i> Roburite Co. [1895] 12 R. P. C. 393; 13 R. P. C. 429	83, 99
Lancaster, <i>Re</i> [1884] Griffin, P. C. 293	243, 575, 577
Lancaster's Patent [1864] 2 Moo. P. C. N. S. 189	326, 524
Lane-Fox's Patent [1892] 9 R. P. C. 411	507, 602
Lane-Fox <i>v.</i> Kensington and Knightsbridge Electric Lighting Co. [1892] L. R. 3 Ch. 424; 9 R. P. C. 222, 413; 67 L. T. 440	22, 42, 43, 101, 149, 233, 571
Lang's Patent [1890] 7 R. P. C. 469	227, 234
Lang <i>v.</i> Gisborne [1862] 31 L. J. Ch. 769; 31 Beav. 133	67, 68, 69, 72
Lang <i>v.</i> Whitecross Co. [1889] 6 R. P. C. 570; 7 R. P. C. 389	236, 411, 591, 592
Law <i>v.</i> Ashworth [1890] 7 R. P. C. 86	477, 627
Lawes <i>v.</i> Purser [1856] 6 E. & B. 930; 26 L. J. Q. B. 25	304, 376
Lawrence's Patent [1892] 9 R. P. C. 85	518, 519, 603
Lawrence <i>v.</i> Perry [1885] 2 R. P. C. 179	74, 196, 211, 458
Lawrie <i>v.</i> Baker [1885] 2 R. P. C. 213	458
Lea <i>v.</i> Saxby, 32 L. T. N. S. 731	420
Leadbeater <i>v.</i> Kitchen [1890] 7 R. P. C. 235	198, 206, 211, 428
Leaf <i>v.</i> Topham [1845] 14 L. J. Ex. 231; 14 M. & W. 146	400, 401
Leather Cloth Co. <i>v.</i> Hirschfeld [1866] 1 Eq. 299	438
Ledgard <i>v.</i> Bull [1886] 11 App. Ca. 648; 3 R. P. C. 390	394, 398, 437, 615
Ledsam <i>v.</i> Russell. <i>See</i> Russell <i>v.</i> Ledsam.	
Lee's Patent [1813] cited p. 555.	
Lee's Patent [1856] 10 Moo. P. C. 226	525, 605
Lee <i>v.</i> Walker [1871] L. R. 7 C. P. 121	664
Lee <i>v.</i> West London Cycle Stores [1892] 9 R. P. C. 301	457
Legat's Case, 10 Co. R. 109	274, 284
Leggott <i>v.</i> McGeech [1893] 10 R. P. C. 429	170
Leonhardt <i>v.</i> Kallé [1895] 12 R. P. C. 306	465
Lewin <i>v.</i> Brown [1866] 14 W. R. 640	286
Lewis <i>v.</i> Davis [1829] 1 Web. P. C. 488; 1 Carp. P. C. 471; 3 C. & P. 502	334
Lewis <i>v.</i> Marling [1829] 10 B. & C. 22; 4 C. & P. 52; 1 Web. P. C. 493	46, 60, 100, 102, 162, 163, 165, 187, 188, 264, 446, 485, 562
Liardet <i>v.</i> Hammond Electric Light and Power Co. [1883] 31 W. R. 710	291

TABLE OF CASES.

xli

Lia—Mac	PAGE
<i>Liardet v. Johnson</i> [1778] 1 Web. P. C. 53; 1 Carp. P. C. 35	162
<i>Lifeboat Co., Ltd. v. Chambers</i> [1891] 8 R. P. C. 418	64, 180
<i>Limmer Asphalte Co. v. Inland Revenue</i> [1872] L. R. 7 Ex. 211	308
<i>Lincoln College Case</i> , 3 Co. Rep. 63 a	289
<i>Linoleum Manufacturing Co. v. Nairn</i> [1878] L. R. 7 Ch. D. 834	299
<i>Lister v. Eastwood</i> [1855—1864] 3 C. L. R. 1249; 26 L. T. 4; 9 L. T. N. S. 766	328, 375
<i>Lister v. Leather</i> [1857, 1858] 3 Jur. N. S. 433, 811; 5 W. R. 603; 8 E. & B. 1004, 1031; 27 L. J. Q. B. 295; 4 K. & J. 425	37, 42, 173, 181, 189, 215, 260, 333, 350, 448
<i>Lister v. Norton</i> [1884—1886] 1 R. P. C. 114; 2 R. P. C. 68, 135; 3 R. P. C. 199	60, 137, 206, 380, 420, 421, 458, 561, 568
<i>Livet's Patent</i> [1892] 9 R. P. C. 327	510, 522, 600, 602
<i>L'Oiseau and Pierrard, Re</i> [1887] Griffin, A. P. C. 36	249, 534, 539, 540, 541, 575, 577, 655, 693, 716
<i>London and Leicester Hosiery Co. v. Griswold</i> [1886] 3 R. P. C. 251	297, 644
<i>Longbottom v. Shaw</i> [1888, 1889, 1891] 5 R. P. C. 497; 6 R. P. C. 143; 8 R. P. C. 333; L. R. 43 Ch. D. 46; 58 L. J. Ch. 734; 61 L. T. N. S. 325; 37 W. R. 792	44, 82, 95, 97, 99, 195, 454, 455, 456, 469, 617
<i>Lorrain, Re</i> [1888] 5 R. P. C. 142	258
<i>Losh v. Hague</i> [1837—1839] 1 Web. P. C. 200; 8 L. J. Ex. 251	42, 43, 60, 85, 86, 87, 88, 91, 95, 359, 373, 379, 432, 464
<i>Lovell v. Hicks</i> [1836, 1837] 5 L. J. Ex. Eq. 101; 6 L. J. Ex. Eq. 85; 2 Y. & C. 481	291, 304
<i>Lowe's Patent</i> [1852] 8 Moo. P. C. 1	508, 601
<i>Lucas, Re</i> [1854] Macr. P. C. 235	215
<i>Lucas v. Miller</i> [1885] 2 R. P. C. 155	105, 143, 144, 154, 556, 561, 570, 571
<i>Luke's Patent</i> [1886] Griffin, P. C. 294	244, 253, 254
<i>Lynde's Patent</i> [1888] 5 R. P. C. 663	260
<i>Lyon's Patent</i> [1894] 11 R. P. C. 537	303, 525, 526
<i>Lyon v. Goddard</i> [1893—1894] 10 R. P. C. 121, 334; 11 R. P. C. 354	49, 173, 179, 207, 434, 466, 560
<i>Lyon v. Mayor of Manchester</i> [1894] 11 R. P. C. 218	359, 383, 433, 464

M.

<i>McAlpine v. Mangnall</i> [1846] 15 L. J. C. P. 298; 3 C. B. 518	173, 287
<i>McCormick v. Gray</i> [1861] 31 L. J. Ex. 42; 7 H. & N. 25	46, 322, 435
<i>McDougal's Patent</i> [1867] L. R. 2 P. C. 1; 37 L. J. P. C. 17; 5 Moo. P. C. N. S. 1	514, 522
<i>McHarg v. Universal Stock Exchange</i> [1895] 2 Q. B. 81; 64 L. J. Q. B. 498	383
<i>McInnes's Patent</i> [1868] L. R. 2 P. C. 54; 37 L. J. P. C. 23; 5 Moo. P. C. N. S. 72	514, 522, 604
<i>Macdougall v. Partington</i> [1890] 7 R. P. C. 216, 351, 472	415, 416
<i>Macevoy, Re</i> [1888] 5 R. P. C. 285	248

Mac—Mil	PAGE
Macfarlane's Patent [1883] Johns. Pat. Man. 174	255
Macfarlane v. Price [1816] 1 Web. P. C. 74; 1 Stark. 199	165, 558
Macintosh's Patent [1836, 1837] 1 Web. P. C. 739, n.	502, 526, 720
Mackelcan v. Rennie [1862] 13 C. B. N. S. 52	151, 154, 157, 211
Mackie v. Berry [1885] 2 R. P. C. 146	336, 657
Mackie v. Soho Laundry Co. [1892] 9 R. P. C. 465	479, 624
Macnamara v. Hulse [1842] 2 Web. P. C. 128, n.; Car. & M. 471	102, 104, 177, 178, 180, 335, 400, 402, 615
Magdalen College Case, 11 Co. R. 74 b	484
Main's Patent [1890] 7 R. P. C. 13	256, 539, 541, 576, 655
Mallett's Patent [1866] L. R. 1 P. C. 308; 4 Moo. P. C. N. S. 175	525
Manceaux's Patent [1870] L. R. 5 Ch. 518; L. R. 6 Ch. 272; 10 W. R. 854, 1184	253
Manchester Trust v. Furness [1895] 2 Q. B. 539	288
Mandelberg v. Morley [1893—1895] 10 R. P. C. 256; 64 L. J. Ch. 245; 12 R. P. C. 35	394, 456, 614, 617
Mander v. Falcke [1891] 2 Ch. 554	300
Mansell's Glass Patent, 1 Web. P. C. 17	10, 673
Manton v. Manton [1815] Dav. P. C. 333; 1 Carp. P. C. 278; 1 W. P. C. 192 n.	100, 101
Markwick's Patent [1860] 13 Moo. P. C. 310; 8 W. R. 333	507, 511, 525
Marsden's Patent [1896] 13 R. P. C. 87	261, 577
Marsden v. Moser. <i>See Moser v. Marsden.</i>	
Marsden v. Saville St. Co. [1878] 3 Ex. D. 203	266, 268, 553, 554, 629
Marshall, <i>In re</i> [1888] 5 R. P. C. 661	252
Marshall's Patent [1891] App. Ca. 430	500, 502, 507, 522
Marshall v. Marshall [1888] 38 Ch. D. 330	369, 436
Marshall v. Ross [1869] L. R. 8 Eq. 651	543, 657
Martin's Patent, Griffin, P. C. 320	490, 631
Mason v. Goodwin [1889] 6 R. P. C. 235	351
Massey v. Heynes [1888] L. R. 21 Q. B. D. 330	369
Mathers v. Green [1865] 34 L. J. Ch. 298; 34 Beav. 170; 35 L. J. Ch. 1; L. R. 1 Ch. 29	277, 278, 279, 284, 551
Matthews v. Parmenter [1896] 13 R. P. C. 514	200, 211
Matthey's Patent [Eliz.] Noy, R. 178; 1 Web. P. C. 6	6, 46, 266, 553
Mayer v. Sherwood [1890] 7 R. P. C. 283	432, 618
Mayer v. Spence [1860] 1 J. & H. 87	383
Maxim and Silvermann's Application [1894] 11 R. P. C. 314	261
Meadows v. Kirkman [1860] 29 L. J. Ex. 205	416
Medlock, <i>In re</i> [1865] 22 Newt. Lon. Journ. N. S. 69	215
Mercier v. Cotton [1876] 1 Q. B. D. 424; 46 L. J. Q. B. 184	419
Merry v. Nickalls [1873] 8 Ch. 205	465
Metford's Patent [1879] 48 Engineer, 15; Waggett, xiv.	525
Meyer v. Sherwood [1890] 7 R. P. C. 283	237
Middleton v. Bradley [1895] 2 Ch. 716; 12 R. P. C. 390	457, 617
Miller v. Barker [1893] 10 R. P. C. 106	103, 105, 150, 165, 175, 180, 201, 558, 560, 570

Mil—Mos	PAGE
Miller <i>v.</i> Clyde Steel Bridge Co. [1891] 8 R. P. C. 198; 9 R. P. C. 470	350
Miller's Patent [1894] 63 L. J. Ch. 324; 11 R. P. C. 55	494, 610
Milligan <i>v.</i> Marsh [1856] 2 Jur. N. S. 1083	267
Millington <i>v.</i> Fox [1846] 3 My. & Cr. 338	382, 432, 462
Mills <i>v.</i> Carson [1892] 9 R. P. C. 338; 10 R. P. C. 9	302, 303, 306, 307
Milner's Patent [1854] 9 Moo. P. C. 39	526, 527, 606
Minter <i>v.</i> Mower [1835] 1 Web. P. C. 141; 6 L. J. N. S. K. B. 183	184, 553, 554
Minter <i>v.</i> Wells [1834] 1 Web. P. C. 127, 134; 1 C. M. & R. 505; 4 A. & E. 251; 4 L. J. Ex. 2	100, 180, 264, 336, 675, 677
Minter <i>v.</i> Williams [1835] 5 L. K. J. B. 60; 1 Web. P. C. 135	329
Mitchell <i>v.</i> Darley Main Colliery Co. [1883] 10 Q. B. D. 457; 52 L. J. Q. B. 394	620
Mitchell <i>v.</i> Henry [1880] 15 Ch. D. 181; 43 L. T. N. S. 186	377
Mitchell <i>v.</i> Reynolds [1713] 1 P. Wms. 181; 19 Mod. R. 130	8
Moncrieff's Patent, cited p. 523.	
Monopolies, Case of	4, 6, 7, 9, 12, 14
Montford <i>v.</i> Marsden [1895] 12 R. P. C. 266	331
Montgomerie <i>v.</i> Peterson [1894] 11 R. P. C. 221, 633	333
Moore <i>v.</i> Bennett [1884] 1 R. P. C. 129	171, 172, 174, 189, 459, 560, 563
Moore <i>v.</i> Craven [1874] L. R. 7 Ch. 94	421
Moore <i>v.</i> Thomson [1890] 7 R. P. C. 325	431
Morey's Patent, <i>Re</i> [1858] 25 Beav. 581; 6 W. R. 612	286, 288, 311, 316, 319, 646
Morgan's Patent [1888] 5 R. P. C. 186; W. N. (1888) 34	609
Morgan's Patent [1843] 1 Web. P. C. 737	505, 511
Morgan, <i>Re</i> [1876] 24 W. R. 245	216, 311
Morgan, <i>Re</i> [1886] Griffin, A. P. C. 17	225, 231
Morgan-Brown's Patent [1886] 3 R. P. C. 212	526
Morgan <i>v.</i> Elford [1876] L. R. 4 Ch. D. 287	465
Morgan <i>v.</i> Fuller [1866] L. R. 2 Eq. 296	405
Morgan <i>v.</i> Seaward [1837] 1 Web. P. C. 170; 6 L. J. N. S. Ex. 153; 2 Carp. 104; 2 M. & W. 544.	26, 40, 60, 62, 64, 75, 78, 100, 102, 163, 178, 180, 181, 200, 215, 274, 337, 378, 390, 485, 558, 673
Morgan <i>v.</i> Windover [1888] 5 R. P. C. 296; 7 R. P. C. 139, 446	65, 83, 94, 95, 96, 97, 402, 403, 406, 455, 615
Morrell <i>v.</i> Pearson [1849] 12 Beav. 284	618
Morris <i>v.</i> Branson [1776] 1 Web. P. C. 51; 1 Carp. P. C. 30; Bull N. P. 76	39
Morris <i>v.</i> Coventry Machinists Co. [1891] 3 Ch. 410; 60 L. J. Ch. 524; 8 R. P. C. 353	411
Morris <i>v.</i> Young [1895] 12 R. P. C. 455	83, 408, 452, 455, 464, 617, 621
Morrison <i>v.</i> Moat [1851] 9 Ha. 241; 10 Ha. 248	282
Morton's Patent [1881] Lawson, 95	507, 525
Morton <i>v.</i> Middleton [1863] 1 Ct. of S. 3rd Ser. 721	200, 201, 208, 558
Moseley <i>v.</i> Victoria Rubber Co. [1886—1887] 3 R. P. C. 351; 4 R. P. C. 241; 55 L. T. N. S. 482	37, 50, 51, 55, 149, 150, 418, 461, 571, 664

Mos—New	PAGE
Moser <i>v.</i> Jones [1893] 10 R. P. C. 368	383
Moser <i>v.</i> Marsden [1893—1896] (1892) 1 Ch. 487; 10 R. P. C. 205, 350; 13 R. P. C. 24; 73 L. T. 667	149, 166, 168, 224, 227, 232, 233, 266, 267, 367, 554, 590
Moser <i>v.</i> Sewell [1893] 10 R. P. C. 365	374, 375
Moss <i>v.</i> Malins [1888] 3 R. P. C. 373; L. R. 33 Ch. D. 603; 56 L. J. Ch. 126; 3 R. P. C. 373	41, 44, 105, 411
Mowry <i>v.</i> Whiteley, cited 3 R. P. C. 143	444
Muirhead <i>v.</i> Commercial Cable Co. [1894] 11 R. P. C. 317; 12 R. P. C. 39	295, 302, 337, 428, 462
Mullins <i>v.</i> Hart [1852] 3 Car. & K. 297	58, 60
Muntz's Patent [1846] 2 Web. P. C. 113	521, 526, 603
Muntz <i>v.</i> Foster [1843, 1844] 2 Web. P. C. 93	35, 46, 50, 73, 178, 185, 208, 263, 326, 340, 349, 373, 430
Muntz <i>v.</i> Grenfell [1842] 7 Jur. 121; 2 Coop. 61, n.	376
Muntz <i>v.</i> Vivian [1840] 2 Web. P. C. 87	378
Murray <i>v.</i> Clayton [1872] L. R. 15 Eq. 115; L. R. 7 Ch. 570; L. R. 10 Ch. 675 n.; 42 L. J. Ch. 191	27, 36, 37, 65, 92, 189, 333, 418, 422, 442
Myers, <i>Re</i> [1882] W. N. (1882) 53, 56	311
Myers <i>v.</i> Baker [1858] 3 H. & N. 802	343

N.

Nairn's Patent [1891] 8 R. P. C. 444	224, 587
Napier's Patent [1881] L. R. 6 App. Cas. 174; 50 L. J. P. C. 40	326, 526, 604, 605
Napier's Patent [1861] 13 Moo. P. C. 543	507
National Opalite Glazed Brick and Tile Syndicate <i>v.</i> Ceralite Syndicate [1896] 13 R. P. C. 658	434
Naysmith's Patent, cited p. 555.	
Needham <i>v.</i> Johnson [1884] 1 R. P. C. 49	206, 458
Needham <i>v.</i> Oxley [1863—1865] 8 L. T. N. S. 532, 604; 1 H. & M. 248; 21 Newt. Lond. Journ. N. S. 300	148, 397, 441, 446, 570
Needler <i>v.</i> Bp. of Winchester, Hob. 221, 222	274
Neilson <i>v.</i> Betts [1868—1871] L. R. 3 Ch. 429; 5 H. L. 1; 34 L. J. Ch. 537; 40 L. J. Ch. 317; 3 De G. J. & S. 22; 6 N. R. 221; 18 L. T. N. S. 159	49, 51, 52, 56, 60, 161, 186, 192, 208, 324, 329, 365, 429, 436, 441, 443, 620
Neilson <i>v.</i> Fothergill [1841] 1 Web. P. C. 287	270
Neilson <i>v.</i> Harford [1841] 1 Web. P. C. 295; 10 L. J. Ex. 493; 11 L. J. Ex. 20; 8 M. & W. 806	22, 23, 30, 32, 33, 34, 87, 102, 138, 163, 176, 178, 180, 186, 189, 202, 203, 209, 234, 375, 400, 557, 561
Neilson <i>v.</i> Thompson [1841] 1 Web. P. C. 278	377, 380, 381
Nettlefolds <i>v.</i> Reynolds [1891] 8 R. C. P. 410; (1892) 9 R. P. C. 295	209, 403, 407, 615
Newall <i>v.</i> Elliott [1863, 1864] 32 L. J. Ex. 120; 10 L. T. N. S. 792; 11 W. R. 438; 13 W. R. 11; 10 Jur. N. S. 954	136, 143, 322, 323, 330, 376
Newall <i>v.</i> Elliott and Glass [1858] 27 L. J. C. P. 337; 4 C. B. N. S. 293	66, 143, 556
Newall <i>v.</i> Wilkins [1851] 17 L. T. 20	447

New—Old	PAGE
Newall <i>v.</i> Wilson [1852] 19 L. T. 161 ; 2 De G. M. & G. 282	374, 379
Newby <i>v.</i> Harrison [1861] 1 J. & H. 393, 678 ; 2 H. & M. 628	308, 362
Newman's Patent [1888] 5 R. P. C. 271, 279	256, 259, 260, 262, 576, 631
Newman <i>v.</i> Milner [1794] 2 Ves. jun. 486	356
Newsom <i>v.</i> Mann [1896] 7 R. P. C. 307	38, 457
Newton's Patent [1884] L. R. 9 App. Cas. 592 ; 1 R. P. C. 177	511, 517, 518, 602
Newton's Patent [1861] 14 Moo. P. C. C. 156	519
Newton's Patent [1881] Lawson, 90	521, 527
Newton <i>v.</i> Grand Junction Rail. Co. [1846] 20 L. J. Ex. 427 n. ; 5 Exch. 331	49, 53, 205, 333, 335, 446
Newton <i>v.</i> Vaucher [1851] 21 L. J. Ex. 305 ; 6 Exch. 859	81, 89, 137, 198, 211, 328
New Ormonde Cycle Co., <i>Ex parte</i> [1896] 2 Ch. 520 ; 65 L. J. 785 ; 13 R. P. C. 475	314, 315, 316, 317, 643, 647
Nickel's Patent [1841] 1 Web. P. C. 650	215
Nickels <i>v.</i> Haslam [1844] 13 L. J. C. P. 146 ; 8 Scott, N. R. 97.	136
Nickels <i>v.</i> Ross [1849] 8 C. B. 679.	267, 553
Nicols <i>v.</i> Pitman [1884] L. R. 26 Ch. D. 374	359
Nobel's Explosives Co. <i>v.</i> Anderson [1894—1895] 11 R. P. C. 128, 519 ; 12 R. P. C. 164	23, 32 <i>et seq.</i> , 197, 206, 207, 209, 336, 341, 349
Nobel's Explosives Co. <i>v.</i> Jones [1880—1882] 42 L. T. N. S. 754 ; L. R. 17 Ch. D. 721 ; 50 L. J. Ch. 582 ; L. R. 8 App. Cas. 5	323, 325, 361, 365
Noble's Patent, <i>In re</i> [1850] 7 Moo. P. C. 191	501, 720
Nordenfelt, <i>Re</i> [1887] Griffin, A. P. C. 18	225, 226, 587, 588
Nordenfelt <i>v.</i> Gardner [1884] 1 R. P. C. 10, 61	166, 172, 336, 358, 466, 469
Nordenfelt <i>v.</i> Maxim Gun Co. [1893] 1 Ch. 630 ; (1894) A. C. 535 ; 63 L. J. Ch. 908	293, 296
Normal, <i>Re</i> Trade Mark [1886] 35 Ch. D. 231 ; 56 L. J. Ch. 519 ; 56 L. T. N. S. 250 ; 35 W. R. 464 ; 4 R. P. C. 123	316, 646
Normandy's Patent [1855] 9 Moo. P. C. 452	525
North British Rubber Co. <i>v.</i> Gormully and Jeffery Manufacturing Co. [1895] 12 R. P. C. 17	358, 379, 381
North British Rubber Co. <i>v.</i> Mackintosh [1894] 11 R. P. C. 477	415, 429, 434
Norton's Patent [1863] 1 Moo. P. C. N. S. 339 ; 11 W. R. 720	505, 507, 604
Norton <i>v.</i> Brooks [1861] 7 H. & N. 499	376
Norwood's Patent [1895] 12 R. P. C. 214	265, 491, 493, 610
Num <i>v.</i> D'Albuquerque [1865] 34 Beav. 395	359, 462, 464
Nussey and Leachman's Patent, <i>Re</i> [1890] 7 R. P. C. 22.	516
Nuttall <i>v.</i> Hargreaves [1892] 1 Ch. 23 ; 61 L. J. Ch. 94 ; 8 R. P. C. 273, 450	144, 148, 149, 154, 211, 212, 457, 494, 569, 570, 609

O.

Oddy <i>v.</i> Smith [1888] 5 R. P. C. 503	44, 454
Official Receiver <i>v.</i> Tailby [1888] 13 App. Ca. 523 ; 58 L. J. Q. B. 75	282
Oldham <i>v.</i> Langmead [1789] 3 T. R. 439, 441	294, 376

	PAGE
Orm—Pay	
Ormsom <i>v.</i> Clarke [1862, 1863] 32 L. J. C. P. 8, 291; 14 C. B. N. S. 490	91
Osmond <i>v.</i> Hirst [1885] 2 R. P. C. 265	379
Otto <i>v.</i> Linford [1881] 46 L. T. 35	21, 49, 51, 102, 103, 105, 161, 163, 189, 204, 448
Otto <i>v.</i> Singer [1890] 7 R. P. C. 7	304
Otto <i>v.</i> Steel [1885, 1886] 2 R. P. C. 139; 3 R. P. C. 109; L. R. 31 Ch. D. 241; 55 L. J. Ch. 196	71, 73, 208, 377, 411, 445, 452, 461, 466, 621
Otto <i>v.</i> Sterne [1885] 2 R. P. C. 139	412
Ottos Kopje Diamond Mines [1893] 1 Ch. 318; 62 L. J. Ch. 166	317
Oxley <i>v.</i> Holden [1860] 30 L. J. C. P. 68; 8 C. B. N. S. 666; 2 L. T. N. S. 464; 8 W. R. 626	60, 140, 207, 329, 568
P.	
Palliser's Patent, cited L. R. 4 App. Cas. at p. 189	526
Palmer <i>v.</i> Cooper [1853] 23 L. J. Ex. 82; 9 Ex. 231	404, 405
Palmer <i>v.</i> Wagstaffe [1853, 1854] 22 L. J. Ex. 295; 23 L. J. Ex. 217; 8 Exch. 840; 9 Exch. 494	197, 202, 404, 405, 420, 615
Parker <i>v.</i> Maignen Filtre Rapide Co. [1888] 5 R. P. C. 207	411
Parker <i>v.</i> Taswell [1858] 2 De G. & J. 559	285
Parkes <i>v.</i> Stevens [1869] L. R. 8 Eq. 358; L. R. 5 Ch. 36; 38 L. J. Ch. 627	43, 92, 140, 168, 169, 172, 173, 177, 208, 333, 351
Parkinson, <i>Re</i> [1896] 13 R. P. C. 509	227, 590
Parkinson <i>v.</i> Simon [1895] 11 R. P. C. 493; 12 R. P. C. 403.	183, 192, 193, 194, 195, 196, 207, 211, 428, 562, 563
Parlement Belge [1880] 5 P. D. 197	538
Parnell's Patent, <i>Re</i> [1888] 5 R. P. C. 126	282, 283, 286, 313, 596
Parnell <i>v.</i> Mort [1884, 1885] L. R. 29 Ch. D. 325; 1 R. P. C. 4; 2 R. P. C. 139	453
Pascall <i>v.</i> Toupe [1890] 7 R. P. C. 125	411
Patent Agents (Institute of) <i>v.</i> Lockwood [1894] A. C. 347; 11 R. P. C. 374; 63 L. J. P. C. 74; 71 L. T. 205	652, 665
Patent Bottle Envelope Co. <i>v.</i> Seymer [1858] 28 L. J. C. P. 22; 5 C. B. N. S. 164	88, 140, 333
Patent Marine Inventions Co. <i>v.</i> Chadburn [1873] L. R. 16 Eq. 447	423, 613
Patent Plumbago Crucible Co.'s Trade Mark [1890] 7 R. P. C. 282	317
Patent Type Founding Co. <i>v.</i> Lloyd [1860] 29 L. J. Ex. 207; 5 H. & N. 192	356, 357
Patent Type Founding Co. <i>v.</i> Richards [1859, 1860] 6 Jur. N. S. 39; 1 Johns. 381; 2 L. T. N. S. 359	160, 340, 394, 396, 397, 559, 614
Patent Type Founding Co. <i>v.</i> Walter [1860] 29 L. J. Ex. 207; Johns. 727	357, 415
Patterson's Patent [1849] 6 Moo. P. C. 469	516
Patterson <i>v.</i> Gas Light & Coke Co. [1875] L. R. 2 Ch. D. 812; 3 App. Cas. 239; 45 L. J. Ch. 843; 47 L. J. Ch. 402	23, 46, 74, 78, 186, 270, 550
Patteson <i>v.</i> Holland [1845] Hig. Dig. 354	430
Payne's Patent [1854] cited in Higgins' Digest, p. 111	515

TABLE OF CASES.

xlvii

Pec—Pos	PAGE
Pechey's Case, 50 Edw. III. 3 Inst. 181	6, 14
Peckover v. Rowland [1893] 10 R. P. C. 118, 234	173, 212, 406, 563
Peek v. Ray, 63 L. J. Ch. 647; 42 W. R. 498	419
Penn v. Bibby } [1866] { L. R. 1 Eq. 548; L. R. 3 Eq. 308; L. R. 2	
Penn v. Jack } { Ch. 127; 36 L. J. Ch. 277, 455; 37 L. J. Ch.	
Penn v. Fernie } { 136; L. R. 2 Eq. 314; L. R. 5 Eq. 81	42,
	91, 96, 143, 144, 151, 155, 196, 210, 366, 391, 406,
	412, 413, 427, 437, 438, 440, 451, 467, 556, 570
Pering, <i>Ex parte</i> [1836] 4 A. & E. 949	679
Perkin's Patent [1845] 2 Web. P. C. 6	510, 511, 517, 519, 599, 601, 604, 720
Peroni v. Hudson [1884] 1 R. P. C. 261	428, 450, 461, 462, 621
Perry v. Mitchell [1840] 1 Web. P. C. 269	392, 395
Pether v. Shaw [1893] 10 R. P. C. 293	46, 211, 212
Petman v. Bull [1886] 3 R. P. C. 390 (S. C. reported as <i>Ledgard v.</i> <i>Bull</i> , 11 App. Cas. 648, which <i>see</i>).	
Pettit-Smith's Patent [1850] 7 Moo. P. C. 133	510, 516, 524, 601, 603, 605
Pharmaceutical Society v. Fox [1896] cited at p. 543.	
Phillips v. Ivel Cycle Co. [1890] 7 R. P. C. 77; 62 L. T. 392	48, 406, 455, 458, 615, 617
Philpott v. Hanbury [1885] 2 R. P. C. 33, 153	51, 103, 156, 157, 163
Pickard v. Prescott [1892] A. C. 263; 9 R. P. C. 195	54, 72
Pieper's Patent [1895] 12 R. P. C. 292	514, 518, 521, 602, 604
Pietschmann, <i>Re</i> [1884] Griffin, P. C. 314	228, 231
Piggott v. Anglo-American Telegraph Co. [1868] 19 L. T. N. S. 46	416, 619
Pinkus's Patent [1848] 12 Jur. 234.	522, 602, 604
Pinto v. Badman [1891] 8 R. P. C. 181	319
Pirie v. York Street Flax Spinning Co. [1893—1894] 10 R. P. C. 34; 11 R. P. C. 429	104, 410
Pitman's Patent [1871] L. R. 4 P. C. 84; 8 Moo. P. C. N. S. 293	502, 503, 504, 525, 600
Pitt's Patent [1888] 5 R. P. C. 343	247
Plating Co. v. Farquharson [1881] L. R. 17 Ch. D. 49; Griffin, P. C. 187	417, 435, 436
Plimpton v. Malcolmson [1875, 1876] L. R. 20 Eq. 37; 3 Ch. D. 531; 34 L. T. N. S. 340; 44 L. J. Ch. 257; 45 L. J. Ch. 405; Seton, 565	51, 52, 57, 66, 67, 68, 71, 73, 164, 165, 180, 193, 264, 265, 266, 371, 372, 373, 429, 442, 446, 553
Plimpton v. Spiller [1877] L. R. 4 Ch. D. 286; L. R. 6 Ch. D. 412; 20 S. J. 860; 47 L. J. Ch. 211	66, 67, 70, 73, 74, 183, 184, 189, 192, 193, 196, 198, 203, 211, 382, 408, 435, 526, 561, 563
Pneumatic Tyre Co. v. Carr [1896] Law Journal, 15th August	456
Pneumatic Tyre Co. v. Caswell [1896] 13 R. P. C. 164	191, 208, 263, 403
Pneumatic Tyre Co. v. Chisholm [1896] 13 R. P. C. 488	387
Pneumatic Tyre Co. v. Warrilow [1896] 13 R. P. C. 284	379
Poole's Patent [1867] L. R. 1 P. C. 514; 36 L. J. P. C. 76; 4 Moo. P. C. N. S. 452	518, 519
Pooley v. Pointon [1885] 2 R. P. C. 167	157, 165, 458
Postcard Automatic Supply Co. v. Samuel [1889] 6 R. P. C. 560	301, 302, 305

	PAGE
Pou—R.	
Poupard <i>v.</i> Fardell [1869] 18 W. R. 59, 127; 21 L. T. N. S. 696	200, 558
Pow <i>v.</i> Taunton [1845] 9 Jur. 1056	100
Powell <i>v.</i> Head [1879] L. R. 12 Ch. D. 686	277, 640
Powell's Trade Marks, <i>Re</i> [1894] A. C. 8; 11 R. P. C. 4; (1893) 2 Ch. 399; 62 L. J. Ch. 845; 69 L. T. N. S. 60; 41 W. R. 627; 10 R. P. C. 195	318, 624, 646
Power <i>v.</i> Walker [1814] 3 M. & S. 7	289
Price's Patent Candle Co. <i>v.</i> Bauwen's Patent Candle Co. [1858] 4 K. & J. 727	443
Printing and Numerical Registering Co. <i>v.</i> Sampson [1875] L. R. 19 Eq. 462	282, 296
Proctor <i>v.</i> Bailey [1889] 6 R. P. C. 106, 538; 59 L. J. Ch. 12; 38 W. R. 100; 61 L. T. 733; 42 Ch. D. 390	359, 370, 382, 432, 462
Proctor <i>v.</i> Bennis [1887] 4 R. P. C. 333; L. R. 36 Ch. D. 740; 57 L. J. Ch. 11	173, 197, 212, 332, 341, 343, 344, 347, 350, 366, 380, 466, 560
Proctor <i>v.</i> Sutton Lodge Chemical Co. [1888] 5 R. P. C. 184	449, 452, 487
Prothero <i>v.</i> May [1839] 1 Web. P. C. 414; 9 L. J. Ex. 121	678
Q.	
Quarrill's Patent [1840] 1 Web. P. C. 740	518
R.	
Railway and Electrical Appliances, <i>In re</i> [1888] L. R. 38 Ch. D. 597 297, 307	
Ralston <i>v.</i> Smith [1860—1865] 31 L. J. C. P. 102; 11 H. L. C. 223; 35 L. J. C. P. 49; 4 L. T. N. S. 549	24, 31, 42, 159, 215, 224
Rawes <i>v.</i> Chance [1890] 7 R. P. C. 275	415, 418, 422, 619
Read <i>v.</i> Andrew [1885] 2 R. P. C. 119	373
Redge <i>v.</i> Mulliner [1892] 10 R. P. C. 21	303
Redmund's Patent [1828] 5 Russ. 44	214
Reece's Patent [1881] Lawson, 83, 259	503, 720
R. <i>v.</i> Arkwright [1875] 1 Web. P. C. 64	40, 67, 163, 178, 485, 558, 559
R. <i>v.</i> Betts [1850] 15 Q. B. 540; 19 L. J. Q. B. 531	489
R. <i>v.</i> Bushopp [1600] Co. Rep. Pt. I. 40	270
R. <i>v.</i> Butler, 3 Lev. 220, 221	484
R. <i>v.</i> Bishop of Chester, 2 Salk. 560; 5 Mod. 297; Show. P. C. 212	673
R. <i>v.</i> Capper [1817] 5 Price, 217; 1 Co. R. 46 a, 46 b	274
Reg. <i>v.</i> Crampton [1886] 3 R. P. C. 367	544, 582, 656
R. <i>v.</i> Cutler [1816] 1 Web. P. C. 76	485, 486
Peg. <i>v.</i> Cutler [1847—1849] Macr. P. C. 124; 3 C. & K. 215; 14 Q. B. 372 n.	43, 87, 187, 188
Reg. <i>v.</i> Eastern Archipelago Co. [1853] 21 L. T. 35	677
R. <i>v.</i> Else [1785] 1 Web. P. C. 76	184
R. <i>v.</i> Fussell, Webst. Letts. Pat. 80	678
R. <i>v.</i> Halifax County Court Judge [1891] 2 Q. B. 263; 60 L. J. Q. B. 550; 8 R. P. C. 388	270, 370, 448

R.—Rus	PAGE
R. v. Lister [1826] Webst. Letts. Pat. 80	678
R. v. Metcalf [1817] 1 Web. P. C. 141 n.; 2 Stark. R. 249.	139
Reg. v. Mill [1850, 1851] 10 C. B. 379; 20 L. J. C. P. 16; 14 Beav. 315; 1 L. M. & P. 695	215, 400
R. v. Mussary [1738] 1 Web. P. C. 41	274, 434
Reg. v. Neilson [1842] 1 Web. P. C. 665	489
Reg. v. Newall, 1 Web. P. C. 671 n.	489
Reg. v. Wallis [1886] 3 R. P. C. 1	544, 656
Reg. v. Walton [1842] 2 Q. B. 969	401
Reg. v. Wheeler [1819] 2 B. & Ald. 345	19, 25, 138, 178, 485
Reg. v. Wheeler [1850] 10 C. B. 395	215
Reg. v. Wilson [1877] L. R. 3 Q. B. D. 42	538
Renard v. Levinstein [1864, 1865] 10 L. T. N. S. 94, 177; 11 L. T. N. S. 505, 766; 3 N. R. 665; 5 N. R. 301; 13 W. R. 229, 382	102, 105, 363, 371, 372, 411, 417, 420, 422, 619
Rendell's Patent [1894] 11 R. P. C. 277; 70 L. T. 756	487
Richardson v. Castrey [1887] 4 R. P. C. 265	336, 426
Ridgway v. Philip [1834] 1 C. M. & R. 415	298, 305
Rivière Trade Mark, <i>Re</i> [1884—1885] 26 Ch. D. 48; 55 L. J. Ch. 545; 53 L. T. N. S. 237.	316, 318, 646
Robb v. Green [1895] 2 Q. B. 1, 315; 64 L. J. Q. B. 593	282
Roberts' Patent [1839] 1 Web. P. C. 573	516, 519, 520, 603
Roberts v. Heywood [1879] 27 W. R. 454	205
Robinson's Patent, Griffin, P. C. 267	628
Roden v. London Small Arms Co. [1876] 46 L. J. Q. B. 213	305
Rollins v. Hinks [1872] L. R. 13 Eq. 355; 41 L. J. Ch. 358	470, 472
Rolls v. Isaacs [1878] W. N. (1878) 37; 51 L. J. Ch. 170; L. R. 19 Ch. D. 268	57, 420
Roper's Patent [1887] 4 R. P. C. 201	515
Rorke v. Dayrell [1791] 4 T. R. 410	5
Rose v. Braby [1894] 11 R. P. C. 198	193
Rothwell's Patent, Griffin, P. C. 320	495
Rothwell v. King [1886, 1887] 3 R. P. C. 379; 4 R. P. C. 76, 397	454
Rothwell v. Macintosh [1894] 11 R. P. C. 274	409
Rowcliffe v. Longford Wire Co. [1887] 4 R. P. C. 281	45
Rowcliffe v. Morris [1886] 3 R. P. C. 17, 145	170, 171, 172, 189, 454
Rubery's Patent [1837] 1 Web. P. C. 649 n. (<i>r</i>)	215
Rushton v. Crawley [1870] L. R. 10 Eq. 522	43, 181, 185, 187
Russell, <i>Re</i> [1857] 30 L. T. 178; 2 De G. & J. 130	253, 262, 278
Russell v. Cowley [1832—1835] 1 Web. P. C. 457, 463, 471; 2 Co. C. C. 59 n.; 1 Carp. P. C. 532, 557; 1 C. M. & R. 864	40, 100, 203, 375, 415
Russell v. Crichton [1837] 1 Web. P. C. 677 n., 15 Dec. Ct. of Sess. 1270	388, 415, 417, 619
Russell v. Hatfield [1885] 2 R. P. C. 144	395, 400
Russell v. Ledsam [1843—1847] 12 L. J. Ex. 439; 14 L. J. Ex. 353; 16 L. J. Ex. 145; 1 H. L. C. 687; 11 M. & W. 647; 14 M. & W. 574; 16 M. & W. 633	123, 276, 330, 400, 401, 403, 409, 505, 507, 523, 524, 525, 584, 615, 676
Rust, Trade Mark, <i>Re</i> [1880] 44 L. T. N. S. 98; 29 W. R. 393	317

Rus—Sho	PAGE
Rustin <i>v.</i> Tobin [1878] 49 L. J. Ch. 262	361
Ryall <i>v.</i> Rowles, 2 W. & T. L. C.	286
Ryland <i>v.</i> Ashby's Bottle Co. [1890] 7 R. P. C. 175	414, 415, 417, 422, 619
Ryland, <i>Re</i> [1888] 5 R. P. C. 665	224, 226, 230, 589, 715
S.	
Sanitas Co. <i>v.</i> Condy [1887] 4 R. P. C. 533	444
Sarazin <i>v.</i> Hamel [1863] 32 Beav. 145	386, 614
Saunders <i>v.</i> Aston [1832] 1 L. J. K. B. 265; 3 B. & Ad. 881; 1 Carp. P. C. 510	168
Savage <i>v.</i> Adam [1895] W. N. 109	467
Savage <i>v.</i> Brindle [1896] 13 R. P. C. 266	331, 364
Savory <i>v.</i> Price [1823] 1 Web. P. C. 83; 1 Ry. & Mo. 3	157, 180
Sayers <i>v.</i> Collyer [1884] 28 Ch. D. 103	380
Saxby's Patent [1870] L. R. 3 P. C. 292; 7 Moo. P. C. N. S. 82	510, 517, 521, 522, 602, 603, 604
Saxby <i>v.</i> Clunes, 43 L. J. Ex. 228	351
Saxby <i>v.</i> Easterbrook [1872] L. R. 7 Ex. 207; 41 L. J. Ex. 113	414 445, 466
Saxby <i>v.</i> Gloucester Waggon Co. [1880—1883] W. N. (1880) 28; L. R. 7 Q. B. D. 305; 50 L. J. Q. B. 577; Griffin, A. P. C. 54	65, 66, 97, 255, 265, 425
Saxby <i>v.</i> Hennett [1873] L. R. 8 Ex. 210	581
Schlumberger's Patent [1853] 9 Moo. P. C. 1	508, 525
Scott and Young, <i>Ex parte</i> [1871] L. R. 6 Ch. 274	271, 581
Seed <i>v.</i> Higgins [1858—1860] 27 L. J. Q. B. 148, 411; 30 L. J. Q. B. 314; 8 H. L. C. 550	197, 208, 215, 335, 343, 347, 428
Sellers <i>v.</i> Dickinson [1850] 20 L. J. Ex. 417; 5 Exch. 312	202, 333, 334
Semet and Solvay's Patent [1895] App. Ca. 78; 64 L. J. Ch. 41; 12 R. P. C. 10	500, 521, 522, 600, 604, 661
Serrell, <i>Re</i> [1889] 6 R. P. C. 101	224, 588
Shallenberger, <i>Re</i> [1889] 6 R. P. C. 550	541, 542, 655
Sharp's Patent, <i>Re</i> [1840] 1 Web. P. C. 641; 10 L. J. Ch. 86	213, 216
Shaw <i>v.</i> Bank of England [1852] 22 L. J. Ex. 26, 210	416
Shaw <i>v.</i> Barton [1895] 12 R. P. C. 282	99
Shaw <i>v.</i> Day [1894] 11 R. P. C. 189	431
Shaw <i>v.</i> Jones [1889] 6 R. P. C. 328	65, 173, 178, 338
Sheehan <i>v.</i> Great Eastern Rail. Co. [1880] L. R. 16 Ch. D. 59; 50 L. J. Ch. 68	278, 287, 359, 362
Sheffield, <i>Ex parte</i> [1872] L. R. 8 Ch. 237; 42 L. J. Ch. 356	246
Shelfer <i>v.</i> City of London Electric Light Co. [1895] 1 Ch. 287; 64 L. J. Ch. 216	416
Sheriff <i>v.</i> Coates [1830] 1 Russ. & My. 159	433
Shillito <i>v.</i> Larmuth [1885] 2 R. P. C. 2	378
Shoe Machinery Co. <i>v.</i> Cutlan [1895] 12 R. P. C. 342, 530; (1896) 1 Ch. 108, 667; 65 L. J. Ch. 44, 314; 13 R. P. C. 141, 345; 73 L. T. 419; 74 L. T. 166; 44 W. R. 92	329, 337, 357, 410, 411, 412, 430, 431, 434, 457, 458, 460, 467, 468, 488, 493, 616, 619

TABLE OF CASES.

li

	PAGE
Sho—Smi	
Shone's Patent [1892] 9 R. P. C. 438	803, 526
Shrewsbury and Talbot Co. v. Morgan [1896] 13 R. P. C. 75	411
Shrewsbury Cab Co. v. Sterckx [1896] 13 R. P. C. 44	50, 51
Siddell's Patent, Griffin, P. C. 320	491
Siddell v. Vickers [1888, 1889] 5 R. P. C. 81, 416; 6 R. P. C. 464, and <i>see</i> Vickers v. Siddell.	
Sidebottom v. Fielden [1891] 8 R. P. C. 266	406, 407, 417
Sielaff, <i>Re</i> [1888] 5 R. P. C. 484	246, 258, 261
Siemens v. Karo [1891] 8 R. P. C. 376	405, 407
Siemens v. Taylor [1892] 9 R. P. C. 393	304
Sillar's Patent [1882] Goodeve, P. C. 581	507, 514, 604
Simister's Patent [1842] 1 Web. P. C. 721; 4 Moo. P. C. 164	514, 516, 604
Simmonds v. Hitchman [1881] Lawson, 174; L. R. 29 Ch. D. 417 n. (ii)	458
Simmons' Patent [1895] 12 R. P. C. 446	487
Simpson v. Holliday [1864—1866] L. R. 1 H. L. 315; 35 L. J. Ch. 811; 13 W. R. 57; 5 N. R. 340; 20 Newt. Lond. Journ. N. S. 108; 12 L. T. N. S. 99	100, 162, 163, 180, 181, 188, 201, 203, 558, 562
Singer v. Stassen [1884] W. Notes, 83; 1 R. P. C. 121, 124	234, 236, 592, 638, 639
Singer Manufacturing Co. v. Wilson [1865] 13 W. R. 560; 5 N. R. 505	415, 416, 619
Skinner v. Shew (or Perry) [1893] 1 Ch. 413; 62 L. J. Ch. 196; 10 R. P. C. 1; (1894) 2 Ch. 581; 64 L. J. Ch. 826; 67 L. T. 696; 11 R. P. C. 406	472, 474, 475, 476, 480, 481, 622, 623, 624, 626
Slack v. Midland Rail. Co. [1880] 16 Ch. D. 8	445
Slazenger v. Feltham [1889] 6 R. P. C. 130	43, 431, 454
Smalt Patents, 1 Web. P. C. 9	9
Smelting Company of Australia v. Inland Revenue [1896] 2 Q. B. 179	293, 308
Smith, <i>In re</i> [1855] Macr. P. C. 232	215, 228, 590
Smith, <i>Re</i> , Griffin, P. C. 268	182
Smith's (Pettit) Patent [1850] 7 Moo. P. C. 133. <i>See</i> Pettit-Smith's Patent.	
Smith's (Wastenev) Patent [1885] 2 R. P. C. 14	524, 594
Smith v. Buller [1874] 10 Eq. 473; 45 L. J. Ch. 880; 31 L. T. N. S. 873; 23 W. R. 332	465
Smith v. Cropper. <i>See</i> Cropper v. Smith.	
Smith v. Davidson [1857] 19 C. B. 691	61, 64
Smith v. Dickenson [1804] 3 B. & P. 630	282
Smith v. Great Western Rail. Co. [1854] 3 W. R. 69; Macr. P. C. 221	418, 619
Smith v. Lang [1890] 7 R. P. C. 148	405, 615
Smith v. London and North Western Rail. Co. [1853] 2 E. & B. 69; Mac. P. C. 188	279, 333, 361, 362, 439
Smith v. London and South Western Rail. Co. [1854] 23 L. J. Ch. 562; Kay, 408	379, 443
Smith v. Neale [1857] 28 L. J. C. P. 143; 2 C. B. N. S. 67	291

	PAGE
Smi—Sud	
Smith <i>v.</i> Scott [1859] 28 L. J. C. P. 325 ; 6 C. B. N. S. 771	291, 376
Smith <i>v.</i> Upton [1843] 6 M. & G. 251	430
Soames' Patent [1843] 1 Web. P. C. 729	73, 504, 511, 513
Société Anonyme de Glaces <i>v.</i> Tilghman's Sand Blast Co. [1883] L. R. 25 Ch. D. 1 ; 53 L. J. Ch. 1	285, 303, 331, 479
Société Anonyme des Verreries de L'Etoile [1893] 10 R. P. C. 441 317, 319	317, 319
Soho Laundry Co. <i>v.</i> Mackie [1893] 10 R. P. C. 68	406, 411, 615
Soltau <i>v.</i> De Held [1851] 2 Sim. N. S. 133	356
Southby's Patent [1891] App. Ca. 432 ; 8 R. P. C. 433	513, 514
Southworth's Patent [1837] 1 Web. P. C. 486	514, 516, 604
Sparrow <i>v.</i> Oxford, &c., Rail. Co. [1851] 9 Hare, 441	355
Speckhart <i>v.</i> Campbell [1884] W. N. 24	369
Spence's Patent [1859] 7 W. R. 157 ; 3 De G. & J. 523	253, 262
Spencer <i>v.</i> Anecoats Vale Rubber Co. [1889] 6 R. P. C. 46	436, 450, 469
Spencer <i>v.</i> Jack [1862—1864] 3 De G. J. & S. 346 ; 11 L. T. N. S. 242	389
Spiel's Patent [1888] 5 R. P. C. 281	252, 256, 574
Spilsbury <i>v.</i> Clough [1842] 2 G. & D. 17 ; 11 L. J. Q. B. 109 ; 1 Web. P. C. 255 ; 2 Q. B. 466	220, 361
Stafford's Patent [1838] 1 Web. P. C. 563	516
Stead's Patent [1846] 2 Web. P. C. 147	529
Stead <i>v.</i> Anderson [1846, 1847] 2 Web. P. C. 147, 151 ; 16 L. J. C. P. 250	59, 67, 322, 388
Stead <i>v.</i> Williams [1843, 1844] 2 Web. P. C. 126, 137 ; 13 L. J. C. P. 218 ; 7 M. & G. 818	59, 67
Steedman <i>v.</i> Marsh [1856] 2 Jur. N. S. 391	553
Steele <i>v.</i> Hutchings [1879] W. N. (1879) 18	436
Steers <i>v.</i> Rogers [1893] App. Ca. 232 ; 62 L. J. Ch. 671 ; 10 R. P. C. 245 ; 63 L. T. 726	272, 277, 278, 284, 287, 289, 359, 551, 643
Stell's Patent [1891] 8 R. P. C. 235	261, 577
Stevens <i>v.</i> Keating [1847, 1848] 2 Web. P. C. 175, 181, 192 ; 19 L. J. Ex. 57	27, 202, 322, 335, 339, 349, 371
Stewart's Application [1896] 13 R. P. C. 627	223, 247, 256, 575, 577
Stewart's Patent [1886] 3 R. P. C. 7	509, 516, 522, 601, 602
Stewart <i>v.</i> Bell's Trustee [1883] 11 Ct. Sess. Cas. 4th Series, 236	200
Stewart <i>v.</i> Casey [1892] 1 Ch. 104 ; 61 L. J. Ch. 61 ; 9 R. P. C. 9	286, 315, 596, 642
Stocker <i>v.</i> Rogers [1843] 1 Car. & K. 99	447, 450
Stoner <i>v.</i> Todd [1876] L. R. 4 Ch. D. 58 ; 46 L. J. Ch. 32	50, 74, 144, 557
Stoney's Patent [1888] 5 R. P. C. 518	512, 515, 522, 523, 605
Stuart's Application [1892] 9 R. P. C. 452	247, 250, 256, 261, 262, 575, 717
Stubbs, <i>Re</i> [1884] Griffin, P. C. 298	250, 256, 258, 574, 576
Sturtz <i>v.</i> De la Rue [1828] 1 Web. P. C. 83 ; 5 Russ. 322	136, 156, 158, 383, 559
Sudbury <i>v.</i> Lee [1894] 11 R. P. C. 58	80, 82, 97, 100

TABLE OF CASES.

liii

Sug—Tie	PAGE
Sugg <i>v.</i> Bray [1884, 1885] 1 R. P. C. 45 ; 2 R. P. C. 223	204, 386, 459, 470, 622
Sugg <i>v.</i> Silber [1874—1877] L. R. 2 Q. B. D. 493, 495 ; 45 L. J. Q. B. 460	412, 616
Swain <i>v.</i> Ayres [1888] 21 Q. B. D. 289	286
Swaine's Patent [1837] 1 Web. P. C. 559	512
Swinborne <i>v.</i> Nelson [1852, 1853] 22 L. J. Ch. 331 ; 16 Beav. 416	419
Sykes <i>v.</i> Howarth [1878] L. R. 12 Ch. D. 826 ; 48 L. J. Ch. 769	330, 364, 435

T.

Talbot's Trade Marks [1894] 63 L. J. Ch. 264	646
Talbot <i>v.</i> La Roche [1854] 15 C. B. 310	339, 349, 394, 395, 397
Tangye <i>v.</i> Stott [1865] 14 W. R. 128, 386	445
Tattersall's Patent [1892] 9 R. P. C. 150	261, 262, 575
Taylor <i>v.</i> Hare [1805] 1 Bos. & P. N. R. 260	376
Teague, <i>Re</i> [1884] Griffin, P. C. 298	260
Templeton <i>v.</i> Macfarlane [1848] 1 H. L. C. 595	46, 103
Tennant's Case [1798] 1 W. P. C. 125 n.	63, 264, 554
Tetley <i>v.</i> Easton [1852—1857] Maer. P. C. 48 ; 23 L. J. Q. B. 77 ; 25 L. J. C. P. 293 ; 18 C. B. 643 ; 2 C. B. N. S. 706 ; 26 L. J. C. P. 269	88, 102, 173, 208, 215, 427
Thierry <i>v.</i> Rickmann [1895] 12 R. P. C. 412, 543 ; Times, 16th Dec., 1896	50, 51, 55, 83, 95, 96, 9.
Thomas' Patent [1892] 9 R. P. C. 367	516, 518, 6.
Thomas <i>v.</i> Foxwell [1858, 1859] 5 Jur. N. S. 37 ; 6 Jur. N. S. 271	185, 205, 208, 333
Thomas <i>v.</i> Hunt [1864] 17 C. B. N. S. 183	285, 301, 331
Thomas <i>v.</i> Welch [1866] L. R. 1 C. P. 192 ; 35 L. J. C. P. 200	151, 152, 215
Thompson <i>v.</i> Hughes [1889] 7 R. P. C. 187	418
Thompson <i>v.</i> James [1863] 32 Beav. 570	43, 90
Thomson <i>v.</i> American Braided Wire Co. [1889] 6 R. P. C. 518	31, 34, 37, 50, 60, 81, 93, 95, 97
Thomson <i>v.</i> Batty [1889] 6 R. P. C. 84	44, 50, 54, 102, 163, 164, 165, 403, 615, 618
Thomson <i>v.</i> Hughes [1890] 7 R. P. C. 71	380, 381
Thomson <i>v.</i> Macdonald [1891] 8 R. P. C. 1	47, 52, 263, 403, 553
Thomson <i>v.</i> Moore [1889] 6 R. P. C. 426 ; 7 R. P. C. 325	345, 435
Thorn <i>v.</i> Worthing Skating Rink Co. [1876] L. R. 6 Ch. D. 415 n.	351, 374
Thornborough and Wilk's Patent [1896] 13 R. P. C. 115	256, 575
Three Towns Banking Co. <i>v.</i> Maddever [1884] L. R. 27 Ch. D. 523	380
Thwaites, <i>Re</i> [1892] 9 R. P. C. 515	251, 574
Ticklepenny <i>v.</i> Army and Navy Co-operative Society [1888] 5 R. P. C. 405	44, 65, 67
Ticket Punch Register Co. <i>v.</i> Colley's Patents [1896] 12 R. P. C. 171	342, 346, 428, 465
Tidey <i>v.</i> Mollett [1864] 33 L. J. C. P. 235	285
Tielens <i>v.</i> Hooper [1850] 5 Ex. 830	307

Til—Uni	PAGE
Tilghman's Patent Sand Blast Co. v. Wright [1884] 1 R. P. C. 103	394, 396, 397
Todd's Application [1892] 9 P. F. C. 487	258, 262, 575, 576
Tolhausen's Patent [1866] 14 W. R. 551	253
Tolson's Patent [1856] 4 W. R. 518; 6 De M. & G. 422	253
Townsend v. Haworth [1875] L. R. 12 Ch. D. 831, n.	330, 351, 435
Tranter, <i>Re</i> [1873] Johns. Pat. Man. 191	590
Travell v. Carteret, 3 Lev. 134	274, 485
Trotman's Patent [1866] L. R. 1 P. C. 118; 3 Moo. P. C. N. S. 488	518, 520, 603, 604
Trotman v. Wood [1864] 16 C. B. N. S. 479	203
Trotter v. Maclean [1879] L. R. 13 Ch. D. 574; 49 L. J. Ch. 256	649
Tulk v. Moxhay, 2 Ph. 774	300
Turner v. Winter [1787] 1 Web. P. C. 77; Dav. P. C. 151; 1 T. R. 602	101, 156, 157, 159, 164, 428, 559
Tweeddale v. Ashworth [1890—1892] 7 R. P. C. 426; 9 R. P. C. 121	340, 452, 461
Tweeddale v. Howard [1896] 13 R. P. C. 522	461
U.	
Ungar v. Sugg [1889] 6 R. P. C. 337; 9 R. P. C. 113	440, 441, 464, 480, 624
Union Electrical Power and Light Co. v. Electrical Power Storage Co. [1888] 5 R. P. C. 329; 38 Ch. D. 325	477, 627
United Horse Shoe and Nail Co. v. Stewart [1885—1888] 2 R. P. C. 122; 3 R. P. C. 139; 4 R. P. C. 130; 5 R. P. C. 260; 13 App. Cas. 401	46, 72, 74, 163, 333, 436, 437, 438, 440, 441, 444, 657
United Horse Shoe and Nail Co. v. Swedish Horse Nail Co. [1889] 6 R. P. C. 1	42, 45, 100, 103, 344
United Telephone Co. v. Bassano [1885, 1886] 2 R. P. C. 70; 3 R. P. C. 295; 31 Ch. D. 630	102, 105, 196, 210, 211, 411, 467
United Telephone Co. v. Dale [1883, 1884] L. R. 25 Ch. D. 778; 53 L. J. Ch. 295	330, 434, 435
United Telephone Co. v. Donohoe [1886] L. R. 31 Ch. D. 399; 55 L. J. Ch. 480; 3 R. P. C. 45	434, 442
United Telephone Co. v. Equitable Telephone Association [1888] 5 R. P. C. 233	379
United Telephone Co. v. Fleming [1886] 3 R. P. C. 268, 282	366, 442, 465
United Telephone Co. v. Harrison [1882, 1883] 21 Ch. D. 720; 51 L. J. Ch. 705	72, 144, 151, 352, 458, 556, 570
United Telephone Co. v. Henry [1885] 2 R. P. C. 11	329, 332
United Telephone Co. v. London and Globe Telephone Co. [1884] 1 R. P. C. 117; L. R. 26 Ch. D. 766; 32 W. R. 870	330, 359, 464
United Telephone Co. v. Mottishead [1886] 3 R. P. C. 213	425
United Telephone Co. v. Nelson [1887] W. N. (1887) 193	329, 333
United Telephone Co. v. Patterson [1889] 6 R. P. C. 140	442, 448, 450, 451, 452, 465
United Telephone Co. v. Sharples [1885] 2 R. C. P. 28; L. R. 29 Ch. D. 164; 54 L. J. Ch. 633	323, 327, 440
United Telephone Co. v. St. George [1886] 3 R. P. C. 33, 321	338, 450
United Telephone Co. v. Tasker [1888, 1889] 5 R. P. C. 628; 6 R. P. C. 38; W. N. (1888) 222	386

TABLE OF CASES.

lv

	PAGE
Uni—War	
United Telephone Co. <i>v.</i> Townshend [1886] 3 R. P. C. 10	450
United Telephone Co. <i>v.</i> Walker [1887] 4 R. P. C. 63; 56 L. T. N. S. 508	436, 437, 438, 440
Universities of Oxford and Cambridge <i>v.</i> Richardson [1806] 6 Ves. 689	356, 370, 373
Unwin <i>v.</i> Heath. <i>See</i> Heath <i>v.</i> Unwin.	
Upmann <i>v.</i> Elkan [1871] L. R. 12 Eq. 146; 7 Ch. 130; 41 L. J. Ch. 246	359, 462
Upmann <i>v.</i> Forester [1883] L. R. 24 Ch. D. 231; 52 L. J. Ch. 946	358, 383, 463, 464
Useful Patents Co. <i>v.</i> Rylands [1885] 2 R. P. C. 255	64, 305

V.

Van de Poele, <i>Re</i> [1890] 7 R. P. C. 69	541, 655, 693
Van Gelder, <i>Re</i> [1889] 6 R. P. C. 22; reported as Simon, <i>Ex parte</i> , 4 Times R. 754	221, 232, 590
Van Gelder [1892] 9 R. P. C. 325	261, 575
Van Gelder <i>v.</i> Sowerby Bridge Flour Society [1890] 7 R. C. P. 41, 208; 44 Ch. D. 374; 59 L. J. Ch. 583	219, 360, 361, 596, 643
Vavasseur <i>v.</i> Krupp [1870] L. R. 9 Ch. D. 351	324, 367, 368, 444
Vickers <i>v.</i> Siddell [1890] 15 App. Cas. 496; 60 L. J. Ch. 105; 63 L. T. N. S. 590; 39 W. R. 385; 5 R. P. C. 96, 430; 39 Ch. D. 92; 7 R. P. C. 292; 9 R. P. C. 152	42, 44, 81, 83, 97, 98, 102, 103, 104, 105, 135, 144, 147, 148, 154, 156, 182, 183, 184, 198, 212, 265, 391, 428, 444, 445, 494, 495, 552, 556, 557, 560, 561, 570, 609, 620
Vidi <i>v.</i> Smith [1854] 23 L. J. Q. B. 342; 3 E. & B. 969	357, 414, 444
Vincent's Patent [1867] L. R. 2 Ch. 341	253, 630
Von Buch, <i>Re</i> [1886] Griffin, A. P. C. 41	249
Von Heyden <i>v.</i> Neustadt [1880] L. R. 14 Ch. D. 230; 50 L. J. Ch. 126	50, 53, 55, 324, 436
Vorwerk <i>v.</i> Evans [1890] 7 R. P. C. 167, 265	31, 32, 34, 52, 212, 460, 465

W.

Walker, <i>Re</i> , Griffin, A. P. C. 22	224
Walker <i>v.</i> Clarke [1887] 4 R. P. C. 111; 56 L. J. Ch. 239	479, 624
Walker <i>v.</i> Congreve [1816] 1 Coop. P. C. 356	679
Walker <i>v.</i> Hydro-Carbon Syndicate [1885] 2 R. P. C. 3; 3 R. P. C. 253	336, 469, 492
Wallace, <i>Re</i> [1889] 6 R. P. C. 134	260
Wallace's Patent, <i>Re</i> [1895] 12 R. P. C. 444	487
Wallington <i>v.</i> Dale [1852] 23 L. J. Ex. 49; 7 Exch. 888	28, 41, 177, 208
Wallis and Ratcliffe, <i>Re</i> [1888] 5 R. P. C. 347	257
Walton <i>v.</i> Bateman [1842] 1 Web. P. C. 613	100, 198, 266, 321, 337, 389, 401, 553
Walton <i>v.</i> Lavater [1860] 29 L. J. C. P. 275; 8 C. B. N. S. 162	278, 279, 284, 322, 323, 361, 362, 444, 643
Walton <i>v.</i> Potter [1841] 11 L. J. C. P. 138; 1 Web. P. C. 585	105, 155, 335, 337, 351, 389, 391
Ward <i>v.</i> Livesey [1888] 5 R. P. C. 102	303

	PAGE
War—Wil	
Warman, <i>Re</i> [1885] Griffin, A. P. C. 43	242
Washburn and Moen Co. v. Cumard Co. [1889] 6 R. P. C. 398	368
Washburn and Moen Co. v. Patterson [1884] 1 R. P. C. 157, 191; 2 R. P. C. 27	51, 444, 466
Wastenev Smith's Patent [1885] 2 R. P. C. 14	524
Watling's Patent, Griffin, P. C. 320	490
Watling v. Stevens [1886] 3 R. P. C. 37, 147	149, 155, 173, 570
Watson v. Holliday [1882, 1883] 20 Ch. D. 780; 52 L. J. Ch. 543; 30 W. R. 747; 31 W. R. 536	444
Webster, <i>Re</i> [1889] 6 R. P. C. 163	257
Wegmann v. Corcoran [1878, 1879] 13 Ch. D. 65; 27 W. R. 357	158, 166, 178, 458, 460, 559
Welch, <i>Re</i> [1884] Griffin, P. C. 300	260, 574
Welch, <i>Re</i> [1889] Goodeve, P. P. 10	241
Welch, <i>Re</i> [1891] 8 R. P. C. 442	261, 577
Wells' Patent. <i>See</i> Westrupp and Gibbins, <i>infra</i> .	
Wenham Co. v. Carpenter [1888] 5 R. P. C. 68	229, 592
Wenham Co. v. May & Co. [1887] 4 R. P. C. 303; [1888] 5 R. P. C. 310	338, 461
Wenham Gas Co. v. Champion Gas Co. [1892] 8 R. P. C. 22, 313; 9 R. P. C. 49	40, 195, 137, 395, 461, 562
Werderman v. Société Générale d'Electricité [1881] L. R. 19 Ch. D. 246	300
Westhead's Patent, cited p. 531.	
Westhead v. Keene [1838] 8 L. J. Ch. 89; 2 Web. P. C. 36 n.; 1 Beav. 287	360, 386
Westinghouse, <i>Re</i> [1885] Griffin, P. C. 315	228
Westinghouse v. L. & Y. Rail. Co. [1884] 1 R. P. C. 98, 229	189, 198, 212, 335, 428, 430, 441, 444, 458
Westinghouse v. Midland Rail. Co. [1883] 48 L. T. N. S. 98, 462	418
Westley, Richards & Co. v. Perkes [1893] 10 R. P. C. 181	52, 64, 75, 427, 458, 461
Westrupp and Gibbins' Patent [1836] 1 Web. P. C. 554	526, 529, 530, 606
Wheatstone v. Wilde [1861] Griffin, P. C. 247	372
White v. Fenn [1867] 15 L. T. N. S. 505; 15 W. R. 348	333
White v. Toms [1867] 37 L. J. Ch. 204	42
Whitehouse's Patent [1830] 1 Web. P. C. 455; 649 n.	215
Whitehouse's Patent [1838] 1 Web. P. C. 476; 2 Moo. P. C. 496	507, <i>See Re Russell</i> , 2 Moo. P. C. 496. 510, 525
Whitton v. Jennings [1860] 1 Dr. & S. 113	383
Wield's Patent [1871] L. R. 4 P. C. 89; 8 Moo. P. C. N. S. 300	517, 520, 526, 527, 606
Willacy's Patent [1888] 5 R. P. C. 690	505, 517, 518, 599, 602
Willeox Sewing Machine Co. v. Wood [1869] 20 L. T. N. S. 10	334
Williams and Robinson's Patent [1896] 13 R. P. C. 550	517
Williams v. Brodie [1785(?)] 1 Web. P. C. 75	168, 558
Williams v. Nash [1859] 28 L. J. Ch. 886; 28 Beav. 93	123, 276, 585
Williams v. Nye [1890] 7 R. P. C. 62	43, 93, 97
Williams v. Robinson [1896] 13 R. P. C. 350	603

TABLE OF CASES.

lvii

Wil—Zou	PAGE
Willoughby <i>v.</i> Taylor [1894] 11 R. P. C. 45	457, 474, 478, 622, 623, 624, 627
Wilson <i>v.</i> Barbour [1888] 5 R. P. C. 245, 675	298, 305, 347
Wilson <i>v.</i> Church Engineering Co. [1885] 2 R. P. C. 175	479
Wilson <i>v.</i> Tindal [1841] 1 Web. P. C. 730 n. (a)	356
Wilson <i>v.</i> Union Oil Mills Co. [1892] 9 R. P. C. 57	48, 101, 102
Winan's Patent [1872] L. R. 4 P. C. 93	639
Winby <i>v.</i> Manchester, &c. Steam Tramway Co. [1889, 1890] 7 R. P. C. 30; 6 R. P. C. 359; 8 R. P. C. 61	50, 66, 263, 338
Winfield & Son <i>v.</i> Snow [1891] 8 R. P. C. 15	77, 78, 460
Winter <i>v.</i> Baybut [1884] 1 R. P. C. 76	234, 236, 592
Wirth's Patent, <i>Re</i> [1879] L. R. 12 Ch. D. 303	268, 269, 550, 555
Wittman <i>v.</i> Oppenheim [1884] 27 Ch. D. 266; 54 L. J. Ch. 56	359, 463, 661
Wood's (Alton) Case, 1 Co. Rep. 27	274
Wood <i>v.</i> Cockerell [1819] 2 Coop. 58 n.	378
Wood <i>v.</i> Zimmer [1815] 1 Web. P. C. 44, 82; 1 Carp. P. C. 290; Holt, N. P. 58	60, 164
Woodcroft's Patent [1841] 1 Web. P. C. 740; 3 Moo. P. C. 171	510, 513, 516, 601
Woodcroft's Patent [1846] 2 Web. P. C. 18	516, 522, 602, 604
Woodward <i>v.</i> Sansum [1886, 1887] 3 R. P. C. 357; 4 R. P. C. 166	143, 150, 151, 466, 556, 570
Wooley <i>v.</i> Broad [1892] 2 A. B. 317; 61 L. J. Q. B. 808; 9 R. P. C. 429	411, 616
Wren <i>v.</i> Weild [1869] L. R. 4 Q. B. 213, 730; 38 L. J. Q. B. 327	470, 478, 622
Wright's Patent [1839] 1 Web. P. C. 575	514
Wright <i>v.</i> Hitchcock [1870] L. R. 5 Ex. 37; 39 L. J. Ex. 97	41, 140, 153, 323, 333, 561
Wyeth <i>v.</i> Stone, 1 Story, 273	185
Wylie and Morton's Application [1896] 13 R. P. C. 97	257, 258, 575

Y.

Yates and Kellett's Patent [1887] L. R. 12 App. Cas. 147; 4 R. P. C. 150	503, 518, 604, 722
York <i>v.</i> Stowers [1883] W. N. (1883) 174	443
Yonatt <i>v.</i> Winyard [1820] 1 J. & W. 394	212
Young's Patent, Lawson, 105	491
Young <i>v.</i> Fernie [1863—1866] 33 L. J. Ch. 192; 10 L. T. N. S. 861; L. R. 1 H. L. 63; 35 L. J. Ch. 523; Pemberton, 236	445
Young <i>v.</i> Hermand Oil Co. [1891] 8 R. P. C. 285; 9 R. P. C. 373	305
Young <i>v.</i> Rosenthal [1884] 1 R. P. C. 29	100, 194, 198, 323, 454, 458, 562

Z.

Zouch and More's (Lord) Case, Godbolt, 416	679
--	-----

ADDENDUM.

Rickmann v. Thierry was reversed in the House of Lords, and is reported in 14 R. P. C. 105. The dicta of the Lord Chancellor fully support the view enunciated at p. 33, that a patent may be granted for a product.

PART I.
PATENT LAW AND PRACTICE.

CHAPTER I.

INTRODUCTION.

THE Sovereign, as the fountain of honour, office, and privilege, the arbiter of trade, and the chief guardian of the common weal, has from time immemorial exercised the prerogative of making grants to subjects. Such grants are in general made by *letters patent* (*littere patentes*), that is, according to Blackstone, "open letters; so called because they are not sealed up, but exposed to open view with the Great Seal pendent (*a*) at the bottom; and are usually addressed by the Sovereign to all the subjects of the realm." Letters patent commence with the formula, "VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: *To all to whom these presents shall come, greeting,*" and then, after such recitals as may be necessary, proceed to grant the privilege which is conferred, "of Our *especial grace*, certain knowledge, and *mere motion.*"

Royal grants.

Among grants which are made by letters patent, we may cite as examples titles of honour, such as peerages and baronetcies; appointments to offices such as those of many of the ministers of the Crown and of the judges of the Superior Courts; special privileges, such as charters of incorporation to bodies of persons (*b*); and, vastly more numerous for many years past than all other grants by letters patent taken together, letters patent to the true and first inventors thereof (*c*) for the monopoly of

Examples
of royal
grants by
letters patent.

(*a*) Patents for inventions are now sealed with the seal of the Patent Office, which is to have the same effect as if the Great Seal of the United Kingdom were appended: Act 1883, sect. 12. Many letters patent for other grants are now sealed with the Wafer Great Seal. See Crown Office Act, 1877, sect. 5, and the orders made pursuant thereto, London Gazettes of March 5th and August 13th, 1878.

(*b*) Charters of incorporation are less freely granted than formerly, because

of the Companies Acts and other statutes, which provide other means for obtaining incorporation.

(*c*) The following is a list of some of the principal grants by letters patent at the present time. Many of them are under the Wafer Great Seal, as provided by the Orders in Council under the Crown Office Act, 1877, see note (*a*), *sup.* Offices in the Herald's College, knights bachelor, the Lord Lieutenant and the Custos Rotulorum of counties, justices of the High Court,

“making, using, exercising, and vending” (*d*) new inventions. It is this last form of royal grant which it is the object of this work to discuss.

Procedure to obtain patents for inventions has diverged.

In consequence of the very numerous grants of patents for inventions, the word “patent” has, in common parlance, come to suggest a patent for an invention only, and it is in this sense that we shall generally use it hereafter (*e*). Patents for inventions have been dealt with by numerous statutes, and the procedure to obtain them has diverged into a channel of its own. With the exception of patents for inventions, the royal grants still made by letters patent pass through a series of formal stages before they receive the Great Seal (*f*). These stages are of very great antiquity, and, though considerably simplified in recent years, are still numerous and technical. The procedure is a simplified form of that which obtained in regard to patents of invention before 1852 (*g*).

Constituent elements of existing law of patents.

In order to understand completely the present position of patent privileges for inventions, it is necessary to consider the limits of the ancient common law prerogative of the Crown with regard to monopolies, under which all patents for inventions are still granted, and then to trace the effect of subsequent statutory enactments.

This ancient common law prerogative, as affected in 1624 by the Statute of Monopolies, and more recently by the Patents Act of 1883, and the amending Acts of 1885, 1886, and 1888, together with the rules of practice made thereunder, and the very numerous decisions of Courts of law upon the construction of these statutes, especially of the Statute of Monopolies, make up the present body of patent law and practice.

Plan of next three chapters.

We propose, in the next chapter, to give an account of monopolies before the Statute of Monopolies, and to deal with the statute itself.

the Queen's counsel, the Crown livings, the Attorney and Solicitor-Generals, annuities to judges of the High Court, Constable of the Tower, Chancellor of the Exchequer, Treasury Commission, Admiralty Commission, charters of incorporation to universities or other learned bodies, and to trading companies, peerages, baronetcies, grants of separate Courts of Quarter Sessions, Commander-in-chief, Queen's printer, Master of the Horse, Keeper of Privy

Seal, Postmaster-General, royal pardons. All these patents are enrolled on the Patent Rolls, which date back for a very long period. They may be seen at the Record Office, or in the case of very recent patents, at the Chancery Enrolment Office.

(*d*) See the words of the patent, p. 667.

(*e*) See also Patents Act, 1883, s. 46.

(*f*) Or the Wafer Great Seal.

(*g*) For which see p. 110.

CHAPTER II.

EARLY HISTORY OF PATENT LAW.

SECT. I.—MONOPOLIES AND THE COMMON LAW.

ALTHOUGH the modern law of patents depends to a very large extent upon the construction and effect of sect. 6 of the Statute of Monopolies, the idea sometimes entertained that patent law commenced with the passing of that statute is recognised by lawyers to be erroneous. The statement that our system of patent law dates from 1624 is about as true as that the feudal system was introduced to England by William the Conqueror. Borrowing an expression of a well-known historian in regard to the latter event, and applying it to the Statute of Monopolies, it may be said that the statute is a turning point and not a fresh starting point in the history of this branch of law.

Patent law did not originate with the Statute of Monopolies.

For the meaning of patentable invention the Patent Act, 1883, sect. 46, refers us back to the Statute of Monopolies, sect. 6. But it will be seen that this section itself is but declaratory of the common law, and was always so intended to be. It follows not only that the question, whether a given invention is patentable or not, will depend to a large extent on the common law, but that to obtain a correct idea of the meaning of sect. 6 of the Statute of Monopolies, the common law as to patents must be known.

Sect. 6 of the Statute of Monopolies is declaratory.

The grant of letters patent conferring a monopoly is a power within the prerogative of the Crown (now, however, regulated as to procedure by the provisions of the Patents Act, 1883). At one time the Crown possessed very many powers which are now exercised by Parliament, and the prerogative may be regarded as such of the original legislative and administrative functions of the Crown as have not been surrendered to or filched by the Great Council of the nation. The regulation of trade was a power to which the Crown clung for some time after the bulk of its former prerogatives had passed away, and as late as the reigns of Edward III. and Richard II. the King claimed and

A Crown prerogative.

The Crown and trade.

Early cases.

exercised the extraordinary powers which were claimed to a certain extent successfully by James I. in *Bates' case*. The right to interfere generally with trade might seem to involve the right to give special privileges to individual traders, and, in fact, *tempo* Edward III. (a), it was judicially said that arts and sciences are greatly favoured in law, and the King, as chief guardian of the common weal, has power and authority by his prerogative to grant many privileges for the sake of the public good, although *primâ facie* they appear to be clearly against common right.

It is also stated that King Edward III., on the representation of some alchemists, granted a commission to two friars and two aldermen to inquire whether a philosopher's stone might be made, and on their reporting that the project was feasible, granted to the two aldermen a patent of privilege, that they and their assignees should have the sole making of the philosopher's stone (b).

Early statutes.

Parliament jealously watched the doings of the Crown in this respect, and on more than one occasion we find statutes passed making for liberty of trade. See (*e.g.*) 9 Edw. III. st. 1, c. 1; 25 Edw. III. st. 4, c. 2; 31 Edw. III. c. 10; 2 Rich. II. st. 1, c. 1; 12 Hen. VII. c. 6.

Prerogative is a part of the Common Law.

A check on the improper granting of monopolies was not imposed by statute alone. These patent grants were made in virtue of the prerogative, but the prerogative itself could be used only in accordance with law and for the general good: "All prerogatives must be for the advantage and good of the people otherwise they ought not to be allowed by law" (c). The prerogative, other than that given by statute, is itself a part of the common law, and cannot be inconsistent with the fundamental rules of the common law (d); the prerogative powers are as capable of ascertainment and definition by the Courts as any other part of the unwritten law of the land (e).

This is expressed thus by Lord Kenyon: "The prerogatives of the King are not given for the personal advantage of the King,

(a) Year Book, Part iv., 40 Edw. III., fol. 17, 18.

(b) Moore, 675; *Darcy v. Allin*. Mr. E. W. Hulme states that the alchemical commission was of the time of Hen. VI. and not of Edw. III., as stated in the authorities. See an excellent paper in 12 Law Quarterly Review, p. 141.

(c) Bacon Abridg. Prerog., p. 33 (ed. 1832).

(d) Viner, Prerog. c. 8.

(e) This is not quite in accordance with Blackstone's view of "prerogative," which he refers to as being "out of the ordinary course of the common law." But see Anson on The Crown, Chapter I., sect. 1.

but they are allowed to exist because they are beneficial to the subject. They are therefore to be guarded on account of the public; they are not to be extended farther than the laws and constitution of the country have allowed them; but within these bounds they are entitled to every protection" (*f*).

One important common law principle is that contracts or grants in restraint of trade, if contrary to the public advantage, are invalid. This rule is familiar in its application to the general law of contract. It is equally applicable to grants: "And indeed the freedom of trade and labour is of such consequence, that as no person can by his own act totally deliver himself of this privilege, much less can he be restrained by the King's letters patent" (*g*). It seemed clear, then, that whilst the King could at common law grant monopolies, he must exercise his power for the general good, and therefore could make grant of monopolies only when the good to be obtained from them overbalanced the evil arising from a restraint of trade.

Monopolies in practice fell into one of two classes: (1) such as were granted in return for the introduction or invention of a new trade or new article (*h*); (2) and such as were granted in restraint of trade in articles and arts already known. The former class (provided that the monopoly was granted only for a limited time) was defensible as an encouragement and reward for ingenuity, work, or expense incurred producing an addition to the material wealth of the nation. The latter was an unalloyed evil, contrary to the common law, and not worthy of being made an exception to the rule that a grant in restraint of trade is invalid.

The use made by the Crown of its powers shows a corresponding division. Whilst, on the one hand, those who improved trade by the invention or introduction of something beneficial were granted monopolies; on the other hand courtiers, those attached to the Crown service, and those willing to replenish the

Grants in restraint of trade are bad.

In practice two classes of monopolies were known.

(*f*) *Rorke v. Dayrell*, 1791, 4 T. R. at p. 410. A comparison of the history of the King's claim to grant monopolies and of his claim to the dispensing power would not be altogether fanciful. The common law recognised to some extent the King's right to both, and his right to both eventually was much modified in consequence of abuses.

(*g*) Bacon Abridg. Prerog., F. 4; see

also Chitty on the Prerogative, 177.

(*h*) At one time the monopolies were probably rewards for introducing from abroad new manufactures at the request of the King; later they were granted as rewards at the prayer of the importer or inventor. See an article in the Law Quarterly Review, April, 1896, by E. W. Hulme.

royal treasury, received grants of an objectionable nature. These latter were a source of annoyance, which in the years of Queen Elizabeth caused the historical skirmish between that monarch and the Commons. Such monopolies from time immemorial have been considered illegal. In fact, to apply for them was held to be an offence at common law (*i*) of a nature similar to that of engrossing (*k*), though Hawkins says he cannot find a modern instance in which any such application has been punished as a crime (*l*).

Remedy of
illegal mono-
polies.

As in theory the King can do no wrong, and as in fact there is no easy practicable way of attacking him if he should transgress by the grant of illegal monopolies, the method adopted to meet the evil was to revoke the grant on the pretence that the Crown had been deceived. (See 5 Co. 94a, and for a modern illustration, *Eastern Archipelago v. Reg.* (*m*).)

The following cases on patents at common law illustrate the above, and also show what were the requisites of a good monopoly prior to the Statute of James I.

*Pechey's
Case.*
50 Edw. III.

In the reign of Edward III. one Pechey obtained the sole right to import sweet wine into London; at a parliament held 50 Edw. III. this grant was adjudged void; Coke says that Pechey was punished (*n*).

*Hastings'
Case.*

Hastings' Case (*post*, p. 883, cited in Noy's report of *Darcy v. Allin*). A patent was granted to Hastings that in consideration that he brought in the skill of making frisadoes as they were made at Haarlem, being not used in England, he should have the sole trade of the making and selling the same for divers years, and infringers were to be liable to a fine. Hastings proceeded for infringement against certain persons, but was defeated upon the ground that his process was not a novelty in England.

*Matthey's
Case.*

Matthey's Case (*nn*) is also quoted in Noy 178. Here the patent was vitiated because the knives which constituted its subject-matter did not differ appreciably from some in use prior to Matthey's patent. The case is especially good as an illustration, as it was admitted that Matthey had "laboured very greatly" on the work of introducing his knives from abroad.

Humphrey's
patent.

Humphrey's Patent (see Noy's report of *Darcy v. Allin*) was

(i) Coke, 3 Inst. c. 85.

(k) Hawkins C. C., Bk. i. c. 29.

(l) P. 625.

(m) (1853) 2 E. & B. 857; 23 L. J.

Q. B. 82.

(n) 3 Inst. 85.

(nn) Properly *Matthey's Patent*. See

the patent set out, *post*, 885.

for the sole and only use of a sieve or instrument for melting lead. On proceedings for infringement the Court stated that the question was whether it was newly invented by him, "whereby he might have the sole privilege, or else used before at Mendiff, in the west country, which if it were there before used, then the Court were of opinion that he should not have the sole use thereof."

The Case of Monopolies—Darcy v. Allin (a) is the great authority relative to common law patents. The grant was for a monopoly of making and selling playing cards for a period of twelve years, extended to a further period of twenty-one years after the expiration of the original term. The patent stated that "the Queen, perceiving that divers subjects of able bodies, who might go to plough, did employ themselves in the art of making cards," did grant the monopoly. The Court held the grant to be bad as (i) "that it is a monopoly and against the common law," and (ii) that it is against divers Acts of Parliament (*e.g.* 9 Edw. III. c. 1 and 2). The Queen was deceived; she thought the grant would be for the public good; in fact, it was lost. Thus was it stated.

The Case of
Monopolies,
Darcy v.
Allin.

In Coke's report we read: "There are three inseparable incidents to every monopoly against the commonwealth; the price of the same commodity will be raised, for he who has the sole selling of any commodity may and will make the price as he pleases: that after the monopoly granted the commodity is not so good and merchantable as it was before, for the patentee, having the sole trade, regards only his private benefit and not the commonwealth; that it tends to the impoverishment of divers artificers and others, who before by the labour of their hands in their art or trade, had maintained themselves and their families, who now will of necessity be restrained to live in idleness and beggary" (p).

That the "monopoly" struck at in *Darcy v. Allin* was of the general kind, and not one limited to a new invention produced or imported by the monopolist, is evident from the above. But during the time of Coke the term "monopoly" was almost always used in the obnoxious sense. In Noy's report, however, appears this very important passage:—

"Now therefore I will show you how the Judges have heretofore

(a) 44 Eliz.; 11 Co. Rep. 81; Noy

(Jac. I.) illustrates the truth of these statements.

(b) The history of the glass patents

Requisites of a good patent at common law.

allowed of monopoly patents; which is that where any man by his own charge and industry, or by his own wit or invention, doth bring any new trade into the realm, or any engine tending to the furtherance of a trade that was never used before, and that for the good of the realm, that in such cases the King may grant to him a monopoly patent, for some reasonable time, until the subjects may learn the same, in consideration of the good that he doth bring by his invention to the commonwealth, otherwise not."

Monopolies not always illegal at common law.

These cases are important, as they show conclusively that a grant of monopoly was not always illegal at common law. The decisions just cited are in each case against the validity of the particular grant in question, but in none was it said that monopolies were invariably invalid (*q*). Expressions are sometimes used which will convey this idea. Thus Coke says that monopolies are void as against the common law of the kingdom; but he defines a monopoly to be "An institution, or allowance by the King by his grant, commission, or otherwise to any person or persons, bodies politique or corporate, of and for the sole buying, selling, making, working or using any thing, whereby any person or persons, bodies politique or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade" (3 Inst. c. 85). This definition—which is followed by Hawkins and Blackstone—refers only to the class of monopoly which interfered with trades already known, and does not comprise those granted as an encouragement to inventors and importers of new things from abroad (*r*).

Illegal monopolies.

Summary in Bacon's Abridg.

The law is thus summed up in Bacon Abridg. Prerog., F. 4: "The King's grant of a monopoly as of the sole buying, selling, working, making, or using of any commodity is not only void of the common law, but the persons procuring such grants are said to be punished by fine and imprisonment. . . . But notwithstanding this, it is agreed, that the King may for a reasonable time grant to a person the sole use of any art invented by him; and this it seems the King might do at common law, and is therefore a matter excepted out of the Statute of Monopolies, 21 Jac. I. c. 3." (See also Chitty on the Prerogative, 177.)

(*q*) *Case of the Clothworkers of Ipswich* (1615), God. 252; Rol. 4; *Mitchell v. Reynolds* (1713), 10 Mod. 130.

(*r*) The definition given by Comyns

is more comprehensive: "A monopoly is when the sale of any merchandise or commodity is restrained to one or a certain number" (Digest, Trade D. 4).

If contrary to this, it is stated by any authority that monopolies are always void as against the common law, the term "monopoly" must, in such statement, be taken in the limited sense it acquired during the struggle against illegal monopolies in the time of Elizabeth and James I.

From the *Case of Monopolies* (Noy 178) may be deduced the requisites of a good patent at common law. They are these:—

- (1) It must not extend to the sole right to sell articles in common use, nor to the exercise of a known occupation.
- (2) It is necessary that the grantee should be at least the introducer of the invention within the realm.
- (3) The term must be for some limited period, such as might be sufficient for the instruction of others. In the glass patent cases (*infra*) Coke stated that twenty-one years was too long.
- (4) The subject-matter must be such as, in the result, led to a new trade, or manufacture, or engine tending to the furtherance of a new trade.
- (5) The subject-matter must possess the incident of novelty within the realm.
- (6) The patent must not be prejudicial to the community; this involved that it must have the incident of utility.

Summary of requisites of a good patent.

No specification was required, but a clause in the letters patent was sometimes inserted requiring the patentee to take apprentices and teach them the new trade.

These requisites may usefully be compared with the requirements of sect. 6 of the Statute of Monopolies. This fixed the time during which the monopoly should last at fourteen years; in other respects it is obvious that the section was intended merely to reproduce and not to do away with the common law.

Some important patents granted before 1624 are to be found set out at length in Webster's Patent Cases—viz., the smalt patents, p. 9; the iron patent, p. 14; and the glass patents, p. 17.

Old patents.

The smalt patents were three in number and were granted in 1606, 1609, and 1618. Though they all refer to the same subject-matter the times limited were twenty-one years, thirty-one years, and thirty-one years respectively. The patent recites that the smalt had never before been made in England, and provided that if the grant should be prejudicial to the commonwealth it should be revoked. In fact, the first grant was revoked and the grant of

The smalt patents.

1610 made in its place, though whether for the benefit of the community may be open to doubt. But it will be observed that the Crown recognised novelty as a requisite of a patent, and granted the monopoly only for a limited time. It is also worthy of note that though monopolies were the subject of parliamentary attention, no point against the Crown seems to have been made with regard to this patent.

The iron patent.

The *Iron Patent* was granted to Lord Dudley in 1622. It recites the novelty of the invention, its utility, and the advisability of encouraging inventors. It was expressed to be for fourteen years, unless revoked within that time as being inconvenient to the commonwealth; and it was provided that this patent should not be in derogation of any former grant relating to the making of iron or iron works. This is a very fair specimen of a good patent granted according to the rules of common law.

The glass patents.

Mansell's Glass Patents were the subject of much complaint in the House of Commons. Their effect was to raise the price of glass, and to lower the quality. (See report of Sir Edward Coke quoted 1 Web. P. C. 27.) The result of the agitation was a new patent, which recited that the former patents had become void in law as being hurtful to the commonwealth, revoked them, and granted a monopoly for fifteen years, with important modifications in favour of freedom of trade.

But though the glass patents were attacked it was not suggested that the power to grant monopolies of a proper kind did not reside in the Crown. In fact, when the patent was modified it was allowed to be good, and in the Statute of Monopolies it is expressly declared that this patent as well as those dealing with smalt and the Dudley iron process should not be prejudiced by any of the provisions of that Act. (See sects. 13 and 14.)

Effect of the Statute of Monopolies.

In the result the law as declared by statute and the common law are the same. A patent valid at common law will not be affected by the statute; a patent invalid by the common law will be invalid under the statute. A change of expression of no real importance is really the sole new result effected by the statute. Before 1624 monopolies fell into two classes; those in the one class were void, those in the other were valid. The statute makes *all* monopolies void, but declares the latter class an exception to the rule. Hereafter we shall hear little of the word "monopoly" as applied to valid grants; the words "patent" or

“patent for invention” will take its place. But in dealing with the subject-matter of patent rights, the Statute of Monopolies must be read in aid of the common law as understood at the date of the passing of the statute.

SECT. II.—THE STATUTE OF MONOPOLIES.

Under Elizabeth and James I. the abuses of the power of granting monopolies aroused the attention of the House of Commons, and in the time of Elizabeth (s) a petition was presented complaining of the patents, but she still persisted in defending the monopolists. Accordingly, a Bill was introduced into the Lower House, abolishing all the obnoxious grants. A memorable debate took place. Eventually the Queen sent for the Speaker, and advised him to acquaint the House that she would immediately cancel the most grievous of these patents (1). The following extract from the Queen's answer shows how clearly she understood the limits to her prerogative: “I never 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 the grants should be grievous to the people, and oppressions, &c., be privileged under

Protests
against
monopolies,
tempo Eliza-
beth.

(1) A passage from Hume (386) shows the condition of affairs under Elizabeth. He says: “It is astonishing to consider the number and importance of those commodities which were thus assigned over to patentees. Currants, salt, iron, powder, cards, calf-skin, pouldavies, ox-shin bones, train oil, lists of cloth, potashes, aniseeds, vinegar, sea coals, steel, aqua vitæ, brushes, pots, bottles, saltpetre, lead, accidences, oil, calamine stone, oil of blubber, glasses, paper, starch, tin, sulphur, new drapery, dried pilchards, transportation of iron ordnance, of beer, of horn, of leather; importation of Spanish wool, of Irish yarn. These are but a part of the commodities which had been appropriated to monopolists. When this list was read in the House, a member cried, ‘Is not bread in the number?’ ‘Bread!’ said every one with astonishment. ‘Yes; I assure you,’ replied he, ‘if affairs go on at this rate, we shall have bread reduced to a monopoly

before next Parliament.’ These monopolists were so exorbitant in their demands, that in some places they raised the price of salt from sixteen pence a bushel to fourteen or fifteen shillings. . . . The patentees of saltpetre, having power of entering every house, and of committing what havoc they pleased in stables, cellars, or wheresoever they suspected saltpetre might be gathered, commonly extorted money from those who desired to free themselves from their damage or trouble; and while all domestic intercourse was thus restrained, lest any scope should remain for industry, almost every species of foreign commerce was confined to exclusive companies, who bought and sold at any price they themselves thought proper to offer and enact.”

(t) See Hume, 386. Also Cecil's speech, *Parl. Hist.* 1601, i. 934; Lord John Russell's *History of English Government*, p. 477.

colour of our patents, our kingly dignity shall not suffer it: and when I heard of it I could give no rest to the thoughts till I had reformed it" (*u*).

Accession
of James I.

Matters did not improve on the accession of James I. (*x*). The manufacture of alum had been introduced into England from abroad, and exercised without much success till about 1600, when Sir Thomas Chaloner discovered a mine in Yorkshire, and the art was brought to perfection by Sir John Bouchier. The importation of alum was prohibited by proclamation; the King took the whole trade into his own hands, and made it the subject of letters patent (1608) (*y*).

Alum patents.

Book
published by
James I.

Other monopolies were granted, and Parliament again protested against the abuse of the royal prerogative. In 1610 the King published a book (*z*), in which he declared that monopolies were things against the laws of the realm, and (as if to fortify himself against cupidity) expressly commanded that no suitor should presume to move him to any grant thereof.

Gold and
silver lace
patents.

The grants, however, continued. The case of Mompesson and Mitchell is the most flagrant instance. According to Rapin, a patent was granted to Sir Giles Mompesson and Sir Francis Mitchell for the sole making and selling of gold and silver lace. The patentees grossly abused their privilege, making sophisticated lace of copper and base materials, and procuring others (who made good lace) to be fined and imprisoned for infringing their patent. Great complaints were made to Parliament; and in consequence Mitchell was imprisoned, but Mompesson escaped, and a proclamation was issued, offering a reward for his apprehension. The King stated that he was ignorant of the abuse of his patent, and by royal proclamation he revoked it (*a*).

In 1624 (*b*) advantage was taken of the good feeling then

(*u*) Cobbet's Parl. Hist. of England, i. 923. But it seems the Queen did not revoke all the monopolies complained against: Rymer, xvi. 540; Carte, iii. 702; Lodge, iii. 159; Hallam, Const. Hist., i. 357, n.

(*x*) However, Professor S. R. Gardiner (History of England from 1603—1642, vol. iv. p. 1 *et seq.*) says that many of the monopolies and grants which were complained of under James I. were quite defensible in principle, and that the chief public grievances arose from the abuse of their privileges by the patentees, and

the difficulty or impossibility of obtaining redress.

(*y*) Parl. Rep., &c. 1829, Appendix, 167. See Statute of Monopolies, sect. 11, *infra*, p. 751.

(*z*) 11 Co. Rep. 88 (*b*). Coke says that the judgment given in *Darcy v. Allin* was the principal motive of the publishing of the King's book.

(*a*) Parl. Rep. 1829, p. 167.

(*b*) According to the law as it then stood, every Act related back to the first day of the session, unless otherwise provided. Hence the Statute of Monopolies passed in 1624 dates back to 1623.

existing between James and his Parliament (c), and of the declaration to which he had committed himself in 1610 (d), to secure the enactment of the Statute of Monopolies (21 Jac. I. c. 3) (e).

The Statute of Monopolies.

This famous statute (e) deserves somewhat minute consideration. After reciting the King's gracious declaration against grants of monopolies in 1610, and that "yet, nevertheless, upon misinformations and untrue pretences of public good, many such grants have been unduly obtained and unlawfully put in execution," the Act declares and enacts, that "all monopolies and all commissions, grants, licences, charters, and letters patent heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of anything 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 anything 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 forfeiture 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 nowise to be put in use or execution."

The monopolies against which this Act was directed are those referred to *ante*, p. 8, and defined by Coke as being against the common law and the commonwealth, *i.e.*, unlawful monopolies. In prohibiting all such grants of monopolies, the statute was

Monopolies against which the Act was directed.

(c) Web. Let. Pat. 7.

(d) Coke, 3 Inst. 182.

(e) See Appendix, p. 745, where the

whole statute is given. The repealed sections are printed in smaller type.

merely declaratory of the common law, already clearly established by the decisions in *Pechey's case* (*f*), in *Hasting's case* (*g*), and in *Darcy v. Allin* (*h*).

Sect. 3 enacted that all persons, "bodies politic and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and incapable to have (*i.e.*, to take) (*i*), exercise, or put in use any monopoly, or any such commission, grant, licence, charter, letters patent, 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."

Sect. 2.

Validity of grants to be tried at common law.

The Statute of Monopolies further provided that the force and validity of disputed grants should be examined and determined according to the common law, in the Courts of common law, and not at the Council Table, Star Chamber, Chancery, Exchequer Chamber, or any other Court of like nature. The necessity for this provision is well explained by Lord Coke: "Such boldness," he observes, "the monopolists took, that often at the Council Table, Star Chamber, Chancery, and Exchequer Chamber, petitions, informations, and bills were preferred, pretending a contempt for not obeying the commandments and clauses of the said grant of monopolies, and of the proclamation concerning the same" (*k*). The Court of Star Chamber also had considered all infringements of patents and grants of the Crown as contempt of royal authority, and on that principle had supported any patent the Crown thought fit to grant (*l*).

Having laid down a general prohibition of monopolies, the statute proceeds (sects. 5—14) to except certain grants from its operation. As Lord Coke has pointed out (*m*), the word "sole" is applied in sect. 1 to five separate things, "whereof four are special, and the fifth, 'sole using,' is so general that no monopoly can be raised which will be beyond the reach of the statute," and yet for more caution the words "or of any other monopolies" are added. The words also "of anything" in the same section are of so large an extent as to necessitate the provisos contained in the subsequent sections.

Letters patent for inventions depend upon the provisions of

f) 50 Edw. III.; 3 Inst. 181.

g) *Supra*, p. 6.

h) (1602) 11 Co. 84; Noy 178; 1 W. P. C. 1.

i) Coke, 3 Inst. 183.

k) 3 Inst. 182, 183.

l) Web. Let. Pat., p. 42. n. (*y*).

m) 3 Inst. 187.

sect. 6 (n), which expressly enacts that no declaration contained in the statute shall extend "to any letters patent and grants of privilege, for the term of fourteen years or under, thereafter to be made, of the sole working or making of any manner of new manufactures within the realm, to the true and first inventor or inventors, which others at the time of making such letters patent and grants shall not use, so as also they be not contrary to the law, nor mischievous to the State, by raising prices of commodities at home, or to the hurt of trade, or generally inconvenient: the said fourteen years to be accounted from the date of the first letters patent or grants of such privileges thereafter to be made, but that the same shall be of such force as they should be if that Act had never been made, and no other."

Sect. 6.
Proviso in
favour of
inventors.

It is upon the wording of this proviso and the great number of decisions upon its meaning, that patent right in inventions now mainly rests. We shall deal more fully with the interpretation of this proviso in the next chapter. For the present, we may observe that it appears from the language of this section that a valid grant of letters patent must possess seven properties (o):—

The basis of
patent right.

- (1) It must be for a term of fourteen years or under;
- (2) It must be granted to the true and first inventor;
- (3) It must be of such manufactures "which any other, at the time of making such letters patent, did not use; for, albeit, it were newly invented, yet if any other did use it before the making of the letters patent, or grant of the privilege, it is declared and enacted to be void by this Act" (p), *i.e.*, there must be novelty;
- (4) The privilege must not be contrary to law;
- (5) It must not be mischievous to the State, by raising the prices of commodities at home. "In every such new manufacture that deserves a privilege, there must be *urgens necessitas et evidens utilitas*" (q);
- (6) The privilege must not be to the hurt of trade;
- (7) It must not be generally inconvenient.

"If any of these seven qualities fail, the privilege is declared

(o) Section 5 relates to patents granted for periods not exceeding twenty-one years, and in force at the time of the statutes being passed. With these exceptions, the words of sects. 5 and 6 are the same. See Coke, 3 Inst. 181.

(o) The interpretation given to these conditions by subsequent decisions will be considered more fully under the next chapter.

(p) Coke, *ubi supra*.

(q) *Ibid.*

and enacted to be void by this Act: and yet this Act, if they have all these properties, set them in no better case than they were before."

Lord Coke on policy of patent privileges.

"The cause," Coke continues (*r*), "wherefore the privileges of new manufactures, either before this Act granted, or which after this Act should be granted, having these seven properties, were declared to be good, was, for that the reason wherefore such a privilege is good in law is, because the inventor bringeth to and for the commonwealth a new manufacture, by his invention, costs, and charges, and therefore it is reasonable that he should have a privilege for his reward (and the encouragement of others in the like) for a convenient time: but it was thought that the times limited by this Act were too long for the private, before the commonwealth should be partaker thereof, 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 apprenticeship), 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 commonwealth after the privilege ended. And this was the true cause wherefore both for the time passed and the time to come, they were left of such force as they were before the making of this Act."

Lord Coke's objection to term of fourteen years.

Lord Coke's objection to the term of fourteen years as too long rests substantially on the grounds that those who have been apprenticed to learn the trade must continue apprenticed till the end of the term, and that consequently a sufficient number of persons would not devote themselves to the manufacture to supply the wants of the public at the end of the term.

Statute of Monopolies, sects. 7—14.

The terms of the prohibition in the declaratory part of the Statute of Monopolies were so wide that it was deemed necessary to except from their scope various grants and privileges which were not intended to be annulled. This was done by sects. 7—14.

Sect. 7 related to all grants, privileges, or authority made or confirmed by Acts of Parliament, so long as such Acts should continue in force.

Judges.

Sect. 8 excepted all warrants under Privy Seal made by his

(*r*) *Ibid.* 184.

Majesty or his successors to the justices of the Courts of law, or justices of the peace, &c., giving power to hear and determine offences against any penal statute.

Sect. 9 saved the charters of the City of London, and other boroughs and corporate towns, and of corporations of any art, trade or mystery, and of any company of merchants erected for the maintenance of any trade. Corporate privileges.

Sect. 10 saved letters patent concerning printing, digging for and making saltpetre or gunpowder; and casting or making of ordnance, or shot for ordnance; and also letters patent for offices. Saltpetre, &c.

Sect. 11 saved letters patent for digging and making alum, and for alum mines. Alum.

Sect. 12 saved all privileges heretofore enjoyed by the hoastmen of the town of Newcastle-upon-Tyne for selling, carrying, and shipping any pit coals out of the river Tyne. It also saved commissions for the licensing of taverns. Newcastle-on-Tyne, &c.

Sect. 13 excepted letters patent for making of glass, granted to Admiral Sir Robert Mansell, dated 22nd May, in the 21 Jas. I. (s); and other letters patent granted to Jas. Maxwell, Esq., concerning the transportation of calve skins, dated 12th June, in the 13 Jas. I. Mansell's glass patent.

Sect. 14 saved letters patent granted to Abraham Baker, concerning the making of smalt, dated 16th Feb., 16 Jas. I. (t); also letters patent granted to Edward Lord Dudley, concerning the smelting of iron ore, and making the same into cast works or bars, with sea coals, or pit coals, dated 22nd Feb., 19 Jas. I. (u). Baker's smalt patent. Lord Dudley's patent.

(s) Mansell's patent is printed in full in 1 Web. P. C. at p. 17. See observations upon, and proceedings in connection with, this patent in 1 Web. P. C. 3. n. and 32, n. (q). And see *ante*, p. 10. See this patent printed in full, and

observations thereon, in 1 Web. P. C., p. 12, and p. 32, n. (r). And see *ante*, p. 9.

(u) 1 Web. P. C. 14, and p. 33, n. (r); *ante*, p. 10.

CHAPTER III.

SUBJECT-MATTER FOR LETTERS PATENT.

IN order that an invention may be subject for letters patent, it is necessary that it should be (1) a manner of manufacture; (2) new; (3) useful; and (4) more or less ingenious. It is proposed to deal with these matters in the above-named order.

SECT. I.—“ANY MANNER OF MANUFACTURE.”

Meaning of
“manufac-
ture.”

Having regard to the common law,—at which any new art of producing an article of trade or commerce might be made the subject of a patent privilege,—and to the construction warranted by the express language and by the context of the Statute of Monopolies, one would have expected a wide and generous interpretation of the word “manufacture” by the Courts of law. The earliest reported decisions, the dicta of the best institutional writers, the obvious intent of the common law, and the emphasis placed by the Statute of Monopolies upon “the working” as well as upon “the making” of any manner of new manufacture, clearly indicate that the term was meant to be taken in its ordinary double signification of an art, or anything made by art.

Any manner
of “manufac-
ture” has not
the same
meaning as
“invention.”

It is sometimes stated that “any manner of manufacture” is almost synonymous with “invention.” But this is scarcely so. There are many inventions which cannot be covered by the words “any manner of manufacture.” Such, for instance, are the inventions of the mind which find outward expression in literary works, in artistic designs, in pictures and sculpture. They may, perhaps, be protected under other statutes, but the Statute of Monopolies does not deal with them. A new game of cards, a new method of balancing accounts, a mathematical problem and its solution, an improved means of calculation—each of these may be in its way an excellent invention, but the Statute of Monopolies affords no opportunity for granting any special right in relation to any of them.

The subject-matter of a patent is not an invention unless the invention is an art or manufacture. “The arts and manufactures of the country constitute the class of object” (a). It therefore becomes necessary to consider what is a manufacture. In *Hornblower v. Boulton* (b), Lord Kenyon stated that a manufacture is something made by the hands of man. This seems fairly wide, but yet is, perhaps, hardly wide enough to include everything which is accepted as any manner of manufacture within the meaning of the Statute of Monopolies. As will be shown hereafter, a patent may be granted for a process or method. The word “manufacture” may mean the art or practice of making, or it may mean anything made by art (c), and the words “working and making,” which are used with the word “manufacture” in the Statute of Monopolies, show that the meaning of manufacture in that statute includes the former meaning. Lord Kenyon’s definition, therefore, should be extended so as to include not only what is made by the hands of man, but also any method which results in the production of an article made by the hands of man, otherwise it will not include everything which the section of the Statute of Monopolies is intended to embrace.

What is a manufacture?

It is necessary that the invention should result in an article which is industrial and vendible (d). Abbott, C. J., in *Rex v. Wheeler* (e), said: “Now the word ‘manufacture’ 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 (f) 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.”

An industrial article must be the result.

In *Boulton v. Bull* (g), Heath, J., says: “Such manufactures are reducible to two classes. The first class includes machinery,

The subject should be vendible.

(a) Webster on Subject-Matter, p. 8.

(c) (1819) 2 B. & Ald. at p. 349.

(b) (1799) 8 T. R. 99.

(f) There is no doubt now. See

(c) Hindmarch, p. 81.

post, p. 24.

(g) *Boulton v. Bull* (1795), 2 H. Bl.

(g) (1795) 2 H. Bl. 482.

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. . . . 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" (*h*).

It seems consonant both to the intention of the statute and to the wording, that the word "manufacture" should imply something vendible. The object of the statute is to allow grants of monopolies to inventive persons, including importers, whose ability or industry favour the trade of the country; the statute provides that this may be done provided, *inter alia*, that the monopoly does not raise the prices of commodities at home, and is not hurtful to trade.

Patents have been granted where no new thing produced.

There are cases, however, where patents have been granted when no thing is produced, and when the subject-matter is not a process which results in the genesis of a new article. *Hartley's Patent* (*i*) was for the application of plates of metal and wire to buildings and ships, securing the joints by doubling in or otherwise, and so making the buildings or ships fireproof. The patent was mentioned without disapproval by Eyre, C. J., in *Boulton v. Bull* (*k*), and Mr. Webster thinks that the invention was a manufacture (*l*). There seems, however, to be some doubt whether this was indeed a good patent.

In *Forsyth v. Riviere* (*m*) (application of known detonating powder to the discharge of known firearms), and *Electric Telegraph Co. v. Brett* (*n*) (method of giving duplicate signals at intermediate stations), patents were held good though the immediate result of the invention was neither the production of a new thing nor of a process resulting in the production of a thing. Applications of old things to a new use, accompanied by the exercise of inventive power, are often patentable (*o*) though there be no production of a new thing. But in every

(*h*) And see per Tindal, C. J., in *Cornish v. Keene*, 1 W. P. C. 517.

(*i*) See 1 W. P. C. 54 *et seq.*

(*k*) (1795) 2 H. Bl. 463.

(*l*) 1 Pat. Cases, 56, n.

(*m*) (1819) 1 W. P. C. 97.

(*n*) (1851) 20 L. J. C. P. 123; 10 C. 838.

(*o*) See *post*, p. 42.

case the invention must refer to and be applicable to a tangible thing. A disembodied idea is not patentable.

The rule now always followed is laid down thus in *Crane v. Price (p)*,—viz., if the result produced is either a new article or a better article, or a cheaper article than that produced before, the invention is one which may be the subject-matter of a patent.

Rule in *Crane v. Price*.

A patent is not granted for the article itself. The monopoly is for the art of making the thing. Thus, if a patent is granted for the manufacture of a certain kind of chair, the patent does not give an exclusive right to a chair made in accordance with the invention, and no action of detinue would lie for the recovery of any such chairs; the right obtained would be the right to make the chair. And no one would infringe the patent merely by sitting down on the chair (*q*).

Patent not granted for the thing, but for the art.

A mere principle, *e.g.*, an abstract law of nature, a fundamental law of mechanics, chemistry, or any other science, cannot be made the subject of a valid patent grant (1) because such principles are capable of an endless variety of uses and applications, and are the common property of all men; (2) because no primary law of science can, apart from the practical application of it, be capable of producing any vendible article or manufacture, “and, therefore, unless a person who discovers such a principle or law makes some practical use of it, so as to produce some article which the public requires and will purchase, he cannot give the public the consideration which the law requires to be given for the grant of a sole privilege. The object of the law was not to reward mere speculative discovery, but to encourage industry and procure for the public the benefit of new manufactures” (*r*).

Principles.

A principle, however, so far embodied and connected with corporeal substances as to be in a condition to produce effects in any art, trade, mystery, or manual occupation is undoubtedly patentable (*s*). In the case of *Otto v. Linford (t)*, the late Master of the Rolls, Sir George Jessel, put the distinction,

Why not subject-matter of valid patent.

A principle applied can.

q (1842) 1 W. P. C. at p. 409.

r Hindmarch, pp. 92, 93.

s Hindmarch, p. 90.

t *Boulton v. Bull* (1795), 2 H. Bl.

u *Blow v. Boulton* (1799), 8

12 Bl. in which, however, Grose, J.,

has not seem very decided as to the

v *Joy v. Pratt* (1837), 1 Web. P. C.

w *The Househill Co. v. Neilson*

1 Web. P. C. 673, 683; 9 C. & F.

788; *Electric Telegraph Co. v. Brett* (1851), 20 L. J. C. P. 123; 10 C. B. 838; *Crossley v. Potter* (1853), Macrory, P. C. 240; *Dangerfield v. Jones* (1865), per Wood, V.-C., 13 L. T. N. S. 142; *Goddard v. Lyon* (1884), 11 R. P. C. at p. 358.

(*t*) (1881), 46 L. T. 39; cp. *Badische Anilin v. Levinstein* (1885), 2 R. P. C. 91; 24 Ch. Div. at p. 163; 52 L. J. Ch. 704.

which is here referred to, with his accustomed clearness: "If you have a new principle or a new idea as regards any art or manufacture, and then show a mode of carrying that into practice, you may patent that, though you could not patent the idea alone, and very likely could not patent the machine alone, because the machine alone would not be new. One of the strongest illustrations that I know of is the patent for the hot blast in the iron manufacture (*u*), where there was nothing new at all except the idea that the application of hot air instead of cold air to the mixture of iron ore and fuel would produce most remarkable results in the shape of economy in the purchase of iron. The inventor or discoverer could not patent that, but what he did was this: he said, 'I will patent that idea in combination with the mode of carrying it out; that is, I tell you you may heat your air in a closed vessel next your furnace, and then that will effect the object.' It was held that that would do" (*x*).

Minter v. Wells (*y*) is a case in point. This was an action for the infringement of a patent for an improvement in the construction of chairs. The claim was for "the application of a self-adjusting leverage to the back and seat of a chair, whereby the weight on the seat acts as a counterbalance to the pressure against the back of such chair." A rule *nisi* to enter a nonsuit on the ground that the patent was bad as claiming a principle in mechanics, was refused by the Court of Exchequer. "Every invention of this kind," said Lord Lyndhurst, C. B., "must include the application of some principle; and here the application of the principle of the lever to the construction of a reclining chair constitutes the machine, the invention of which the plaintiff claims. He does not, as is asserted, claim the principle in the summing-up of his specification, but he claims the invention of applying that principle in a certain manner and by certain machinery."

"Discoveries."

It is said that a *discovery* cannot be the subject of letters patent (*z*). In this statement "discovery" is used synonymously with "principle." For instance, the persons who "discovered" abstract phenomena of electricity, or magnetism; the expansive

(*u*) The case here referred to is *Neilson v. Harford* (1841), 8 M. & W. 806; 1 W. P. C. 331.

(*x*) (1881) 46 L. T. 39; *cp. Badische Anilin v. Levinstein* (1885), 2 R. P. C. 91; 4 R. P. C. 449; 24 Ch. Div. 156; 29 Ch. Div. 325.

(*y*) (1834) 1 C. M. & R. 505; 1 Web. P. C. 134.

(*z*) See per Lindley, L. J., in *Larz Fox v. Kensington Electric Light Co.* (1892), L. R. 3 Ch. 424; 9 R. P. C. at p. 416.

power of steam; the fact that in the expansion of a gas in the performance of work there is a fall of temperature; or the existence of a metal or a medicinal herb; could not patent these “discoveries,” though any mode of applying them would *cæteris paribus* be patentable. So a discovery that resistance causes light is not good subject-matter; but if the principle be embodied as Edison embodied it in the electric lamp the position is changed.

It has been pointed out that a claim to every method of making an article would amount to a claim for a principle, and would be bad. Assuming that the patent is for a process this would undoubtedly be so. And, it is submitted, the claim for a totally new product might be good, and yet prove no exception to this rule (a).

Patent for every means of producing a thing.

In the case of *Neilson v. Harford* (b) the patent was for a method of applying for iron smelting purposes a hot blast instead of a cold blast to the furnace. In the course of argument counsel said: “We do claim every vessel and every shape of vessel, closed vessel, in which air can be heated between the blowing apparatus and the furnace.” Baron Alderson replied: “Then I think that is a principle, if you claim every shape. . . . If you claim every shape you claim a principle. There is no difference between a principle to be carried into effect in any way you will, and claiming the principle itself” (c).

A recent example of a claim held to be for a principle is to be found in *Patterson v. Gaslight and Coke Co.* (d). The plaintiff claimed, “The employment of sulphide of calcium in separate purifiers as a means of purifying coal gas from sulphur existing in other forms than in that of sulphuretted hydrogen.” The Court of Appeal held this bad, as being nothing but the enunciation of a chemical truth, that pure sulphides will absorb the sulphur compounds.

But though an idea cannot be patented, yet when the apparatus for carrying out the idea is patented the idea itself must be taken into account in considering the validity of the patent (e).

The idea may be an important consideration.

(a) See post, under “Products,” p. 29.

(b) (1841) 1 W. P. C. 295, 331; 8 M. & W. 806; 11 L. J. Ex. 20.

(c) This dictum has been repeatedly acted upon, and has been affirmed by the Court of Appeal in more than one case. See, e.g., *Automatic Weighing Machine Co. v. Knight* (1889), 6 R. P. C. p. 300, and *Nobel's Explosive Co.*

v. Anderson (1894), 11 R. P. C. 519. But *quære* whether the application of it has not been pushed too far. See note in 1 W. P. C. 355.

(d) (1876) 2 Ch. Div. 812; 45 L. J. Ch. 843.

(e) Per Lord Herschell in *Goddard v. Lyon*, 11 R. P. C. at p. 358.

The class of inventions which may be included in the term "any manner of manufacture" can best be illustrated under the following heads: (1) Processes; (2) Products; (3) Combinations; (4) Additions and Improvements; (5) Applications and Analogous User.

(A) *Processes.*

Meaning of the word.

At one time doubtful if a process was patentable.

The modern view.

Another view.

A process consists of operations pursued in regular sequence. It may be mechanical, *e.g.*, printing; or chemical, *e.g.*, soap-making; or both, *e.g.*, paper-making. There was at one time a doubt whether a patent could be obtained for a process. The words of the Statute of Monopolies are: "The sole working or making of any new manner of manufacture." Now this may mean that the substance produced by the act of manufacturing is to be protected, or it may mean that the actual method of manufacturing is the subject-matter of the monopoly, or it may refer to both the one and the other. A patent cannot be granted save for that which produces a vendible article, but the monopoly may relate to the article or to the method of producing the article. In *Ralston v. Smith* (*f*) Lord Westbury said: "By a large interpretation given to the word 'manufacture,' it not only comprehends productions, but it also comprehends the means of producing them. Therefore, in addition to the thing produced, it will comprehend a new machine, or a new combination of machinery. It will comprehend a new process or an improvement of an old process." This states the modern view of the law, which coincides with that held throughout the greater period of time which has elapsed since patents for inventions were first granted.

In *Hornblower v. Boulton* (*g*) Lord Kenyon said that the word "manufacture" meant "something made by the hands of man." If the word be limited to this meaning, a patent for a process would be excluded from the exception to the Statute of Monopolies. It would be possible to have a patent for the result of the process if the result were new, but not for the process itself. Though the decision in the case does not lend countenance to this limited meaning of the word "manufacture," it may be perhaps, that some passages of the judgment delivered do. (See per Grose, J., at pp. 102, 103. See also the curious passage

(*f*) (1865) 11 H. L. C. 223; 35 L. J. C. P. 49.

(*g*) (1799) 8 T. R. 95.

in which Lawrence, J., states that the word "method" may mean "engine" (p. 106.)

In *Rex v. Wheeler* (h) Abbott, C. J. (in a passage already quoted), said: "The word 'manufacture' 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 and more expeditious manner, or of a better and more useful kind."

In *Hill v. Thompson* (i) Lord Eldon used language which though not exactly in point, tends to show that he thought a patent for a process might be valid; in *Gibson v. Brand* (k) Tindal, C. J., whilst inclining (it may be said) to allow that a process could be within sect. 6 of the Statute of Monopolies, refused to decide what he considered to be unnecessary to put an end to the litigation.

Such would seem to be the authorities upon which it was at one time argued that a process is not a "manner of new manufacture" within the saving clause of the Statute of Monopolies. We may now declare any such argument to be unsound. An examination of the above authorities will show that in no case was there a definite judicial condemnation of process patents. Nothing but implied objections and expressed doubts can be extracted from the judgments.

On the other hand, reason and authority are to be found in favour of the view that the words "any manner of new manufacture" must be interpreted to include processes. The statute provides that a patent for the *working or making* of any manner of new manufacture shall be allowable. These terms are appropriate to both senses of the word "manufacture," to the verb and to the noun.

Reasons for saying that processes are patentable.

(i) (1819) 2 B. & Ald. 345.

(h) (1817) 3 Mer. 622, 626; 1 W. P. C. 235.

(k) 1841) 4 M. & G. 179; 1 W. P. C.

631; 11 L. J. C. P. 177, 179.

Common law
and processes.

Moreover, the section in question merely retained the right of the Crown to grant monopolies of the nature of those permitted at common law (see before). The words of the section therefore may be interpreted in the light of patents for inventions granted about the time of the passing of the statute. Now before the year 1624 we read of patents for processes, some of which were upset, some upheld, but in no case was there any successful objection that the subject-matter was invalid as not being a manufacture. See the case of the knives (Matthey's patent), quoted in Noy's report of *Darcy v. Allin*; the smalt case (3 Jac. I.); the Dudley iron patent (19 Jac. I.); the glass patent (21 Jac. I.). All these were patents for processes. (See *ante*, p. 6.)

In 1777 a patent was granted to one Hartley by a special Act (17 Geo. III. c. 6), but there was a proviso reserving a right of objection if the invention was not a new manufacture within the meaning of the statute of James. The subject-matter of the invention was the application of plates of metal for the prevention of fire. In the next-mentioned case, Eyre, C. J., referring to this patent, treated it as valid, and as being an example of a patentable method or process.

Boulton v. Bull (l) was decided about four years before *Hornblower v. Boulton* referred to above. The actual decision was not satisfactory, as the Court was evenly divided in opinion. But Eyre, C. J., said: "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. . . . 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 expense, and thereof 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."

Hall v. Jarvis (m) was decided in 1822, and the patent was upheld, although the subject-matter of the invention was certainly a process. See also *Morgan v. Seaward* (n).

(l) (1795) 2 H. Bl. 463.
(m) (1822) 1 W. P. C. 100.

(n) (1837) 2 M. & W. 544; 1 W. P. C. 187.

The great case of *Crane v. Price* (o)—the anthracite and hot blast patent—finally settled all doubts as to the validity of a patent for a process. Here the invention, in respect of which a patent was claimed, consisted in the application of anthracite or stone coal combined with a hot air-blast, to the smelting or manufacture of iron from ironstone, mine, or ore. In delivering the judgment of the Court, Tindal, C. J., said: “The question is whether, admitting the use of the hot air-blast to have been known before in the manufacture of iron with bituminous coal, and the use of anthracite or stone coal to have been known before in the manufacture of iron with cold blast, but that the combination of the two together—the hot blast and the anthracite—was not known before in the manufacture of iron,—such a combination can be the subject of a patent. We are of opinion that if the result produced by such a combination is either a new article, or a better article, or a cheaper article to the public, than that produced before by the old method, that such combination is an invention or manufacture intended by the statute, and may well become the subject of a patent.”

Crane v. Price.

Since the time of *Crane v. Price* there has been no serious suggestion that a patent cannot be obtained for a process. On the other hand, many such patents have been upheld. Thus, in *Both v. Kennard* (p), an application was made for a patent for an improvement in the manufacture of gas—viz., for a method of making gas direct from seeds, leaves, nuts, fruits, and other substances containing oil or oily matter, instead of from oils, resins, and gums previously extracted from such substances. The Court held that, assuming the invention to be new, it was a good subject-matter for a patent (q).

Later cases of processes.

In 1847 Pollock, C. B., upheld a patent for a process, but the explanation he gave for so doing is worthy of note. He said, in the case of *Stevens v. Keating* (r): “All patents must be for a manufacture. The real invention may be not so much for the

(o) (1812) 4 M. & G. 580; 1 W. P. C. 53; 12 L. J. C. P. 81. Few cases have had a greater effect on patent law than this. It may be cited as the turning-point in the matter of “analogy cases;” indirectly, perhaps, it has given us the modern rule relating to “want of invention.” It is important in connection with the validity of combination patents, and it establishes the validity of patent for processes.

Nevertheless the correctness of the actual decision has not escaped criticism: see *Murray v. Clayton* (1872), L. R. 7 Ch. 570; *Rushton v. Crawley* (1870), 10 Eq. 522; *Bamlett v. Picksley*, Griff. 40.

(p) (1856) 1 H. & N. 527; 26 L. J. Ex. 23.

(q) Want of novelty, however, was fatal to this patent, 2 H. & N. 54.

(r) 2 W. P. C. at p. 182; 19 L. J. Ex. 57.

thing when produced as for the mode in which it is produced; and its novelty may consist not so much in its existence as a new substance as in its being an old substance, but produced by a different process. In one sense, an old substance produced by a new process is a new manufacture, of that there cannot be a doubt; and therefore, although the language of the Act has been said to apply only to manufactures and not to processes, when you come to examine it, either literally or even strictly, it appears to me the expression 'manufacture' is free from objection, because though an old thing, if made in a new way, the very making of it in a new way makes it a new manufacture."

The decision at which the Chief Baron arrived is that which has always been given save in the earlier years of the present century, but the language used is perhaps hardly bold enough to suit the circumstances. It implies that a process alone is patentable if it results in a thing or substance. But this is not the law. Two examples referred to above will suffice to show this, viz.:-

Is a process not resulting in a thing patentable?

In *Forsyth v. Riviere* (s), the application of a known detonating powder to the discharge of known kinds of firearms, was held to be patentable. Again, the application of plates of metal and wire to the several parts of buildings and ships, so as to prevent the access of fire and the current of air, has been held good subject-matter (t).

In *The Electric Telegraph Co. v. Brett* (u), a method of giving duplicate signals at intermediate stations was declared to be patentable.

See also *Wallington v. Dale* (x). In none of the cases just cited was there any new product.

An omission of a step may make a process patentable.

It should be observed that omission of a step in a process may be good subject-matter for a patent (*Booth v. Kennard* (y)); this follows from the fact that a patent may be granted for an improvement in a process (*Electric Telegraph Co. v. Brett, sup.*), and a combination of processes may be a manufacture within the terms of the Statute of Monopolies (*Booth v. Kennard, sup.*).

Chemical processes.

Chemical processes have been sometimes placed in a position by themselves, and their peculiarities are considered to a certain extent in the case of *Badische Anilin v. Levinstein* (z). There is no doubt but that a chemical process is patentable.

(s) (1819) 1 W. P. C. 97; 1 Carp. 401.
 (t) 1 W. P. C. 54.
 (u) (1851) 10 C. B. 823; 20 L. J. C. P. 123.
 (x) (1852) 7 Ex. 888; 23 L. J. Ex. 49.

(y) (1856) 26 L. J. Ex. 23; 1 H. & N. 527.
 (z) (1883—1889) 24 Ch. Div. 156; 29 Ch. Div. 366; 52 L. J. Ch. 704; and 12 App. Ca. 710.

It seems, then, from the above cases that patents for processes have always been regarded as valid; but that from about the year 1799 to 1840 doubts were expressed as to the correctness of the law. Possibly this doubt was due to the influence of Lord Kenyon, not a judge who favoured patentees (a); but so far as can be gathered from the *reported* cases, even during this period of doubt the general inclination was to support such patents. Summary.

(B) *Products.*

Whether a product can of itself be subject-matter of a patent is a question which cannot yet be confidently answered. There are dicta in recent cases in the Court of Appeal which point to the conclusion that products cannot be patented apart from the method of producing them. One judge has stated that a claim for a product would be bad, another has denied this; others, again, have reserved their opinion. Text writers have hitherto not given any definite opinion. Under these circumstances it is necessary to consider the whole matter *de novo*. Can a product be good subject-matter?

“Product” means “anything that is produced whether as the result of generation, growth, labour, or thought, or by the operation of involuntary causes” (b). Clearly a product is not always patentable. If a product is a manufactured article it should fall within the meaning of the words “any manner of new manufacture,” unless the word “manufacture” is used merely in a verbal sense—viz., “any manner of manufacturing.” But in this sense, subject-matter would be limited to methods or processes, a limitation which it is submitted it is too late to place on the word “manufacture;” indeed it was at one time a matter of doubt whether methods and processes were within sect. 6 of the Statute of Monopolies at all (see *Processes*, ante, p. 24). Such being the case there seems to be nothing in the wording of the statute to exclude such products as fall within the class of things manufactured. To take an example. A celebrated chemist by dint of experimental work produces a new element, thallium, the existence of which he had discovered by means of the spectrum; if this statute is not confined to processes, is not thallium a new manufacture within its meaning? Taking the word “manufacture” in its literal signification, Meaning of “product.”

Examples of products which it is submitted are patentable.

(a) See his remarks in *Hornblower v. Eulton* (1799), 8 T. R. 98.

(b) Webster's Dictionary.

thallium is a manufacture, and would seem to be good subject-matter for letters patent. It may be urged that the chemist does not make thallium; he merely separates it out from its compounds. Assuming this argument to be sound, it would not apply to the manufacture of a new organic compound, say a new chemical dye. This can be made synthetically, and seems in every respect a manufacture.

Assuming, then, that "any manner of new manufacture" is not confined to methods and processes (and it is worthy of note that it was not until the reign of Anne that a specification of the method employed in a new manufacture was required) there seems no reason to exclude products from sect. 6 of the Statute of Monopolies.

Effect of declaring a product to be subject-matter.

The effect of including it, however, must not be overlooked. If a product be subject-matter, it may be claimed separately and the patent right would, in such case, be infringed by anybody who made the product by any method whatsoever. If I make a new thing and claim it as a product, and the claim be good, my neighbour may not make that same thing although there be no similarity between his method and mine. But it is a firm rule of patent law that a discovery or a principle cannot be the subject-matter of a patent, though a principle together with the method of putting it in practice may be. And it may be said (though, we think, incorrectly) that to claim a product simply, without any special claim to a method of putting it in practice, is, in effect, to claim a principle. If this be so, products *per se* are not subject-matter.

A claim for every method of making is a claim for a principle.

In *Neilson v. Harford* (c) counsel said: "We do claim every vessel and every shape of vessel, closed vessels in which air can be heated between the blowing apparatus and the furnace." There said Baron Alderson: "Then I think that is a principle, if you claim every shape. . . . There is no difference between a principle to be carried into effect in any way you will and claiming the principle itself. You must detail some specific mode of doing it." This statement was made in the course of the argument but the law as laid down therein has constantly received approval and is beyond question. It is also unquestionable law that a discovery of a natural law cannot be patented.

From this the deduction is made that a product cannot be

(c) (1841) 1 W. P. C. at p. 355; S. M. & W. 806.

subject-matter apart from the means of making it, because so to hold would be to allow the patenting of a principle. Before stating the reason why this should not be accepted the authorities may be dealt with.

In *Ralston v. Smith* (d) Lord Westbury said that the word "manufacture" would comprehend productions as also the means of producing them. In *Badische Anilin und Soda Fabrik v. Levinstein* (e) Pearson, J., said: "But there is another principle . . . and that is this, that where a patent is taken out for a process for arriving at a known result (I mean a result known before the patent is taken out for the process *simpliciter*), any other person may take out a patent for another process, or may use another process without taking out a patent, without any infringement of the process first taken out. But when a patent is taken out for a new result not known before, and there is one process described in the patent which is effectual for the purpose of arriving at that new result at the time when the patent is taken out, the patentee is entitled to protection against all other processes for the same result, and no person can, without infringing upon his patent, adopt simply a different process for arriving at the same result." The learned judge then refers to *Jupe v. Pratt* (f) and to *Househill Coal Co. v. Neilson* (g). Finally he quotes Lord Westbury's well-known dictum in *Curtis v. Platt* (h),

Dictum of Pearson, J., in the *Badische case*.

In *Vorwerk v. Evans* (i) the question of a product as subject-matter came more directly in discussion. A new waistband was in question. Kekewich, J., said that a claim for the waistband apart from the method of wearing it would make the patent bad. Cotton, L. J. (holding that in fact the waistband was not separately claimed), said: "I decide that, not on the ground that there could not be a patent for a waistband if that was claimed as a new thing, provided that it was new, because it would be going against principle, I think, to say that there could be no claim for such a thing if it were entitled to be protected by a patent." After referring to *Thomson v. American Braided Wire Co.* (k), he continued: "I think it would be contrary to principle, because if there is a new thing produced, and that is useful and complies with other requirements, then, in my

The Court was divided in opinion in *Vorwerk v. Evans*, 1890.

(d) (1865) 35 L. J. C. P. 49; 11 E.L.C. 223.

(e) (1883) 24 Ch. Div. at p. 171; 52 L.J. Ch. 704.

(f) (1836), 1 W. P. C. 145.

(g) (1843) 1 W. P. C. 673.

(h) (1864) Good. P. C. 102; 11 L. T. N. S. 245.

(i) (1890) 7 R. P. C. 265.

(k) (1889) 6 R. P. C. 518.

opinion, there could be a thoroughly good patent taken out for that." Bowen, L. J., added: "It is not necessary to adopt, nor do I adopt the view of Mr. Justice Kekewich, that you cannot have a patent for a new article or for a product independent of the mode by which it is produced. I doubt very much whether that is so, both on the true construction of the Statute of Monopolies, and on authority, if authority were needed." Fry, L. J., expressed no opinion.

So far the cases are all one way. But in the *Automatic Weighing Machine Co. v. Knight (l)*, decided in the year before the case last quoted, the Court held that a claim of every combination of coin-receiving mechanism and weighing mechanism, would be a claim for a principle, and unpatentable. Cotton, L. J., said: "Where there is a principle first applied in a machine capable of carrying it into effect, the Court looks more narrowly at those who carry out the same principle, and say they do it by a different mode, and looks to see whether in effect, although the mode is not exactly the same, it is only a colourable difference." Lindley, L. J., quotes with approval the dictum of Alderson, B., in *Neilson v. Harford (sup.)*. This case may go somewhat against the view that a product may be subject-matter, but the next decision is the most serious one against it.

Nobel Explosive Co. v. Anderson (m) was heard in the Court of Appeal in 1894. Plaintiff claimed the manufacture from "nitro-glycerine and soluble nitro-cellulose of a horny or semi-horny explosive," &c. Defendant made a substance of very similar properties out of nitro-glycerine and insoluble nitro-cellulose. The Court decided that there was no infringement. It could truly be said that even if the plaintiff did claim the product, defendant had not manufactured it, but had made something altogether different; be this as it may, the plaintiff distinctly claimed the substance as made in a particular specified way, and it was on this fact that the decision was based (n). Therefore, but for the dicta of the judges composing the Court, this case would not militate against the view that a product can be patented alone. Lord Esher, however, referring to the passage of the judgment of Pearson, J., in the *Badische case* quoted above, said that the rule laid down there is too large, and equally he condemned Baron

(l) 6 R. P. C. 297.

(m) 11 R. P. C. 519; in the House of Lords, 12 R. P. C. 164.

(n) The same remark applies to *Lancashire Explosive Co. v. Roburite Co.* (1896), see 13 R. P. C. 429.

Alderson's dictum in *Jupe v. Pratt*; but he approves the same Judge's opinion expressed in *Neilson v. Harford*, and adds that, if a new invention (*quere*, does he mean substance?) is claimed, there is no infringement though the same result be produced, unless the defendant has colourably imitated the invention. Kay, L. J., also differs from Pearson. J. J. adopts the language of Cotton, L. J., in the *Automatic case*, above quoted, and adds: "I take the law to be clearly settled that, if the result of the patent is entirely new, and one method of arriving at that result is described on the face of the patent, the patentee cannot say 'that enables me to treat every other method of arriving at that result as an infringement,' but the question is in every case whether the method which he says is an infringement, is so like the method which he has himself described, as to be substantially the same, or in other words, only colourably different." And later on his Lordship says: "When a patentee has invented a new product, or a new result, and describes one mode of making it . . . the Court looks, in a case of that kind, more narrowly at those who carry out the same principle, and see they do it by a different method." The learned Judge then came to a conclusion that defendant, whilst obtaining the same result as the patentee, did so by means of something different to that invented by the patentee; he made a different product (a).

Opinion of
Kay, L. J.

It is noteworthy that special emphasis was laid on the fact that a special method of producing was claimed, a method not infringed by the defendant. Nothing is said which directly contradicts the proposition that a product may be patented. But it must be admitted that the dicta tend to support the proposition that a patent for a new product would not protect the patentee against every mode of making that product, or, in other words, that a product alone cannot be subject-matter of a patent.

Nevertheless it is submitted that a product may be subject-matter of a patent. In the *Automatic case*, the subject-matter was merely a means of putting into practice a principle, and if so, admittedly not patentable; hence the decision and the dictum are both in accordance with received rules. It will also be observed that Cotton, L. J., who delivered the leading judgment, has since expressed a decided

Semble,
A product
may be
patented.

(a) In the House of Lords the point now under consideration was not touched upon.

opinion that a product may be good subject-matter (*Vorwerk v. Evans, supra*). *Nobel's case* is more difficult to deal with. But it is submitted that the dicta, if they amount to a statement, that a product cannot be patented, go too far.

They all rest upon the view enunciated by Alderson, B., that a claim for every method of doing a thing is a claim to a principle. But the claim under consideration in *Neilson v. Harford*, in which case Alderson, B., stated this opinion, was not a claim to a product. Whilst it will be admitted that every means of carrying out a principle cannot be patented, it is a very different thing to say that a product, independently of the way in which it is made, cannot be subject-matter. A claim involving every means of utilising a speculative discovery would be bad, it would amount to a claim for a principle, and a principle is not a manufacture. But a claim to a product, though involving the right to prevent others making the product by any method, is a claim to a manufacture, to an article which the public require and which is vendible, and is not a claim to every method of making that product, and would seem to be good subject-matter for a patent. This is consistent with the statement in *Neilson v. Harford*, and with all the cases and dicta, save perhaps, with the dicta in *Nobel's case*. And inasmuch as those dicta are founded on Baron Alderson's view of the law, they are of less weight so far as they refer to a point not within the ambit of Baron Alderson's remarks. In view of this, and of the opinion of Cotton and Bowen, L. JJs., in *Vorwerk v. Evans*, it is submitted that the law allows a patent for a product which consists of a vendible article (p).

The following case is peculiar and worthy of observation:— In an action for the infringement of a patent for “an improved manufacture of metal plates for sheathing the bottoms of ships,” Tindal, C. J., directed the jury in the following terms: “The plaintiff has by an experiment ascertained that a certain mixture of the alloy of zinc with copper will have the effect of producing a better sheathing, by reason and by means of its oxidating just in sufficient quantity; that is, not too much, so as to wear away and impair the sheathing and render the vessel unsafe, but enough, at the same time, to keep, by its wearing, the bottom of the vessel clean from those impurities which before attached to

(p) See also *Edison v. Holland* (1889), 6 R. P. C. 243, and *Thomson v. American Braided Wire Co.* (1889), 6 R. P. C. 518; *Taffè v. Richardson* (1894), 11 R. P. C. 261.

it. . . . I look upon it that there is as much merit in discovering the hidden and concealed virtue of a compound alloy of metal, as there would be in discovering an unknown quality which a natural earth or stone possessed. We know by the cases that have been determined that where such unknown qualities have from the result of experiments been applied to useful purposes of life, that such application has been considered as the ground, and a proper ground, of a patent; and therefore when I come to that part of the case in which they seek to show this is not so, because these metal plates have been invented before—that is, persons have used them before—in my judgment it will not go far enough, unless there has been some application of them before to this very useful purpose” (q).

(C) *Combinations.*

It may be said generally that every invention is either a combination, or the result of a combination. The term “combination,” therefore, requires definition and analysis before we proceed any further.

Classification of patentable inventions.
Definition of combination.

This word signifies by derivation the putting of two things together, so as to convert a double into a single. Its original meaning has, however, been extended, and it now, in common parlance, imports the putting together, not of two only, but of any number of things, so as to form a single group, and indeed the putting together of any number of groups.

The meaning of “combination” in the law of patents is somewhat narrower. It is not the mere putting things together in the sense of juxtaposition: it includes also connection of some kind, so that the group, in consequence of the connection of its members, has properties or effects different from those possessed by its members separately.

Combinations (omitting processes which have been separately dealt with) may be divided roughly into four classes:—

1. New compounds resulting from the chemical combination of two or more substances, *e.g.*, aniline dyes or nitro-glycerine.
2. New mixtures without actual chemical combination.

“Thus, an alloy of two or more metals producing a compound metal presenting particular qualities may be fairly considered an

Classes of combinations.
New compounds.
New mixtures.

(q) *Muntz v. Foster*, 2 W. P. C. 96 *et seq.*

invention, provided that there is some particular rule as to proportions, temperatures, or modes of fusion, which is not obvious, but must have required experiment and observation for its determination. It would not do for a patentee to say, 'I melt together lead and tin, and so produce pewter, which I claim'; because if lead and tin were put together in a ladle and sufficiently heated, they would melt and mingle independently of any invention whatever. But if a person found that by melting lead and tin together in certain proportions, or by melting them in a particular way, he could produce an alloy having some special character, he might fairly claim that special product" (r).

Mechanical
union of
materials.

3. A mechanical union of two or more particles—*e.g.*, macintosh cloth, made by a film of caoutchouc put on fabric, so as to render it waterproof.

Here not only the special process necessary to effect the union, but it is submitted the product itself, if new and useful, might be claimed.

4. Machines (s).

A combination which is new, useful, and shows a sufficient amount of invention is good subject-matter for a patent although each principle, process, or material part in it is old (t). Such an invention comes under the words of Tindal, C. J., in *Crane v. Price* (u): "We are of opinion that if the result produced by such a combination is either a new article, or a better article, or a cheaper article to the public, than that produced before by the old method, that such combination is an invention or manufacture intended by the statute, and may well become the subject-matter of a patent." Whether the combination in that case was in fact a new manufacture has been doubted, but the principle upon which the decision was formed has not been questioned (x).

The criterion
for a patent-
able combina-
tion given in
Crane v. Price.

(r) Imray on "Combination" (Transactions, I. P. A. i. 135). This is a very interesting paper, from which much useful information may be obtained.

(s) See "On Combinations as Subjects of Patents Claims," by J. Imray, in Transactions, I. P. A., vol. i. p. 135. See also paper on "Patent Claims," by the same writer, in Trans. I. P. A., vol. vi. p. 203; *cp. Clark v. Adie* (1873-75), per James, L. J., L. R. 10 Ch. at p. 676, and *S. C.*, per Lord Cairns, L. C., 2 App. Cas. at p. 326.

(t) *Crane v. Price* (1840-42), per Tindal, C. J., 1 Web. P. C. at p. 406; *Cannington v. Nuttall* (1871), L. R. 5 H. L. 205; 40 L. J. Ch. 731; *Automatic Weighing Machine Co. v. Knight* (1889), 6 R. P. C. 297.

(u) 1 W. P. C. 408; (1892) 1 W. P. C. 393; 4 M. & G. 580; 12 L. J. C. P. 31.

(x) *Murray v. Clayton* (1872), 7 Ch. 570, 584; *Bamlett v. Picksley* (1875), Griff. 40, 43.

Many decisions and dicta could be quoted showing that a combination might be the subject-matter of a patent. In *Boulton v. Bull* (y), Buller, J., said: "Mechanical and chemical discoveries all come within the description of manufactures; and it is no objection to either of them that the articles of which they are composed were known and were in use before, provided the compound article, which is the subject of the invention, is new." In *Huddart v. Grimshaw* (z), Lord Ellenborough said: "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-matter of a patent." In *Brunton v. Hawkes* (a), the Court stated that a machine, each part of which was in use before, but which as a combination was new, is good subject-matter for a patent. And to come to more recent times: in *Lister v. Leather* (b), Lord Campbell, C. J., said: "A patent for a combination is not a claim that each part thereof is new. On the contrary each part may be old, and yet a new and useful combination of such old parts may be valid, as has been often decided." In *Murray v. Clayton* (c), the Court of Appeal decided that where a machine, for which a patent had been granted, was shown to produce work more expeditiously, more economically, and of a better quality than any previous machine, the patent could not be invalidated on the ground that the machine was formed of the mere arrangement of elementary mechanical materials, producing results of the same nature as those previously accomplished by other mechanical arrangements (d).

Cases on combinations on the subject-matter of patents.

Where the use of soap and water in a felting process and the use of rollers were both old, it was decided that a patent for the application of soap and water in combination with rollers was good subject-matter (e).

In another case, a patent was granted for improvements in pavement lights. The inventor used a well-known form of prism to direct the light, and made his pavement light itself in an old way; but it was held that the combination was good subject-matter (f).

The Pavement Light case.

(y) (1795) 2 H. Bl. 463.

(z) (1803) Dav. P. C. 267; 1 W. P. C. 85.

(a) (1821) 4 B. & Ald. 550.

(b) (1858) 8 E. & B. 1004; 27 L. J. Q. B. 295.

(c) (1872) 7 Ch. 570.

(d) Cf. *Hill v. Thompson* (1817), 1 W. P. C. at p. 237; 3 Mer. 622; *Thomson v. American Braided Wire Co.*

(1889), 6 R. P. C. 518, 528. See also *Cornish v. Keene* (1837), 1 W. P. C. at p. 517; 3 Bing. N. C. 570; 16 L. J. C. P. 225; *Hayward v. Hamilton* (1881), Griff. P. C. 115; *Moreley v. Victoria Rubber Co.* (1887), 4 R. P. C. 241.

(e) *Allen v. Rawson* (1845), 1 C. B. 551.

(f) *Hayward v. Hamilton* (1881), Griff. 115.

In *Boyd v. Horrocks (g)*, an invention was held good subject-matter, as being a new method of adapting in a practical and useful form something well known by itself with something equally well known by itself, but so as in the combination to make something new and useful.

A patentable combination must produce a new and useful result.

But a patentee cannot, by merely calling a thing a combination, make it a combination sufficient to be subject-matter. A combination in point of law must be a combination producing a new and useful result (*h*).

(D) *Improvements and Additions.*

Improvements are patentable.

At one time it was doubted whether a patent could be validly granted for an addition or improvement to an already known process, machine, &c. Assuming that the improvement is, in fact, a distinct invention compared with the original one, and is otherwise fit subject-matter for a patent, it seems difficult to see why a good patent for it should not be granted. And inasmuch as nearly every invention is, when carefully looked into, but an improvement upon other things already known, public policy requires that improvements should, as such, be regarded as within the exceptions to the Statute of Monopolies. And such is now the law, notwithstanding a decision quoted with evident approval by no less an authority than Coke.

Decision in *Bircot's case* not followed.

In *Bircot's case (i)* it was resolved, that "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 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" (see Coke, 3 Inst. 184).

Boulton v. Bull.

Whether this decision was right on the facts, we have no materials for judging; but so far as it attempts to lay down a rule, it has been overruled. In 1795, in the case of *Boulton v. Bull (k)*, Buller, J., said: "That a patent for an addition or improvement may be maintained is a point which has never been directly decided, and *Bircot's case* (3 Inst. 184) is an express authority against it, which case was decided in the

(g) (1888) 5 R. P. C. at p. 578. The case was reversed on another ground, 6 R. P. C. 152.

(h) *Bamlett v. Picksley* (1875) Griff. 40, 44. And see *Newsum v. Mann*

(1890), 7 R. P. C. 307.

(i) Ex. Ch. Pasch. 15 Eliz. 3 Inst. 184.

(k) *Boulton v. Bull* (1795), 2 H. Bl. 489.

Exchequer Chamber. What were the particular facts of that case we are not informed, and there seems to me to be more quaintness than solidity in the reason assigned, which is, that it was to put but a new button to an old coat, and it is much easier to add than to invent. If the button were new, I do not feel the weight of the objection that the coat on which the button was to be put was old. But, in truth, arts and sciences at that period were at so low an ebb, in comparison with that point to which they have been since advanced, and the effect and utility of improvement so little known, that I do not think that case ought to preclude the question. In later times, whenever the point has arisen, the inclination of the Court has been in favour of the patent for the improvement, and the parties have acquiesced, where the objection might have been brought directly before the Court. In *Morris v. Branson*, which was tried at the sittings after Easter Term, 1776, the patent was for making eyelet-holes or network in silk, thread, cotton, or worsted; and the defendant objected that it was not a new invention, it being only an addition to the old stocking frame. Lord Mansfield said: 'After one of the former trials on this patent, I received a very sensible letter from one of the gentlemen who was upon the jury, on the subject whether, on principles of public policy, there could be a patent for an addition only. I paid great attention to it, and mentioned it to all the Judges. . . . That objection would go to repeal almost every patent that ever was granted.' There was a verdict for the plaintiff, with 500*l.* damages, and no motion was made in arrest of judgment. Though his lordship did not mention what were the opinions of the Judges, or give any direct opinion himself, yet we may safely collect that he thought, on great consideration, that the patent was good; and the defendant's counsel, though they had made the objection at the trial, did not afterwards persist in it. Since that time it has been the generally received opinion in Westminster Hall that a patent for an addition is good. But then it must be for the addition only, and not for the old machine too."

*Morris v.
Branson.*

In *Hornblower v. Boulton* (*l*), Grose, J., refers to the same subject, and says that "Lord Coke's opinion, therefore, seems to have been formed without due consideration, and modern experience shows that it is not well founded."

(*l*) (1799) 8 T. R. at p. 104.

This view, it may be noted, was foreshadowed by Buller, J. in *The King v. Arkwright* (m). And since the beginning of the present century any doubt as to the validity of patents for new and useful improvements has quite vanished. In *Ex parte Fox* (n), Lord Eldon decided that the fact that the subject-matter was an addition to or improvement of an invention already patented was no ground for refusing a patent for the improvement.

A patent for an improvement is not necessarily in derogation of a prior grant.

It might be argued that, as no patent is valid which is in derogation of a grant already made to another, therefore a patent for an improvement on a prior invention, the patent for which is still in force, must be bad. But this is not so. The second patent is not in derogation of the former one, because as long as the former one subsists, the patentee of the improvement is debarred from using his rights in infringement of the prior patentee's rights. In *Ex parte Fox* (o), Lord Eldon said: "If the petitioners have invented certain improvements upon an engine for which a patent has been granted, and their improvements could not be used without the original engine, at the end of fourteen years the petitioners could make use of a patent taken out upon their improvements; though, before that period expired, they would have no right to make use of the other's substratum" (p).

Amount of improvement necessary.

The amount of improvement is in some respect an important consideration, but a slight improvement may be the subject-matter of a patent. "It is sufficient if it is an improvement at all," said Alderson, B., in *Morgan v. Seaward* (q); but this (in modern times) must be taken the limitation that there must be the requisite amount of ingenuity in the improvement; of course the improvement must have the qualities of novelty and utility.

Omission of a step in a process may bear improvement of a patentable nature.

The omission of a step in a process, or of a portion of a machine, may be a very valuable improvement. In *Russell v. Cowley* (r) the Court of Exchequer decided that an invention to manufacture tubes by welding them without the use of a mandril was sufficiently good subject-matter to enable the patent to be supported. In *Arnold v. Bradbury* (s) Lord Hatherley said that if an inventor "produced a machine, and dispenses

(m) (1785) 1 Web. P. C. at p. 71.

(n) (1812) 1 Ves. & B. 67; 1 W. P. C. 431.

(o) (1812) 1 Ves. & B. 67; 1 W. P. C. 431.

(p) And see per Tindal, C. J., in *Crane v. Price* (1842), 4 M. & G. 580; 12 L. J. C. P. 81; 1 W. P. C. 393; *Fox v. Dellestable* (1866), 15 W. R. 194,

and see also *Wenham Gas Co. v. Champion Gas Co.* (1892), 9 R. P. C. 49, which is to the same effect.

(q) (1836) 1 W. P. C. 170.

(r) (1835) 1 W. P. C. 463; 1 C. M. & R. 864.

(s) (1871) 6 Ch. 706, 714.

with a process which is avowed to be injurious, I cannot, in the absence of evidence, take on myself to say that that would not be subject-matter of a patent." His Lordship meant, in the absence of evidence relating to anticipations (*t*).

Mere change of size may be an improvement entitling the inventor to a patent. Such was the case in *Edison and Swan Co. v. Woodhouse* (*u*), an action for the infringement of patents for improvements in electric lamps and in the method of manufacturing the same, the plaintiffs' second claim was for "the combination of a carbon filament within a receiver made entirely of glass, through which the leading wires pass, and from which receiver the air is exhausted for the purposes set forth." In two prior instances of alleged anticipation, substantially the same instrument had been constructed, the use of a filament of carbon instead of a rod of carbon being the sole change introduced by Mr. Edison. It appeared, however, that this modification was no casual matter, but was intended to bring about, and did bring about, a result which a rod could never produce, viz., high resistance to the electric current combined with great durability. It was held by Fry and Bowen, L. JJ. (Cotton, L. J., on some points, dissenting), that the subject-matter of the plaintiffs' patent was good.

*Edison v.
Woodhouse.*

In *Wright v. Hitchcock* (*x*) an action for the infringement of a patent for improvements in the method of manufacturing frills, ruffles, and such like things, and the machinery or apparatus employed therein, it was proved that until the invention in question had been discovered and had been patented; articles such as frills, ruffs, etc., had been invariably made by hand, the material being folded by a knife and then sewn so as to keep it permanently folded. According to the plaintiff's invention, the fabric was folded by a reciprocating knife, and the folds stitched by the sewing machine, so that they could be kept permanently in their place. The plaintiff's invention was admitted to be novel, and to produce the result more cheaply and conveniently than the method previously known. It was held that the improvement sufficed to make the invention good subject-matter for letters patent.

In *Herrburger v. Squire* (*y*) it was held by Fry, L. J., that the

(*t*) See also *Wallington v. Dale* (1852), 7 Ex. 888; 23 L. J. Ex. 49.

(*u*) (1887) 4 R. P. C. 79, 92. And see *Moss v. Malings* (1886), 3 R. P. C. 373.

(*x*) (1870) L. R. 5 Ex. 37; 39 L. J. Ex. 97.

(*y*) (1889) 6 R. P. C. 194.

mere alteration of the position of the centre of a bent lever is not patentable.

The substitution of a pivot for a hinge in a machine for punching nails is not sufficient to support a patent, *United Horsenail Co. v. Swedish Horsenail Co.* (z).

In the course of the argument, viz., *Vickers v. Siddell* (a), Lord Herschell said that there might be a patent for an improved mechanical equivalent for an old thing.

Cases of
improvements.

Amongst cases in which additions have been supported may be mentioned, *Lister v. Leather* (b) (in the course of which Lord Campbell said that the assertion that all patents for improvements on existing patents must be void, is obviously untenable); *Ralston v. Smith* (c) where it was said that the word "manufacture" comprehends an improvement on an old process; and *Electric Telegraph Co. v. Brett* (d). See also *Foxwell v. Bostock* (e), a leading case on the way to shape a specification of invention relating to an improvement.

(E) *Application of Old Things to New Uses.*

This part of the law is inextricably mixed up with "amount of invention," and is best considered under that head. In *Losh v. Hague* (ee), Lord Abinger said that an application of a well-known thing to an exactly analogous operation was not good subject-matter. The following is the present condition of patent law. The application of an old invention to a new purpose is not patentable unless there is some novelty in the method of using it as distinguished from novelty of purpose (f), unless the new application lies so much out of the track of the former use as not naturally immediately to suggest itself to the mind of a person turning his thoughts to the subject (g). But a patent for a new use of a known contrivance is good, if the discovery of the new use

(z) (1889) 6 R. P. C. 1.

(a) (1890) 7 R. P. C. at p. 303; 15 App. Cas. 496.

(b) (1857) 8 E. & B. 1004.

(c) (1865) 11 H. L. C. 223; 35 L. J. C. P. 49.

(d) (1851) 20 L. J. C. P. 123; 10 C. B. 838.

(e) (1864) 4 De G. J. & S. 298; 12 W. R. 723.

(ee) 1 W. P. C. at p. 208.

(f) *Brook v. Aston* (1859) per Campbell, C. J., 8 E. & B. at p. 485; 27 L. J. Q. B. 145; *Lane-Fox v. Kensington*

and Knightsbridge Electric Lighting Co. (1892), 9 R. P. C. 413, 416; L. R. 3 Ch. 424.

(g) *Penn v. Bibby*, 1866, L. R. 2 Ch. 127, per Lord Chelmsford; 36 L. J. Ch. 455. Cp. *Harwood v. G. N. Ry. Co.* (1860-65), per Cockburn, C. J., 2 B. & S. 208; 29 L. J. Q. B. 193. Where there is merely an improvement in a mode of manufacture, and no invention, that is not a proper subject for a patent: *White v. Toms* (1867), per Malins, V.-C. 37 L. J. Ch. 204.

involves practical difficulties which the patentee has been the first to see and overcome by some ingenuity of his own (*h*).

In *Thompson v. James*, a suit to restrain the infringement of a patent for crinolines, it appeared that the invention consisted merely in the substitution of steel springs for whalebone and other elastic materials; Romilly, M. R., held that there was no subject-matter (*i*).

So, where a patentee claimed the application of either iron or steel tubes—when coated with copper, brass, or other alloys of copper—in the construction of tubular flues for steam boilers, and admitted that the coated tubes mentioned in the specification were not new, nothing more than the mere application of the tubes being claimed; Denman, C. J., held that the patent was invalid (*k*).

Again, *Bush v. Fox* (*l*) was an action for the infringement of a patent for improvements in the means of, and in the apparatus for, building and working under water, the invention consisting in the use of a caisson or hollow cylinder, so constructed that the workpeople might be supplied with compressed air; it was proved that an apparatus described in the specification of a prior patent was the same in all material respects as the plaintiff's, and that the two differed only in their application—the one being for building on land, the other for constructing foundations under water; Pollock, C. B., directed the jury that the alleged invention was not a new manufacture, and this ruling was affirmed in the Exchequer Chamber and in the House of Lords.

In *Harwood v. The Great Northern Railway Co.* (*m*), a patent for the application of "fishes," to connect the rails of railways, was held to be bad, because a similar contrivance had previously been applied to the purpose of connecting and fastening timbers placed vertically upon one another, or placed horizontally side by side. This case is dealt with in detail, *post*, p. 81.

(*h*) Lindley, L. J., in *Gadd v. Mayor of Manchester* (1892), 9 R. P. C. at p. 525; *Lane Fox v. Kensington, &c., Electric Lighting Co.* (*supra*).

(*i*) (1863) 32 Beav. 570; *cp. Parkes v. Sterens* (1869), L. R. 8 Eq. 358; 38 L. J. Ch. 627; affirmed on appeal, L. R. 5 Ch. 36; *Itushton v. Crawley* (1870), L. R. 10 Eq. 522.

(*k*) *Reg. v. Cutler* (1847), 14 Q. B. 372, n.; *Macr. P. C.* 124; *Slazenger v. Feltham* (1889), 6 R. P. C. 130; *Cole v. Saqui* (1889), 6 R. P. C. 41; reversing

decision of Kekewich, J. (1888), 5 R. P. C. 489. Webster styles this a "double use." See *Web. on Subject-matter*, pp. 10, 11.

(*l*) (1852-56) *Macr. P. C.* 164-166, 178; 35 L. J. Ex. 251.

(*m*) (1860) 2 B. & S. 194; 11 H. L. C. 654; 35 L. J. Q. B. 27. *Cp. Losh v. Hague* (1838), 1 Web. P. C. 208; *Kay v. Marshall* (1839-48), 2 Web. P. C. 71-79; *Horton v. Mabon* (1862), 12 C. B. N. S. 437; 16 C. B. N. S. 141; 31 L. J. C. P. 255.

In *Ormson v. Clarke* (*n*), a patent for an improvement in the manufacture of cast tubular boilers was held invalid, under the following circumstances: Tubular boilers, such as those in question, were perfectly well known, and had long been used for the heating of horticultural buildings. The only novelty was the casting in one piece that which used formerly to be cast in several pieces. There was no claim for novelty in the process of casting. In a later case (*o*), it was held that iron and wood having long been used for the construction of the frame and coating of vessels, the application of wooden planking to the iron frame of a vessel without any peculiarity in the nature of that planking could not be the subject of a patent. "It is not only," said Byles, J., "the substitution of one well-known and analogous material for another, that is, wood for iron, to effect the same purpose on an iron vessel, but it is the application of the same old invention, viz., planking with timber, which was formerly done on a wooden frame, to an analogous purpose, or rather the same purpose on an iron frame."

The doctrine that a patent cannot be claimed for applying an old machine to an analogous purpose is not applicable where there is a new machine, although that new machine may contain old and well-known mechanical appliances (*p*). In *Thomson v. Batty* (*q*), it was held that an invention to steady a compass by means of a bowl filled with a viscous fluid, which operated by the friction of the fluid against the sides of the bowl in which the fluid was itself contained, was not anticipated by an invention in which a compass bowl was steadied by being placed in another bowl filled with a viscous fluid, where the steadying effect was produced by the resistance of the fluid to the sides of the compass bowl.

In *Edison and Swan Co. v. Woodhouse* (*r*), an action for the infringement of patents for improvements in electric lamps and in the method of manufacturing the same, the plaintiffs' second

Material
variation of
element of
combination.

(*n*) (1862, 1863) 13 C. B. 339; 14 C. B. N. S. 490; 32 L. J. C. & S. 291. Cp. *Williams v. Nye* (1890), 7 R. P. C. 62.
(*o*) *Jordan v. Moore* (1866), L. R. 1 C. P. 624; 35 L. J. C. P. 268. Cp. *Hill v. Tombs*, Engineer, April 15, 1881, p. 274, cited Johns. Pat. Man. 48; *Calvert v. Ashburn*, Pract. Mech. Jour. Vol. 7, 2nd ser. 971; *ib.* 49; *Hyde v. Trent*, Newt. Lond. Jour. Vol. 45, 135; Johns. Pat. Man. 45; *Oddy v.*

Smith (1888), 5 R. P. C. 503; *Longbottom v. Shaw* (1888), *ib.* 497; 6 R. P. C. 510; 8 R. P. C. 333; L. R. 48 Ch. D. 46; *Tickelpenny v. Army and Navy Co-operative Society* (1888), 5 R. P. C. 405.
(*p*) *Siddell v. Vickers* (1888), 5 R. P. C. 430.

(*q*) (1889) 6 R. P. C. 84.
(*r*) (1887) 4 R. P. C. 79. Cp. *Moss v. Malings* (1886), per North, J., 3 R. P. C. at pp. 378, 379; 33 Ch. Div. 603.

claim was for "the combination of a carbon filament within a receiver made entirely of glass, through which the leading wires pass, and from which receiver the air is exhausted for the purposes set forth." In two prior instances of alleged anticipation, substantially the same instrument had been constructed, the use of a filament of carbon instead of a rod of carbon being the sole change introduced by Mr. Edison. It appeared, however, that this modification was no casual matter, but was intended to bring about, and did bring about, a result which a rod could never produce, viz., high resistance to the electric current with great durability. It was held by Fry and Bowen, L. JJ. (Cotton, L. J., in some respects, dissenting), that the subject-matter of the plaintiffs' patent was good.

In *Rowcliffe v. Longford Wire Co. (s)*, the grantee of a patent for improvements in frames for woven or elastic wire-web mattresses brought an action for infringement. The defendants denied the alleged infringement, and alleged the patent to be invalid, *inter alia*, on the ground of want of subject-matter. The patent claimed a rectangular framework, which was substantially that of the old four-post bedstead, and differed from that only—in not having any legs or posts; in having the transverse sliding piece on the top of the sides instead of in grooves along the sides; and in having the feet and head raised above instead of being flush with the sides. It was held by Kay, J., that the alleged invention was not the subject-matter of a patent.

Immaterial variations of element of combination.

The substitution of a pivot for a hinge in a machine for punching nails is not sufficient invention to support a patent (*u*).

SECT. II.—NOVELTY.

1. General.

"The only thing which a patentee gives to the public is a knowledge of his invention, and a patent is, in effect, a bargain between the patentee and the public, in which the public, in consideration of an inventor communicating to them a knowledge of his invention, so that they may afterwards be enabled to practise it, grant to him the sole use of his invention for a limited time. But if an invention is not new, the patentee does not communicate

Novelty of subject-matter.

Consideration grant.

(s) (1887) 4 R. P. C. 281.

(u) *United Horsenail Co. v. Swedish Horsenail Co.* (1889), 6 R. P. C. 1.

anything to the public which they did not know before, and therefore the patentee gives them nothing which can be considered as a consideration for the grant, and therefore the patent is wholly void" (x). This is true whether the patentee believes that his invention is novel or otherwise.

Want of novelty in material part of invention avoids grant.

Want of novelty in any material part of an art or invention renders the patent grant void, even as to those parts of the invention which may be new, and otherwise proper subjects for a patent grant—because the consideration for a patent is entire, and also because in such a case there is a false suggestion or representation appearing on the face of the patent (y).

The law before Statute of Monopolies.

Authority, as well as reason, is clear upon this point. That the grant of a privilege in a known art or trade is illegal, was decided in several cases before the Statute of Monopolies (z), is distinctly recognised by the language of that statute, and has uniformly been held by the Courts of Law ever since.

Degree of novelty.

It is difficult to define the necessary degree of novelty, and it is, of course, impossible to lay down rules which will absolutely and clearly govern every case that may arise. Still, it may be affirmed, with sufficient accuracy for general purposes, that an invention once brought to the knowledge of the public cannot be made the subject of a valid patent grant. "If the public," says Hindmarch (a), in language approved of and adopted by Lord Blackburn (b), "once become possessed of an invention by any means whatever, no subsequent patent can be granted for it, either to the true or first inventor himself, or to any other person; for the public cannot be deprived of the right to use the invention, and a patentee of the invention could not give any consideration to the public for the grant, the public already

General principle.

(x) Hindmarch, pp. 103, 104.

(y) Cp. Hindmarch, p. 115; also *Hill v. Thompson* (1818), 2 B. Moo. 457; 8 Taunt. 401; 1 Web. P. C. 249; *Brunton v. Hawke* (1821), 4 B. & Ald. 541; 1 Carp. P. C. 405; *Lewis v. Marling* (1829), 10 B. & C. 27; 5 M. & R. 70; 4 C. & P. 58; 1 Web. P. C. 497; *Kay v. Marshall* (1839), 2 W. P. C. 39; 7 Scott, 561; *Gibson v. Brand* (1842), 4 M. & G. 179; 4 Scott, N. R. 844; 1 Web. P. C. 631; *Muntz v. Foster* (1844), 2 Web. P. C. 112; *Templeton v. Macfarlane* (1848), 1 H. L. C. 595; *McCormick v. Gray* (1861), 7 H. & N. 25; 31 L. J. Ex. 42; *United Horse Nail Co. v. Stewart* (1885), 2 R. P. C. 132; *Pether v. Shaw*

(1893), 10 R. P. C. 293.

(z) *Hastings' Patent* (1561), Noy, R. 182; 1 Web. P. C. 6; *Matthey's Patent*, Eliz., Noy, R. 178; 1 Web. P. C. 6; *Humphrey's Patent*, Noy, R. 183; 1 Web. P. C. 7; *Darcy v. Allin* (1602), Noy, R. 182; 1 Web. P. C. 6; *Clothworkers of Ipswich case* (1615), Godb. 254; 1 Rol. R. 4.

(a) Page 33.

(b) *Patterson v. The Gas Light and Coke Co.* (1875), 3 App. Cas. at p. 244; 47 L. J. Ch. 402. See *infra*, as to publication at international and industrial exhibitions, 79; also as to applications under International Convention, see p. 533.

possessing everything that he could give." This is true whether the alleged invention has been used in public or not (*c*).

A patent can be granted only to the true and first inventor. But it does not follow that because the true and first inventor applies for a patent, that he will not be met with difficulty in the matter of want of novelty. The two points,—Is the invention new? and, Is the applicant for the patent the first and true inventor?—are not variations of the same issue. A discovery may be new within the meaning of the patent law, yet it may be that the applicant is not the first inventor; or on the other hand the first inventor may have applied for the patent, but the manufacture may have lost its novelty owing to communication of the invention prior to the making an application for a patent (*d*). The claim to be the first and true inventor is not to be attacked under a defence which alleges merely want of novelty (*e*); and the converse holds good. We shall, therefore, not deal in this place with the law relative to the true and first inventor; this will be considered hereafter (*f*).

"True and first invention" not the same in use as "novelty."

There are two main points to consider in connection with novelty—(1) the amount of disclosure which will vitiate an invention claimed to be new; (2) the method of disclosure. Under the former head we must deal with anticipation, and the state of public knowledge at the time of the alleged invention; under the latter head we deal with publication and user.

Division of the subject.

2. Anticipation.

Anticipation, (in the strict sense of the term) and the state of public knowledge, are akin but not identical. An alleged invention which is invalid for want of novelty may be to all intents and purposes the same as one which is already known, in which case the latter is an anticipation of the former. Or it may be that, notwithstanding nothing can be pointed out as an anticipation, the information at the disposal of those familiar with the particular class of manufacture covered by the invention, will suffice to enable them to make the alleged invention without further experiment or guidance; novelty would

(*c*) There is an exception to this in the case of certain foreign inventions introduced in the realm before the application is made for a British patent, see sect. 103, *post*, p. 533.

(*d*) *Cornish v. Keene* (1835), 1 W. P. C. 501, 507.

(*e*) *Thomson v. Macdonald* (1891), 8 R. P. C. 5.

(*f*) *Post*, p. 263.

Old because "anticipated," and old because of the "state of knowledge" to be pleaded separately.

Identity of purpose, the test.

Discovery of an equivalent not known to be such.

Infringement and novelty not to be tried always by the same tests.

in such case be impossible, owing to the state of knowledge. The line is often difficult to draw, and the ground upon which a patent is declared invalid is rendered the more difficult of accurate statement owing to a confusion which, it is suggested, is caused by attempting to differentiate novelty and want of invention (*g*). But anticipation and the state of knowledge must be, as far as possible, kept distinct, and as objections to a patent must be pleaded separately (*h*) and be treated differently in drafting particulars of objections (*i*).

If identity be proved, of course the patent is invalid; nor is it necessary that an anticipation should be exactly similar to the alleged invention in order to invalidate the patent for want of novelty. And in dealing with these matters, identity of name or shape is not of importance; identity of purpose and of the thing itself is alone to be considered (*h*). Where an invention differs from another only in the substitution of a known equivalent, there is no novelty in the latter of the two. The mere substitution of a hinge for a slide would not render the machine with the hinge a novelty (*l*).

But if the equivalent is not known to be an equivalent at the date of the alleged anticipation, the mere fact that the two discoveries differ only in this equivalent will not avoid the novelty of the latter. This is especially to be borne in mind in chemical cases (*m*).

It is said loosely that if an invention would, if used, infringe a former patent, the patent for that invention is bad for want of novelty. This is true to a certain extent, but the statement as it stands is too sweeping (*n*). A patent the use of which is an infringement of a prior patent may itself contain sufficient novelty to be supported. The novelty may be an improvement, but one inseparable in use from the original machine, on which it is an improvement; the novel invention would then be patentable,

(*g*) See the next section, pp. 80 *et seq.*

(*h*) *Phillips v. Ivel Cycle Co., Ltd.* (1890), 7 R. P. C. 77. In this case a sketch almost exactly similar to the machine, the subject-matter of the patent, was referred to as an anticipation, the Judge saying that it would be incorrect to use it as part of public knowledge.

(*i*) *Holliday v. Heppenstall* (1889), 41 Ch. Div. 109; 58 L. J. Ch. 829; 6 R. P. C. 320.

(*k*) *Re Cutler's Patent* (1839), 1 W. P. C. 418, 427.

(*l*) *Fletcher v. Arden* (1888), 5 R. P. C. 46, 54; *Wilson v. Union Oil Mills Co.* (1892), 9 R. P. C. 57; and see *Heath v. Unwin* (1845), 2 W. P. C. at pp. 227, 241.

(*m*) *Pearson, J., in Badische, &c., Co. v. Lorinstein* (1883), 24 Ch. Div. at p. 171; 52 L. J. Ch. 704; following *Unwin v. Heath* (1850), 2 W. P. C. 302, 314.

(*n*) See, *e.g.*, *Daw v. Eley* (1867), 3 E. 496; 36 L. J. Ch. 482.

but its use an infringement of the prior patent. Again, if a new combination be invented, it may, though new, be an infringement of the patent rights of others. The copying of a part of an invention may be a piracy, therefore on a question of infringement the various elements of the two inventions are considered; whereas, in determining whether or not a thing is novel, the invention claimed is regarded as a whole (o). On the other hand, the fact that an invention does not infringe a prior patented invention obviously is, of itself, no ground for alleging the later invention to be novel; for in determining whether a patent has been infringed the claim chiefly is considered; in considering whether a prior specification discloses a subsequent invention alleged to be novel, the body of the specification, the drawings and the claims are all equally important. Therefore, whilst the decisions on infringement may often be used to illustrate the law on the subject of novelty, they must be applied with care, and the differences between the issues of novelty and of infringement, be borne in mind.

If a thing be manufactured its public existence will render invalid any patent subsequently granted for the manufacture of a like machine, even, perhaps, though the second machine be put to uses which the former machine was capable of, but which were not in contemplation at the time of the production of the earliest machine (p).

In the case of paper anticipations, however, the prior description will not avoid a subsequent patent unless it be sufficiently clear to enable those conversant with the subject, to produce the thing invented without any experiment, or further assistance than can be got from the paper itself. This applies equally to anticipation in books, prior specifications, and to drawings (q).

Rule to be applied in paper anticipations.

The description must be so clear that an intelligent workman reading it will deduce the invention and the way to make it (r), otherwise the invention is not anticipated. Therefore a prior specification which contains some information, but does not disclose an important part of the invention, does not anticipate a subsequent invention containing that part (s). It is true that

The "workman" test.

(o) *Newton v. Grand Junction Railway Co.* (1846), 20 L. J. Ex. 427, n.; 5 Ex. 331.

(p) *Otto v. Linford* (1882), 46 L. T. N. S. 35. See per Holker, L. J. There seems some doubt about this.

(q) *Ehrlich v. Ihlee* (1888), 5 R. P. C. at pp. 206, 207.

(r) *Neilson v. Betts* (1871), L. R. 5 H. L. 1, 15, 24; 40 L. J. Ch. 317.

(s) *Lyon v. Goddard* (1893-1894), 10 R. P. C. 334; 11 R. P. C. 354.

if a patentee has his mind furnished with the material of his supposed invention by a prior specification, and he has merely put it into a more detailed shape, it would not be a new invention (*t*); but to defeat a new patent, it must be clear that the antecedent specification disclosed a practical mode of producing the result, which was the object and effect of the subsequent discovery (*u*). And a patentee does not anticipate himself, by merely telling the public before the date of his patent that a particular result is desirable, unless he discloses means of attaining it (*x*). Nor is a patent anticipated by prior specifications dealing with analogous applications of the same subject-matter, but not describing a practical mode of producing the patented article (*y*).

It has been said that, to be an anticipation, the information in the prior publication must be equal to that given in the subsequent specification (*z*), and that the prior disclosure should give the same full and precise information which is required in a specification (*a*).

If further experiment be needed, no anticipation.

It will not suffice to invalidate a subsequent patent, that the prior publication would have enabled the patentee to discover his invention, unless he could have done this without invention or experiment. In *Hills v. Evans* (*b*) the law was put thus: in order to invalidate a subsequent patent, an antecedent statement in a prior publication must be such that a person of ordinary knowledge of the subject, would at once perceive, understand, and be able practically to apply it, without making experiments or seeking for further information. Knowledge and the means of knowledge are not the same thing (*c*), and a mere suggestion is not an anticipation, if it be such that it could practically be carried out only after further experiment (*d*).

Unworkable paper anticipations.

An alleged paper anticipation, which proves unworkable in practice, will not be a bar to a patent for a similar idea with a

(*t*) *Muntz v. Foster* (1844), 2 W. P. C. 107.

(*u*) *Betts v. Menzies* (1862), 10 H. L. C. 117; 31 L. J. Q. B. 233.

(*x*) *Thomson v. Batty* (1889), 6 R. P. C. 84.

(*y*) *Thomson v. American Braided Wire Co.* (1889), 6 R. P. C. 518; *Winby v. Manchester, &c., Steam Tramway Co.* (1891), 8 R. P. C. 61.

(*z*) *Thierry v. Rickmann* (1895), 12 R. P. C. 412, 428; in House of Lords, Times, 16 Dec., 1896.

(*a*) *Von Heyden v. Neustadt* (1880), 14

Ch. Div. 230; 50 L. J. Ch. 126; *Haslow v. Hall* (1888), 5 R. P. C. 1; *Shrewsbury Cab Co. v. Sterckx* (1895), 13 R. P. C. 44. A mere experimental production recorded in a chemical journal would hardly be anticipation: *Von Heyden v. Neustadt* (*supra*).

(*b*) (1862) 31 L. J. Ch. 457; 4 De G. F. & J. 289. See also *Stoner v. Todd* (1876), 4 Ch. Div. 58; 46 L. J. Ch. 32; *Moseley v. Victoria Rubber Co.* (1887), 4 R. P. C. 211.

(*c*) *Ibid.*

(*d*) *Hills v. London Gas Light & Coke Co.* (1860), 29 L. J. Ex. 409; 5 H. & N. 312.

mode of putting it to practical use (e). And clearly no publication which is unintelligible can be an anticipation (f). On the other hand, if what is disclosed would suffice to enable a competent person to make the article or carry out the process, it is equally an anticipation whether anybody did or did not in fact do so (g).

In determining whether a prior publication renders a patent invalid, the prior publication must be read as it appears to a person of competent skill; for it is not because the prior publication does not clearly disclose the invention to the man in the street, that it necessarily is not an anticipation. The question is, can a person conversant with the trade, and of *competent skill*, make the article without further direction than can be obtained from the prior publication (h)? Or it may be put this way: can an intelligent mechanic accustomed to the kind of thing in question, ascertain the one invention from reading the other? If yes, the invention has been anticipated (i).

The principle laid down in the cases decided upon this point cannot be better stated than in the language of Mr. Justice Grove in *Philpott v. Hanbury* (k): "I am willing to rest my definition or description of what anticipates a patent on this: that there must be a publication which, when read by persons versed in the trade, skilful and well acquainted with the trade (I might even limit it, perhaps, to those in the trade who are most skilled—the higher class of skilled workmen), would enable them to understand it. If it be such, it anticipates the patent. If it is a mere suggestion, if it is so erroneous in the description, that they cannot, by reasonable application of the mind, find out what it means, it does not anticipate the patent. But if it reasonably discloses what the invention is, so that a person skilled in the trade can practise the invention from it, then I am of opinion that there is anticipation."

(e) *Betts v. Menzies* (1861), 10 H. L. C. 17; 31 L. J. Q. B. 233; *Duckett v. Whitehead* (1895), 12 R. P. C. 376.

(f) *Washburn & Moen Manufacturing Co. v. Floyd Elwy Patterson* (1884), 1 R. P. C. 157.

(g) *Neilson v. Betts* (1871), L. R. 5 H. L. 1, 15, 16; 40 L. J. Ch. 317, 327; *Betts v. Menzies* (1860), 10 H. L. C. 117; 31 L. J. Q. B. 233. But the alleged anticipation must be something more than a mere student's speculation, or philosopher's dream. *Ibid.*

(h) *Plimpton v. Malcolmson* (1876), 3

Ch. Div. 531, 567, 569; 45 L. J. Ch. 505; *Moseley v. Victoria Rubber Co.*, 4 R. P. C. 241; *Bray v. Gardiner* (1887), 4 R. P. C. 400, 405; *Gadd v. Mayor of Manchester* (1892), 9 R. P. C. 516; *Otto v. Linford* (1882), 46 L. T. N. S. 35; *Thierry v. Rickmann* (1895), 12 R. P. C. 412; and *Times*, 16 Dec., 1896.

(i) *Neilson v. Betts* (1871), L. R. 5 H. L. 11; 40 L. J. Ch. 317.

(k) (1885) 2 R. P. C. at p. 43. And see *Shrewsbury Cab Co. v. Stercker* (1895), 13 R. P. C. 44.

Sufficiency of the prior specification not important.

In the case of a specification alleged to be an anticipation, the sufficiency of the specification is not the matter to be considered; the question is, not whether the patent for the invention claimed in the prior specification is good, but where the specification does in fact disclose the subsequent invention (*l*) ?

State of knowledge at date of anticipation to be considered.

In considering the novelty of an invention alleged to have been anticipated, the state of knowledge at the date of the publication of the anticipation is to be regarded, not the knowledge acquired subsequently to that date (*m*).

State of general knowledge may avoid a patent.

Though the invention has not been actually anticipated, its novelty may be destroyed owing to the general state of knowledge at the time when the application was made for the patent. It may be impossible to point to any specific thing, or to any particular publication which disclosed the subject-matter of the patent, and yet the information at the disposal of the world at large may be such that obviously the patentee has produced nothing new (*n*).

Proof of general knowledge.

Whether the state of knowledge is such as to negative novelty, is a matter on which evidence may be given; it may be proved by experts, or by the production of standard books, encyclopædias, etc., the conclusion arrived at depending on the balance of evidence (*o*). The burden of proof is on that party who alleges want of novelty as a ground for invalidating the patent (*p*).

The general knowledge of those versed in the particular trade or science with which the invention is connected alone need be considered. "When you say a thing is known to the public and part of common knowledge, of course you do not mean that every individual member of the public knows it. That would be absurd. What is meant is, that if it is a manufacture connected with a particular trade the people in the trade shall know something about it; if it is a thing connected with a chemical invention people conversant with chemistry shall know something about it. And it need not go as far as that. You need not show that the bulk or even a large number of those people know it. If a sufficient number know it, or if the communication is such that a sufficient number may be presumed or assumed to know it, that will do" (*q*).

(*l*) *King v. Anglo-American Brush Co.* (1892), App. Ca. 367; 9 R. P. C. 313; and see *Betts v. Neilson* (1868), 3 Eq. 429.

(*m*) *Ibid.*

(*n*) *Vorwerk v. Evans* (1890), 7 R. P. C. 265; *Thomson v. Macdonald* (1891), 8 R. P. C. 5, 8.

(*o*) *Thomson v. Macdonald* (1891), 8

R. P. C. 5; *Cassel Gold Co. v. Cyanide Gold Co.* (1895), 12 R. P. C. 232.

(*p*) *Westley, Richards v. Perkes* (1893), 10 R. P. C. 181, 186.

(*q*) *Jessel in Plimpton v. Malcolmson* (1876), 3 Ch. Div. at p. 556; and see *King v. Anglo-American Brush Co.* (*supra*).

Though it is necessary that, as a whole, the publication relied on should be such as clearly to point out the invention claimed as the subject-matter of the patent, and to enable the skilled workman, at the date of such publication, to make it from the alleged anticipating publication (r), such precision is not required in each of the documents produced to show the state of public knowledge. And the state of public knowledge may be gathered from a variety of publications and sources (s). A specification giving a clue may, with the assistance of other public knowledge, be sufficient to prevent the novelty of a subsequent alleged invention (t).

It must not be readily assumed that a patchwork of information taken together will prove the existence of a state of knowledge fatal to the patent. If a mosaic of extracts from books is required to show want of novelty, the Court will probably conclude that the patent is good (u). Putting a man on the road to a place and leaving him to find his way there is not the same as taking him there (v). Moreover, diligent study of books ending in a practical result may make that result a novelty, though everything leading to the result be found in the books (y); and the case is all the stronger for validity if the publications which are supposed to give the clue are very old (z). Though every element of an invention be old, the combination may in itself be a novelty (a).

Knowledge must be distinguished from means of knowledge.

Whether the claimed invention be novel or not is a question of fact, and was a question for the consideration of the jury in the days when patent cases were tried before juries (b). There seems at one time to have been a doubt whether the law should not be expressed thus: Where the two inventions are described in common language which the Judge is sure that he understands, and are plainly identical, "novelty" is a question to be determined by the Court alone; but where in the description of the two conflicting

Novelty a question of fact.

(r) See *ante*, p. 49.

(s) See (e.g.) *Gaulard v. Gibbs* (1890), 7 R. P. C. 367.

(t) *Gaulard v. Gibbs* (*ibid.*).

(u) *Von Heyden v. Neustadt* (1880), 14 Ch. Div. 230; 50 L. J. Ch. 126.

(v) Per Lord Westbury in *Hills v. Evans* (1862), 31 L. J. Ch. 457.

(y) *Von Heyden v. Neustadt* (*supra*).

(z) See *Crampton v. Patents, &c., Investments Co.* (1888), 5 R. P. C. at p. 399, and 6 R. P. C. at p. 292, for remarks which may throw light on this.

(a) *Cannington v. Nuttall* (1871), L. R. 5 H. L. 205; 40 L. J. Ch. 739; *Newton*

v. Grand Junction Ry. Co. (1851), 20 L. J. Ex. 427, n.; 5 Ex. 331.

(b) The point is not unimportant now, in view of the decision of Esher, M. R. and of Lopes, L. J.—viz., that in the Court of Appeal the burden of proving the Judge below to have been wrong on the facts lies on the appellant. See *Colonial Securities Trust v. Massey* (1896), 1 Q. B. 38; 65 L. J. Q. B. 100. But the remarks of the Law Lords in *Thierry v. Rickmann* (15th Dec. 1896) make it possible to say that the Court of Appeal may have construed the scope of its functions too narrowly.

inventions there occur terms of art or commerce, upon which experts must be examined and evidence given, "novelty" is a question of fact, and must be determined by the jury if there be one (c). But this is not satisfactory. In *Hills v. Evans* (d) Lord Westbury put the rule thus: The specification, like any other document, is construed by the Court, provided that the Court understand the terms used in it. But the function of the Court is limited to stating the legal construction of the document; the explanation of technical words or phrases, and the proof and results of processes are matters of fact to be determined on evidence by the jury. It follows that the identity of the invention claimed and of the alleged anticipation must have been properly a question for the jury. This is equivalent to saying that identity is a question of fact, and as such it is now considered. Prior user and prior publication also are matters of fact to be determined after hearing evidence (e).

Anticipation may be proved by single witness.

Anticipation and public knowledge may both be proved by evidence in the ordinary way—by books, experts, workmen, etc. And the burden of proof is mainly upon the party alleging want of novelty. He may prove anticipation by means of a single witness, as was actually the case in *Badham v. Bird* (f). There the owner of a patent for improvements in combined manhole covers and ventilators for sewers brought an action for alleged infringement. The defendant put in issue the validity of the patent on the ground, amongst other things, of anticipation by prior user. At the close of the examination of the plaintiff, who was called as first witness, the defendant's counsel undertook to prove user of articles admitted to be similar in all essential points to the patented article. A witness was accordingly examined on behalf of the defendant who had superintended the manufacture of such articles for some years prior to the date of the patent. The learned Judge then dismissed the action.

(c) See, e.g., *Bush v. Fox* (1856), 5 H. L. C. 707; 25 L. J. Ex. 251; *Booth v. Kennard* (1857), 2 H. & N. 84; 26 L. J. Ex. 305; per Blackburn, J., in *Betts v. Menzies* (1861), 31 L. J. Q. B. at p. 237; 10 H. L. C. 117.

(d) (1862) 31 L. J. Ch. 457. See also in *Betts v. Menzies* (1861), 31 L. J. Q. B. at p. 243.

(e) See *Pickard v. Prescott* (1892), 9 R. P. C. 195, 200; *Gadd v. Mayor of Manchester* (1892), 9 R. P. C. at p. 527; *Edison v. Holland* (1889), 6 R. P. C.

at p. 277; and per Tindal, C. J., in *Cornish v. Keene* (1835), 1 W. P. C. at p. 519.

(f) (1888) 5 R. P. C. 238. See also *Germ Milling Co. v. Robinson* (1886), 5 R. P. C. 254, 399. It is not necessary or proper to prove multiplied instances of anticipation, if one or two are sufficient: *Cole v. Saqui* (1888), 5 R. P. C. 489; reversed on questions of subject-matter, 6 R. P. C. 41; cp. *Thomson v. Batty* (1889), 6 R. P. C. 84.

But the patentee can at the most make out only a *prima facie* case of novelty, and show that persons in the way of hearing of similar inventions, and conversant with the class of machine or process dealt with in the specification, did not hear of or know anything which would have led them to make the subject-matter of the questioned patent (*g*). In this respect it may be said that the evidence of skilled persons to the effect that a prior publication did not convey the discovery to their minds, is of greater weight than the evidence of those who depose that, from inquiry made, pending or in view of the action, they conclude that, had their attention been drawn to the prior publication, they would easily have done what the patentee claims to have discovered (*h*).

A test of novelty for apparatus is given by Lord Hatherley in *Cannington v. Nuttall* (*i*). He says: "I take it that the test of novelty is this: Is the product, which is the result of the apparatus for which an invention claims letters patent, effectively obtained by means of your new apparatus, whereas it had never before been effectively obtained by any of the separate portions of the apparatus which you have now combined into one valuable whole for the purpose of effecting the object that you have in view?" (*j*)

Lord Hatherley's test of novelty.

Amongst matters which may be important the following should be noted: that a considerable period has elapsed since the publication of the alleged anticipation, but that nothing has hitherto been made as claimed in the patent attacked (*k*); failure of the alleged anticipation when attempted to be put in practice (*l*); merit and utility of the invention (*m*); that the invention claimed to be novel has been imitated (*n*); a very large sale (*o*).

Important pieces of evidence to prove novelty.

The following examples may usefully illustrate the above and valid rules and principles:—

Examples.

Betts v. Menzies (*p*). A specification disclosed that lead and tin in any proportions and in ingots or plates of any size

(*g*) *Cornish v. Keene* (1835), 1 W. P. C. at p. 509; *Galloway v. Bleaden* (1839), 1 W. P. C. 521, 526.

(*h*) *Von Heyden v. Neustadt* (1880), 50 L. J. Ch. 126; 14 Ch. Div. 230.

(*i*) (1871) L. R. 5 H. L. at p. 216; 40 L. J. Eq. 739.

(*j*) And see *Haslam v. Hall* (1888), 5 R. P. C. at pp. 18, 19.

(*k*) *Moseley v. Victoria Rubber Co.* (1887), 4 R. P. C. 241, 252.

(*l*) *Duckett v. Whitehead* (1895), 12 R. P. C. 376, 379, 381.

(*m*) *Thierry v. Rickmann* (1895), 12 R. P. C. 412; *Gosnell v. Bishop* (1888), 5 R. P. C. 151.

(*n*) *Harper v. Wright* (1895), 12 R. P. C. at p. 492.

(*o*) *Ehrlich v. Ihlee* (1888), 5 R. P. C. 437.

(*p*) (1862) 10 H. L. C. 117; 31 L. J. Q. B. 233.

(capable of being pressed between the rollers of a flattening mill) would, if passed once or more through those rollers, unite, provided that the surfaces of the metal were clean. A patent was subsequently obtained for another alleged invention thus described by Wilde, B.: An ingot of lead, previously rolled out till about one-fourth of an inch thick, if laid upon an ingot of tin previously rolled out to one-twentieth the thickness of the lead, will, if passed through the rollers of a flattening mill, combine and unite into one substance if the tin be brought very evenly into superficial contact with the lead before subjecting them to pressure together. Whether the earlier specification was in fact an anticipation of the later invention was not definitely determined (though in a subsequent case the patent for the latter was upheld (q)); but assuming the proportions to have been necessary to the proper carrying out of the latter invention, and to have been claimed as part of it, there would have been little difficulty in deciding against anticipation.

In *Goddard v. Lyon* (r) it appeared that an apparatus for disinfecting was made and used at Aberdeen. It consisted of an outer and an inner chamber. The outer chamber was intended to be filled by steam, and there was a means provided of introducing the steam into the inner chamber. The main purpose, however, was to use steam in the outer and air in the inner chamber; and in fact steam could not be, and never was, used at high pressure in the inner chamber. Plaintiff's apparatus—of later date—was similar, but was designedly constructed that steam at high pressure could be used in the inner chamber, an admitted advantage. The only material difference between the apparatus of plaintiff and the Aberdeen apparatus was that the door in the former would stand high pressure, that in the latter would not. It was decided by the House of Lords that plaintiff's apparatus had not been anticipated by the user at Aberdeen.

In the *Cassel Gold Extracting Co. v. Cyanide Gold Recovery Co.* (s) the Court of Appeal held that the existence of a specification, wherein a combination of two or more chemical substances to obtain a certain result is claimed, is no anticipation of the discovery that one substance will obtain the result. Also, that though it was known that cyanide of potassium would extract

(q) *Neilson v. Betts* (1871), L. R. 5 H. L. 1; 40 L. J. Ch. 317.

(r) (1894) 11 R. P. C. 354.
(s) (1895) 12 R. P. C. 232.

gold from ore, a patent for an invention which showed how to use it so as to extract the gold and leave everything else, is valid.

3. Publication.

An invention may be published in many ways. This part of the subject may be divided into three heads: (i) publication by prior user; (ii) publication in books, specifications, and other documents; and (iii) publication by communication to individuals. No publication of an invention will affect the validity of a patent subsequently obtained, unless the publication took place within the realm. An importer of a thing known abroad is entitled to a patent for the subject-matter of his importation, provided the invention be unknown at the time within the realm (*t*). The public use of an invention in England has been held to be a bar to the validity of a Scotch patent (*u*). In *Rolls v. Issacs* (*x*) it was decided that a grant could validly be given to the introducer of an invention already known in Natal, but unknown in England before the application for the patent. It will be observed that the patent extends to Great Britain, Ireland and the Isle of Man (*y*), and the invention must be novel within the limits of the realm as thus defined.

Publication beyond the realm not a bar to a patent for the same invention.

(A) *Prior User.*

Prior user in public of an invention is sufficient to invalidate the grant subsequently obtained for the same invention. The reasons for this rule cannot be better stated than in the language of Hindmarch (*z*): "A public use of an invention is sufficient to avoid a subsequent patent for it, for three reasons: *firstly*, because the public use of an invention is evidence of a public knowledge of it; *secondly*, because the Statute of Monopolies expressly requires that an invention granted by patent shall be such as others (than the inventor), at the time of making the patent or grant, *do not use*; and *thirdly*, because every patent expressly requires that the invention comprised in it shall be new as to the public use of it."

Nor is it necessary that, to have this effect, the use should

User in public.

(*t*) See per Jessel, M. R., in *Plimpton v. Malcolmson* (1878), 3 Ch. Div. 531, 552; 45 L. J. Ch. 505; Bacon, V.-C., in *Rolls v. Issacs* (1881), 19 Ch. Div. at p. 275; 51 L. J. Ch. 170.

(*u*) *Brown v. Annandale* (1842), 1

W. P. C. 433.

(*x*) (1881) 19 Ch. Div. 268; 51 L. J. Ch. 170.

(*y*) *Post*, p. 669.

(*z*) Page 108.

Machinery
used at works.

Tricycle
ridden on
public road.

have been by the public; user in public is all that is needed. Thus, in *Re Adamson's Patent* (a), a contractor, engaged in the erection of a pier, used certain newly-invented machinery on the works for several months before applying for a patent, and during such user it was open to the view of the public; the Lord Chancellor decided that the invention had been publicly used, and refused a patent. In *Brereton v. Richardson* (b), a patent had been taken out for an improved tricycle; one witness stated that prior to the date of the patent he had ridden an identical machine in the public thoroughfare as far as Cheam, Coombe, and Malden, and had used it by day and night; this, it was held, amounted to a publication by user.

Pollock, B., in *Croysdale v. Fisher* (c), thus expresses himself: "It is obvious that, in almost all cases of user, it does not profess that there is a publication to the world, as there is in the case of a specification, or in the case of a book that is largely disseminated; because the more, perhaps, as different modes of refinement, variations, and improvements continue to multiply, the more does it happen that one portion of the manufacturing world does not know what is going on or what is being done by another portion. Certainly, still more does the public not know with very great nicety, unless concerned either as manufacturers or traders, what is going on in the different laboratories or manufactories attached to any particular trade. When it is said that a process has been disclosed, or an invention has been disclosed by means of user, it is not necessary that such user should be a user by the public proper, provided only there is a user in public, that is to say, in such way as contradistinguished from a mere experimental user, with a view of patenting a thing which may or may not be existing."

Deposit for
purpose of
sale is user.

The deposit of articles in a warehouse for the purpose of sale is user, even though no sale actually takes place (d).

*Carpenter v.
Smith.*

And publication by user does not turn upon whether, in fact, the article was seen by the public; it has been held to suffice that it was so used that it might be seen. In *Carpenter v. Smith* (e), a patent had been taken out for a new lock; a similar lock had been used on a certain gate in a public place for over

(a) (1856) 25 L. J. Ch. 456; 6 De G. M. & G. 420.

(b) (1884) 1 R. P. C. 165.

(c) (1884) 1 R. P. C. at p. 21.

(d) *Mullins v. Hart* (1852), 3 Car. & K. 237.

(e) (1841) 11 L. J. Ex. 213; 9 M. & W. 300; 1 W. P. C. 530.

sixteen years, and Lord Abinger, C. B., laid it down to the jury that the use of a lock in such a situation that the public might see it, is a public use and exercise of the invention sufficient to avoid registration of the alleged new lock. This is a very strong illustration.

Stead v. Williams (f) will further illustrate the statement that user in public is publication. In that case an invention for paving was in question, and it appeared that a pavement, said to be similar to the one in question, had been laid down in a small covered-in portico, a porch to the private house of Sir William Worsley. If the pavement so laid down had been found to be the same as that for which the patent was claimed, the patent would have been avoided by previous user. Cresswell, J., said: "I should say, in point of law, that makes an end of the patent, because that appears to have been introduced by Sir William Worsley, or to have been used by him in public—not concealed—no secrecy about it—made known to all persons who came to his house, so far as their ocular inspection could make them. It was intended to be public, not to be made a matter of merchandise certainly, but merely for his own private use; but the knowledge of it exposed to the public an article in public use, and continued to be used down to the time in question. Therefore, if you think that is the same thing in substance as that which the plaintiff claims, I think that it was publicly used before, and that he cannot have his patent. Whether it had been used by one or used by five, I do not think it makes any difference. If I am wrong in that respect, I have stated my opinion distinctly, and that may be corrected. I know that it has been matter of much controversy, whether that is so or not. I have seen some very sensible observations upon the subject, perhaps not altogether corresponding with the view I now take of it; but, however, that is my opinion, that if you think that pavement made by Sir William Worsley is substantially the same thing as the plaintiff's, then your verdict should be for the defendants upon that issue" (g).

User in public.

Pavement in private house.

Sometimes language has been used by Judges which would lead to the inference that prior user, to be a bar to the validity

(f) (1843) 2 W. P. C. 126, 136; 13 L. J. C. P. 218.

(g) A new trial was afterwards directed, but the principles stated in

the above extract were not impugned. And see *Stead v. Anderson* (1846), 2 W. P. C. 147; 16 L. J. C. P. 250.

of a subsequent patent, must have been a general user (*h*); but this is not the law, as the above cases show (*i*).

Prior public sales.

The novelty of an invention is destroyed by the prior public sale in this country of the same or a similar invention, whether manufactured here or abroad (*h*).

Wood v. Zimmer (l). Here the patent was for a new mode of making verdigrease, to be called *British Imperial Verdigrease*. It was shown that the patentees had sold an article composed precisely in the same manner as that for which the patent had been obtained, under the name of *Dutch Imperial Green*. The patent was pronounced against.

Losh v. Haque (m). The publicly making and selling an article to one individual, though there be no demand or use for it by the public, will vitiate a subsequent patent.

Hancock v. Somervell (n). An invention may come into public use by being handed about the country for the purpose of attracting customers, although no actual sale has taken place.

Jensen v. Smith (o). J., in 1878, took out a patent for a lubricating apparatus, and in 1885, brought an action against S. for infringing it. It was proved at the trial that, prior to the date of the patent, lubricators substantially similar to the patented invention had been sold in England by the agents of a foreign firm; and that lubricators substantially similar to the patented invention had been used by a firm of engineers in England on machines used by them. It was held by Kay, J., that the patent was bad on both grounds.

A patent for an invention is invalidated by the prior public sale of the patented article; it is not necessary to show that an anticipatory article was made for the purpose of sale (*p*).

Disclosure with user.

A secret user is not publication; there is no user in the eye of the law without evidence of both *disclosure* and *actual use*.

(*h*) See per Lord Tenterden in *Lewis v. Marling* (1829), 1 W. P. C. 492; 4 C. & P. at p. 52; 10 B. & C. 22.

(*i*) See also *Morgan v. Seaward* (1837), 1 W. P. C. at p. 190; 2 M. & W. 553.

(*l*) *Lister v. Norton* (1886), 3 R. P. C. 208—210; *Deutsche Nähmaschinen Fabrik, &c. v. Pfaff* (1890), 7 R. P. C. 16; *Betts v. Menzies*, 1 E. & E. 990.

(*l*) (1815) 1 Holt, N. P. C. 60; 1 Web. P. C. 44; 1 Carp. P. C. 294; cp. the language of Gibbs, C. J., in this case. See also *Germ Milling Co. v. Robinson* (1886), 3 R. P. C. 254, 399.

(*m*) (1838) 1 Web. P. C. 200.

(*n*) (1851) 39 New. Lon. Jour. 153; cp. also *Mullins v. Hart* (1852), 3 Car. & K. 297; *Oxley v. Holden* (1860), 8 C. B. N. S. 666; 30 L. J. C. P. 68, where Byles, J., expressed the opinion that the offering even a sample for sale was a user; *Lister v. Norton* (1886), 3 R. P. C. 208—210; *American Braided Wire Co. v. Thomson* (1888), 5 R. P. C. 120.

(*o*) (1885), 2 R. P. C. 249; *Fletcher v. Arden* (1888), 5 R. P. C. 46.

(*p*) *Betts v. Neilson* (1868), 3 Ch. 422, 436; 37 L. J. Eq. 321.

Dollond's Patent (q). Case for the infringement of a patent Cases. for a new method of making the object-glasses of refracting telescopes. At the trial it was proved that one Dr. Hall had made such glasses in 1720, but had not disclosed the secret. The patent was supported.

Bentley v. Fleming (r). Case for the infringement of a patent of 21st December, 1841, No. 9207, for improvements in machinery for making cards for carding cotton, &c. It was contended by the defendant that the patent was avoided by the public use of the machine in a public room before the grant, and that a machine which was in complete working order for a long period before the grant was not the subject for a patent. Cresswell, J., overruled both objections, and as to the latter, which is the one in point, said: "You cannot contend that if a man were to keep his invention shut up in a room for twenty years, that circumstance merely would deprive him of his right to obtain a patent for it."

Betts v. Menzies (s). Here the plaintiff had manufactured a quantity of the capsules—which were the subject-matter of his patent—before the date of the patent, but the manufacture was not carried on openly in the course of business, and none of the capsules had been sold. Held, that there was no "user" of the invention.

In *Hills v. London Gaslight Co. (t)*, Bramwell, B., said: "If a person has invented anything which is the subject of a patent, and has kept it to himself or communicated it privately to one or two, in fact has not made it public knowledge; if any one else discovers that invention, it is new, that is to say, new in the sense that the first invention has not been published."

A question, to which at present no satisfactory answer can be given, may be asked in connection with secret user. If a man invents something, the production of the thing may or may not suffice to tell a workman how the thing is made. If a new machine is produced, the novelty consisting in the placing of a spring at a particular place, the mechanic can at a glance understand the invention and how to carry it out. But if a new

Difficulties where the invention publicly used, but where the nature of the invention is secret.

(q) (1776) cited H. Bl. 470, 487; 1 W. P. C. 43; Parl. Rep. 182. The full name of this case appears to be *Dollond v. Champness* (1866). See an article in the Law Journal, 1897, February 13th.

1 W. P. C. 232; 8 Taunt. 402.
(s) (1857-62) 1 E. & E. 990, 1008; 30 L. J. Q. B. 81.
(t) (1860) 5 H. & N. 312; 29 L. J. Ex. 409. See also *Smith v. Davidson* (1857), 19 C. S. 191.

(r) (1844) 1 Car. & K. 587; 1 C. B. 479. And see *Hill v. Thompson* (1817),

The case of
chemical dye.

chemical dye is manufactured, it may well happen that even the expert chemist is unable, either by inspection or by experiment, to discover the method of production. The question then arises, does the exhibition in public, or sale of such an article as the latter, amount to publication by user?

Where the
user applies
for a patent.

Supposing that one John Smith invents a new alloy, and uses it in the construction of a lamp, and suppose that he does not take out a patent for the invention, but uses the lamp on the desk of an office, where people are accustomed to come; can John Smith himself subsequently take out a patent for his alloy? The wording of the Statute of Monopolies read in their ordinary meaning would seem to be no bar. Nor would the "consideration" theory be against him. The consideration for the grant of a patent is the disclosure of a new manner of manufacture which "others" shall not use; John Smith would be prepared to give this consideration. On the other hand there are authorities which are against the validity of a patent granted under such circumstances. In *Morgan v. Seaward* (u), Heath, J., says: "If an inventor could sell his invention, keeping the secret to himself, and when it was likely to be discovered by another take out a patent for it, he might have practically a monopoly for a much larger period than fourteen years." But this is not so, for the monopoly would commence with and end with the fourteen years; before and after he would not have a monopoly at law at all, though secrecy might give him a monopoly in fact. In *Heath v. Smith* (x), Erle, J., said: "If one party only had used the process and had brought out the article for profit, and kept the matter entirely secret, I am not prepared to say that the patent would have been valid." This dictum however is limited to cases where the production is for profit, though there seems no sound distinction between production for profit and any other proceeding, save where it is admitted that the earlier production was experimental; in every case the question to be solved is one of novelty and not motive. See also the *Germ Milling Co., Ltd. v. Robinson* (y), when upon proof of sale of the patented article before the date of the patent, plaintiff's case collapsed. But the point now under consideration did not arise, or at any rate was not discussed. Then there is another

(u) (1836) 1 W. P. C. at p. 194; 2 M. & W. 544.

(x) (1854) 2 W. P. C. at p. 278; 23

L. J. Q. B. 166; 3 E. & B. 256; 13 C. B. 522.

(y) (1836) 3 R. P. C. 254.

question: if John Smith used the alloy publicly, could another person, having discovered the alloy quite independently of John, have a patent for the discovery? At first glance there seems to be no reason why not. He gives to the public an invention of which the public has no knowledge at the time. But it seems the better opinion, nevertheless, that no patent can be granted to such person. "Others" do use the invention, to wit, John Smith does. Again, a patent for the later invention either would or would not entitle the patentee to prevent John Smith from using a thing or process he had long used. Either result would be absurd (z). There are authorities, not very satisfactory ones, which tell against the validity of the patent. *Tennant's case* (a) is often cited in this connection; there it appeared that a bleacher had kept his process of preparing a liquor a secret from all but his two partners and two servants engaged in preparing it; subsequently the plaintiff discovered the identical liquor and took out a patent for it; but Lord Ellenborough held the patent to have been anticipated (b). The decision is not quite satisfactory for the present purpose, as from the short report it cannot be gathered whether plaintiff ever saw the other liquor; if not, the authorities cited on page 61, *supra*, throw question on the accuracy of this decision. See also the remark of Dallas, J., in *Hill v. Thompson* (c), and in *Cornish v. Keene* (d) Tindal, C. J., said: "if the defendants have shown that they practised it, and produced the same results in their factory before the time the patent was obtained, they cannot be prevented from going on with that which they have done" (e).

When a person other than the user applies for the patent.

On this point *Hancock v. Somervell* (f) should be consulted. Goloshes were made in America, and were vulcanised by means of sulphur, and sold in England; subsequently a patent was obtained in England for vulcanising india-rubber goods by means of sulphur. It was said by witnesses that the appearance and smell of the articles would enable an expert to tell whether the india-rubber had been manufactured with sulphur. The Judge directed the jury that, if so, the patent was bad, but, if not, the patent was good: "If you should find that the material was in

Hancock v. Somervell.

(z) It must be admitted that the same results might arise in the case of any secret user.

(a) (1798) 1 W. P. C. 125, n.

(b) C. J. *Dollond's Patent*, 1 W. P. C. 13; 2 H. Bl. 469, 470.

(c) (1818) 8 Taunt. 402; 1 W. P. C. at p. 239.

(d) (1835) 1 W. P. C. at p. 511.

(e) *Cheetham v. Oldham* (1890), 7 R. P. C. 116, 124, also may be referred to.

(f) (1851) 39 New. Lon. Jour. 158.

public use, but that notwithstanding the invention remained still a matter to be discovered, in my opinion the plaintiff's case would not be affected by the circumstance of the material being in public use." But here the manufacture took place beyond the realm; it could hardly be said that "others" used the invention within the realm; they might use the resulting goods without using the invention.

Conclusion.
The invention not debarred by user from getting a patent, if user does not disclose the invention.

In conclusion, it is submitted that an inventor who publicly uses his invention, but so as not to disclose it, is not debarred subsequently from taking out a patent; but that others are debarred from so doing. But this will not prevent a patent for making an article, the method of making which has been completely forgotten.

The novelty of an invention is not destroyed by prior confidential user.

Confidential user.

In *Morgan v. Scaward* (g) it was proved at the trial that before the date of the patent, Galloway, the patentee, ordered an engineer, under an injunction of secrecy, to make two pairs of paddle wheels upon the principle of the patent. The wheels when completed, were packed at the engineer's factory and sold to and exported by the plaintiff, who was the assignee of the patent, and the managing director of a foreign company by whom the paddle wheels were used *abroad*. The plaintiff paid the engineer for the wheels. It was held: that there was no use of the machine as a machine in England, or indeed *abroad*, before the date of the patent; and that there had been no use or exercise "in public" of the mode of constructing the machine.

Bentley v. Fleming (h). If the inventor of a machine lend it to another in order to have its qualities tested, and that other use it for some weeks in a public workroom, this is not giving the invention such publicity as to deprive the inventor of his right to obtain letters patent for it.

On the other hand, in *The Lifeboat Co., Ltd. v. Chambers* (i), letters patent for a boat specially useful for lifeboat purposes were granted in November, 1887; it appeared that the boat had been exhibited before that date at one of the shipbuilding yards

(g) (1837) 2 M. & W. 544; 1 W. P. C. 187.

(h) (1844) 1 C. & K. 587; cp. also *Galloway v. Bleaden* (1839), 1 Web. P. C. 524, per Tindal, C. J.; *Smith v. Davidson* (1857), 19 C. B. 691; *Hills v.*

London Gas Light Co. (1860), 5 H. & N. 312; 29 L. J. Ex. 409; *Westley, Richards & Co. v. Perkes* (1893), 10 R. P. C. 161; *Useful Patents Co. v. Rylands* (1855), 2 R. P. C. 255.
(i) (1891) 8 R. P. C. 418.

at Glasgow, at the Royal Albert Docks, and at Portsmouth; invitations to the exhibition had been issued, and accounts of the exhibitions appeared in the public press; no precautions were taken to ensure secrecy. It was decided by the Court of Session in Scotland that the invention had been used in public (k).

The test is thus given by Fry, L. J., in *Humpherson v. Syer* (l): Is it a fair conclusion from the evidence that some English people, under no obligation of secrecy, arising from confidence or good faith towards the patentee, knew of the invention at the date of the patent?

Test of novelty given in *Humpherson v. Syer*.

A discontinued user will not always be sufficient to invalidate a patent. The law may be stated thus: If the prior user is discontinued as useless, or if it was merely experimental, the patent granted subsequently is not invalidated by the prior user; otherwise notorious prior user of an invention will invalidate subsequent letters patent, although such user has been discontinued before the date of the patent grant (m). If the prior user, however, was discontinued under such circumstances that the invention was entirely lost sight of, and unknown to the public, a different question would be raised (n), and probably the subsequent patent would be good.

Discontinued user.

Suppose, for instance, that the patent is granted for a revival by independent discovery of some long-forgotten art—of some art practised by the Romans. The patent would probably be good (o). But an invention of an art practised by or within the memory of living man, would not fall in this category (p).

There is no need, in order to invalidate the grant, to show user right down to the application for a patent (q). On the other hand, James, L. J., said in *Murray v. Clayton* (r): "I am not aware of any principle or authority upon which the exhibition

(k) See also *Sarby v. Gloucestershire Waggon Co.* (1883), Griff. A. P. C. 54.

(l) (1887) 4 R. P. C. 407. In *Tickelpenny v. Army and Navy Co-operative Society* (1888), 5 R. P. C., at p. 410, Kekewich, J., doubted whether, having regard to *Humpherson v. Syer*, *supra*, the mere preparation and discussion of plans between directors and their architects could be an anticipation.

(m) *The Househill Co. v. Neilson* (1843), 1 Web. P. C. 709, 710, 717; *Morgan v. Windover* (1888), 5 R. P. C. 236; *King v. Anglo-American Brush Co.* (1889), 6 R. P. C. 414, 420.

(n) Cp. Lord Lyndhurst, L. C., at

E.

p. 717, *supra*; also *Carpenter v. Smith* (1841-42), per Alderson, B., 1 Web. P. C. 534; *Shaw v. Jones* (1889), 6 R. P. C. 328.

(o) See *Househill Co. v. Neilson* (1843), 1 W. P. C., pp. 713 to 717.

(p) *Dick v. Tullis* (1896), 13 R. P. C. 149, 157.

(q) See some remarks of Patteson, J., in *Jones v. Pearce* (1832), 1 W. P. C. 122, that abandonment prior to the patent *per se* suffices to avoid invalidated; but this is not so. See per Alderson, B., in *Carpenter v. Smith*, *supra*.

(r) (1872) 7 Ch. 581. See also *Barlow v. Baylis* (1870), Griff. 44.

Useless
machines.

of a useless machine which turns out a failure can be held to affect the rights of a patentee who has made a successful machine, although there may be a degree of similarity between some of the details of the two machines.”

Experimen-
tal user.

Experimental user, though made in the presence of others than the inventor, and though continued up to the date of the patent, does not ordinarily amount to publication (s), and the coincidence of experiment with actual immediate profit is not *per se* sufficient to make the experimental user a publication (t).

In *Newall v. Elliott and Glass*, (t) Byles, J., said: “Is an experiment performed in the presence of others, which not only turns out to be successful, but actually beneficial, in the particular instance, necessarily a gift of the invention to the world? We think it is not. A necessary and unavoidable disclosure to others, and, as here appears, if it be only made in the course of mere experiments, is no publication; although the same disclosure, if made in the course of a profitable use of an invention previously ascertained to be useful, would be a publication.

A worthless and abandoned experiment may be an anticipation of a subsequent invention if it describes that invention in terms which fully and sufficiently discloses it, and the manner in which it is to be practised (u).

(B) *Publication in Books and Specifications.*

Difference
between pub-
lication by
user and pub-
lication in
books.

The meaning of “publication” must be obtained from the decided cases, and, for this purpose, those relating to designs as well as those relating to patents may be referred to. Publication by prior user differs from publication in books, documents, &c. In the former case user in public alone is publication; in the latter, the publication must not only be such that the public (*i.e.*, a sufficient portion of the public (x)) may acquire the

(s) *Newall v. Elliott* (1858) 27 L. J. C. P. 336; 4 C. B. N. S. 293; *Cornish v. Keene* (1835), 6 L. J. C. P. 225; 1 W. P. C. 508; *Jones v. Pearce* (1832), 1 W. P. C. 122; *Househill Co. v. Neilson* (1843), 1 W. P. C. 673, 708; *Adamson's Patent* (1856), 25 L. J. Ch. 457; 6 De G. M. & G. 420; *Elias v. Grovesend Tin Plate Co.* (1890), 7 R. P. C. 466. But see the limits put upon this doctrine by Lord Blackburn in *Sarby v. Gloucester Waggon Co.* (1883), Griff. A. P. C. at p. 57. Tindal, C. J., in *Galloway v. Bleaden* (1839), 1 W. P. C.,

at p. 525.

(t) *Newall v. Elliott* (1858), 27 L. J. C. P. 337; 4 C. B. N. S. 293. See also *Winby v. Manchester Steam Tram* (1889), 6 R. P. C. 359.

(u) *Kaye v. Chubb* (1888), 5 R. P. C. 641; *cp. Haslam Co. v. Hall* (1888), 5 R. P. C., at p. 19; *Barlow v. Bayle* (1870), Griff. P. C. 44; *Bramah v. Hailcastle* (1789), 1 W. P. C. 44, n.

(x) *Plimpton v. Spiller* (1877), 4 Ch. Div. 412, 435; 47 L. J. Ch. 212; *Plimpton v. Malcolmson*, *infra*.

knowledge, but such that the invention actually becomes part of the public knowledge (*y*). In an ordinary case, a description in a book published in England will be assumed to be public knowledge (*z*). In *Stead v. Williams* (*a*) Tindal, C. J., said, if published in England, "the publication makes the patent bad, but in each case publication is a question of fact—the existence of a single copy of a work, though printed, brought from a depository, where it has long been kept in a state of obscurity, would afford a very different inference from the production of an Encyclopædia or other work in general circulation. The question would be whether, upon the whole evidence, there has been such a publication as to make the description a part of the public stock of information."

Book published in England. Publication always a question of fact.

Publication in a book, then, will be publication sufficient to invalidate a subsequently granted patent (*b*). Thus an alleged invention published in *Emerson's* book on Mechanics before the date of the patent obtained was decided to be not patentable (*c*). The following cases may be referred to:—

Lang v. Gisborne (*d*).—A book was written in French, and it appeared that in England four copies at least had been sold, one of them being to the librarian of the University Library, Cambridge. It was decided that the contents of that book had been published in England, so that the information contained in it had become common property. Sir John Romilly, M. R., said that, "a publication, however, takes place when a person who is the inventor of any new discovery, either by himself or by his agents, makes a written description of that, prints it in a book, and sends it to a bookseller to be published in this country. It is not at all necessary to establish the fact that one volume of that book has been sold; as soon as an inventor informs the public of what his invention is, and publishes that in a book which he sends to a publisher to sell, the moment that book is

Illustrative cases.

Four copies of a French book sold, one to librarian, held publication.

(*y*) *Per* Pollock, B., in *Croysdale v. Fisher*, 1 R. P. C. 17. And see *Plimpton v. Malcolmson* (1875-6), 3 Ch. Div. 531; *Plimpton v. Spiller*, *supra*; 44 L. J. Ch. 505; mere lapse of time is no bar to, provided the invention has not been published, *Bentley v. Fleming*, 1 Car. & K. 587.

(*z*) *Plimpton v. Malcolmson*, *supra*.
(*a*) (1843) 2 W. P. C. 143; 7 M. & G. 818; and see *Stead v. Anderson* (1846), 2 W. P. C. 150.

(*b*) *Cornish v. Keene* (1835), 6 L. J. C. P. 225; 1 W. P. C. 508.

(*c*) *Rex v. Arkwright* (1785), 1 W. P. C. 64, 72; *Hill v. Thompson* (1818), 1 W. P. C. 244; 8 Taunt. 375; 1 Carp. P. C. 53; and see *Jones v. Berger* (1843), 12 L. J. C. P. 179; 1 W. P. C. 544; *Harris v. Rothwell* (1887), 35 Ch. Div. 416; 56 L. J. Ch. 459; 4 R. P. C. 225; *Stead v. Anderson* (1846), 2 W. P. C. 151; 16 L. J. C. P. 250.

(*d*) (1862) 31 L. J. Ch. 769; 31 Beav. 133.

Offer of books
for sale in a
public shop
said to be
publication
per Romilly,
M. R.

exposed in the shop for the purpose of purchase, then that becomes a complete publication in point of law. I wish to state it as broadly as I can, because, in case this matter should go further, it is desirable that there should be no ambiguity as to my opinion with respect to the law. That would be the effect if it were the publication of a book in England by an English inventor, and there is no difference when the inventor is a Frenchman or any other foreigner who publishes a book in his own language, but sends it over to a bookseller in this country for the purpose of being sold. As soon as the book comes to this country to be sold, and is offered for sale in the public shop of a bookseller, then that becomes a publication of the invention, assuming it to be a clear and accurate description of the invention in question. It would be impossible to arrive at any other result without producing the most inextricable difficulties in law. It would be difficult to ascertain how many persons had bought the book, though the purchase of the book would be nothing if they had not read the contents. It would be impossible to say to how many persons the purchaser had lent it, who had read it. In the present case it has been proved that a public library in one of the large universities in England had actually bought the book. It may be that a thousand persons had read it and considered it before this invention had taken place; but how can that by any possibility be proved? The Courts would be involved in inextricable difficulty if the burthen of proof were thrown on a person who had made public an invention as far as he was able to make it public, to shew that the public themselves had appreciated it by buying the book or making it common to other persons."

What
amounts to
publication in
a book, per
Jessel, M. R.

In *Plimpton v. Malcolmson (e)*, a book was deposited in the Patent Office library on July 20, 1865, but in what part was unknown, and it was not catalogued nor entered in the list of donations. It was then taken to a private room, and remained untouched, unread, and unlooked at till 1875. Jessel, M. R., held that the contents had not been published up to 1875. He said: "The case goes to this, that a book must be made public to such an extent as to be generally known among persons practising in such matters. It is, therefore, not merely publication, though, as a general rule, according to the *Household Coal*

(e) (1876) 3 Ch. Div. 531, 558; 44 L. J. Ch. 257.

and *Iron Co. v. Neilson* (1 Webs. P. R. 673, 718, n.), when you say a book is published, and nobody contests it, you assume that several copies have been printed and circulated, unless somebody asserts the contrary. But, as regards the law you must go a step further. Does that doctrine, therefore, apply to a case of this kind? There is one copy of the book, which is all that has ever been printed or published, and that copy of the book was always kept in the back-parlour of the bookseller's shop, and never was seen, as far as the evidence went. Would that satisfy the doctrine? Clearly not. Even although a book was published, and, in the technical sense, published in England, it does not satisfy the conditions; it has not become part of the public knowledge; it is not knowledge in the possession of the public. And, therefore, if in the cases I have cited the patentee had given evidence to shew that the day after the publication in England of 500 copies, 499 had been destroyed, and the remaining one had been put aside by the bookseller in his back-parlour, and never circulated, though if somebody had asked him he would have been willing to sell the book, I am satisfied, from what I have read of the opinion of those learned Judges, they would all have decided that that was not made publicly known, so as to be part of the public possession and part of the public knowledge."

Referring to *Lang v. Gisborne* (f), he says: "Suppose the bookseller had put one volume in his shop-window as exposed for sale for one day, and the next day, by direction of the author, destroyed all the volumes, that would not do, and I do not think that Lord Romilly intended that it would. These are general observations, not to be read in that strict literal sense, but in this sense: that, if a man publishes a book, that is a large number of copies, and sends them to booksellers for sale, and they are for a reasonable time exposed in the window, so that you may infer that people have known and seen them, and may reasonably so infer, though you do not prove, one has been sold—if the other side cannot prove that one has not been sold, you may reasonably infer that some of those books have been sold. If he means anything more than that, I humbly dissent from it; and I say that my decision is supported by the previous decisions to which I have referred, because I am clear that, if it were

(f) 31 L. J. Ch. 769; 31 Beav. 133.

shewn that no copy had ever got into the hands of the public, and the public knew no more about it than seeing the back of the book in the bookseller's window, and every copy could be accounted for, and that none had been sold though exposed for sale, that would not be a sufficient publication to avoid a subsequent patent."

Book held
not to be
accessible to
public.

Plimpton v. Spiller (g). The facts in this case were similar to those in the last-named; but, in addition, it was shewn that a sub-librarian had seen the book in a corridor open to the public, leading into the public room of the old Patent library. When the new Patent Office library was opened, the book was placed in a room upstairs, and not in the principal room. The Court of Appeal decided that the book had never been published in any sense in which it could be construed to be accessible to the public. James, L. J., said: "I should, if it were necessary, desire much further time to consider whether, even if it were proved that the book, one copy of which had been sent over as a present from a gentleman in America, was on the shelf in the library between July 20 and August 25, that would be a sufficient publication, and would be such an addition to the stock of common knowledge in this country as would have prevented a man from being the first and true inventor of this patent; such an addition to the stock of common knowledge as a man was not entitled (to use the language of one of the cases) to deprive the public of." And Brett, L. J., says: "I cannot agree with Mr. Davey when he says that it is sufficient to shew that the thing has been printed in a book, and that the book has been so placed that it might have been known to the public. It must be not only printed in a book, but that book must be placed in such a position and so used that you may fairly infer or assume that the contents of the book have become known to a sufficient number of people. Therefore, when you prove that this book was put in the Patent library, I care not into what part, I do not say that is no evidence of its having become known to the public; but I say that when you have other facts which shew that, although it was put into the Patent library, the proper inference is that nobody ever did see it there or elsewhere, then, although it has been in one sense, if you please, published, or in one sense, if you please, intended to be dedicated to the

public, all I can say is, that the public have not been able to take advantage of the dedication or the publication, and therefore you do not shew that it was known to the public."

Otto v. Steel (h). One copy of a French treatise was placed in the British Museum library in 1863, and that one copy was the only one proved to be in England prior to 1876. The catalogue referred to it, and it was placed in its proper place in the library. Readers would find the book in the catalogue only under the author's name, and it was not placed in a part of the library where they could get at it without special assistance. Pearson, J., refused to find that the book had been published in such a manner that there was a reasonable probability that any person might have obtained knowledge from it, and decided, therefore, that the presence of the book in the Museum did not invalidate a patent granted in 1876 (*i*).

Book in
British
Museum and
catalogued.

Harris v. Rothwell (k). Two specifications in German of German patents were deposited in the Patent Office library some two years before a patent for making the same article was granted in England. Entries of such specifications were duly published in the *Patents Journal* amongst German Patents, and described, a footnote stating that they might be consulted at the Patent Office library. The Court of Appeal, affirming Chitty, J., held, that the German patent had been published in England, and that the subsequent patent was therefore bad. Cotton and Lindley, L. JJ., were of opinion that had the existence of the description of the prior invention been unknown, the invention could not be said to have been previously published, and distinguished the present case from those above, as in the *Plimpton* cases the book was not known to be in the Patent Office library, and in the *Otto* Case it was not known to be in the Museum library. Lopes, L. J., said: "Can the plaintiff be said to have increased the stock of human knowledge, to have given the public any information which they did not previously possess if, at the time of filing the specification, there existed in the library of the Patent Office, unreservedly open to the public, specifications describing in identical terms the same invention?"

German
specifications
at the Patent
Office.

(*h*) (1885-6) 31 Ch. Div. 241; 55 L. J. Ch. 196; 3 R. P. C. 109.

(*i*) And see *Heurteloup's Patent* (1836), 1 W. P. C. 553. If a book is in the British Museum, is there a presumption that it has been read? Pro-

bably not. *Otto v. Steel*, 31 Ch. Div. 245; 55 L. J. Ch. 196; but see Jessel M. R., in *Plimpton v. Malcolmson*, 3 Ch. Div. 560.

(*k*) (1887), 35 Ch. Div. 416; 56 L. J. Ch. 459; 4 R. P. C. 225.

The public were then possessed of the information contained in the plaintiff's patent; it was on the shelves of their public library—a library in the Patent Office—the place of all others devoted to information relating to inventions; the place to which anyone wanting information on such subjects would resort. Why should the public be precluded from the right of using the information of which they were then in possession? I think directly the German specifications were deposited in the library of the Patent Office, and became unreservedly accessible to the public, there was a complete publication of the invention in this country, and it became the property of the public. If this case had been tried at *Nisi Prius*, and the defendant had given evidence of the deposit of these German specifications in the library at the Patent Office in the way mentioned in this case, I think the Judge should have at once told the jury that the evidence of prior publication, if they believed it, was conclusive, and they must find accordingly. In my opinion the depositing the specifications in the library of the Patent Office in the way described was itself a publication of the invention contained in them, and I think that the invention was then dedicated to and became the property of the public.”

Other cases
of books in
foreign
language.

Some questions may arise when the book is published in a foreign language. In the cases of *Lang v. Gisborne* (l) and *Otto v. Steel* (m) the publication was in French, but no point arose upon that. The same may be said of *Harris v. Rothwell* (n), where the specification, held to amount to prior publication, was written in German. In *Re Heurteloupe's Patent* (o), the deposit of a foreign work in the British Museum invalidated a similar patent subsequently obtained in England. In the *United Telephone Co. v. Harrison* (p), an invention was described in a paper, written in German, in a scientific journal, and was illustrated by figures. A copy of the journal was in the Patent Office library, and also in the library of the Institute of Civil Engineers, and there open to members and to certain others. It was catalogued only under the title “Journals.” A telegraphic engineer saw this journal, and from the technical terms used, and the

(l) 31 L. J. Ch. 769; 31 Beav. 133.

(m) 31 Ch. Div. 241; 55 L. J. Ch. 196; and see *Pickard v. Prescott*, L. R. (1892) A. C. 263; 9 R. P. C. 195.

(n) *Supra*.

(o) 1 W. P. C. 553.

(p) (1882) 21 Ch. Div. 720; 51 L. J. Ch. 705. See also *United Horse Nail Co. v. Stewart* (1885), 2 R. P. C. 137.

illustrations, was able to understand the invention; Fry, L. J., held, that the invention had been published (r).

The cases are difficult to reconcile, if the question be regarded as one of law. The true rule seems to be that in each case the question is one of fact. The *Plimpton* cases and *Otto v. Steel* do not really conflict with *Lang v. Gisborne*, or with *Harris v. Rothwell*. In the two former cases, the books, though in the libraries, were not accessible; in the latter cases, the books were accessible. All that has to be determined is, whether the public had already the information professed to be given for the first time by the patentee. This was a question to be answered by the jury when patent cases were tried by jury; it is still a question of fact (s).

Summary of result of the cases.

A drawing may be a sufficient publication. In *Herrburger v. Squire* (t) it was said that if a person has drawn a picture of a machine without describing it, and published that picture in a book, and that picture was one which any mechanist would understand, and could make a machine from that picture alone, then a person cannot take out a patent in respect of a machine substantially the same. This may not always be the case, for in *Ehrlich v. Ihlee* (u) Kekewich, J., said that a strong *prima facie* case of novelty, attested by commercial success, will not be defeated by the mere production of models alleged to have been made according to older specifications—no proof being given as to the persons by whom, the knowledge with which, and the purpose for which, such models were made.

Drawings.

Jones v. Berger (x). "I think it is an objection to the patent, and not evidence simply of an objection, that there has been a previous patent and a specification enrolled, and therefore published, being enrolled, containing the invention."

Cases on prior publication in specifications.

Muntz v. Foster (y). If a patentee has had his mind furnished with the material of his invention by a prior specification, and has merely put it into a more detailed shape, it would neither be a new invention, nor would he be the first and true inventor.

(r) In *Househill Co. v. Neilson* (1843), 1 W. P. C. 718 n., Lord Brougham said: "It must not be a foreign book," but the meaning of this is clear from the succeeding clause, "but published in England." See also *Soames' Patent*, 1 W. P. C. 733.

(s) See 1 W. P. C. 719, n.

(t) (1889) 6 R. P. C. 194.

(u) (1888) 5 R. P. C., at pp. 206, 207; affirmed at p. 437.

(x) (1843), 1 Web. P. C. 544; 12 L. J. C. P. 179; 6 Scott, N. R. 219, per Maule, J.; cp. *Cornish v. Keene* (1835), per Tindal, C. J., 1 Web. P. C. 510; *King v. Anglo-American Brush Co.* (1889), 6 R. P. C. 414.

(y) (1844), 2 Web. P. C. 107.

Publication
by provisional
specification.

Laurence v. Perry (z). The plaintiff, as assignee of a patent for "improvements in lead and crayon holders," brought an action for infringement against the defendants, who alleged that there had been prior publication of the invention, *inter alia*, by fifteen specifications. It was held by Justice North, that two of these specifications anticipated the plaintiff's patent, which was therefore declared invalid. In dealing with one of the specifications, his lordship said (a), that the "publication of a provisional specification may be a sufficient anticipation of a subsequent patent is clear from the remarks of Sir George Jessel in *Stoner v. Todd* (b), if any authority were necessary on such a point. In this case . . . I find a clear description how to construct an instrument which is completely covered by the first claiming clause of the plaintiff, and this is, in my opinion, quite sufficient to prevent their being subsequent first and true inventors within the realm of the instrument so described." Anticipation of an invention by a foreign specification published in England has already been mentioned in connection with the case of *Harris v. Rothwell* (c).

(C.) *Publication to Individuals.*

Although an invention has not been published in any book, it may still be unpatentable, on the ground that it has been communicated orally or otherwise to some person who is not in a confidential relation to the inventor. The cases which follow shew that there is a publication whenever it is the fair conclusion from the evidence that some English people, under no obligation to secrecy, arising from confidence or good faith towards the inventor, knew of the invention at the date when the application for a patent was made (d). If, however, the person to whom the communication is made is under an obligation to secrecy, the statement to him will not be a bar to novelty unless he breaks the confidence reposed in him (e).

Confidential
trial of
invention.

Brett v. Electric Telegraph Co. (f). Plaintiffs obtained a patent on February 11. On January 25 M. entered into

(z) (1885) 2 R. P. C. 179.

(a) At p. 187.

(b) (1876) L. R. 4 Ch. Div. 58; 46 L. J. Ch. 32.

(c) *Supra*, p. 71. See also *United Horse Nail Co. v. Steward* (1885), 2 R. P. C. 133, per Lord Kinnear, distinguishing *Plimpton v. Spiller* (1876

—77), L. R. 4 Ch. Div. 286, *ante*.

(d) See Fry, L. J., in *Humpherson v. Syer* (1887), 4 R. P. C. 414.

(e) *Ibid.*, p. 416; and cf. *Patterson v. Gas Light & Coke Co.*, 3 App. Cas. 42 p. 245; 47 L. J. Ch. 402.

(f) Norman on Designs, p. 7; *Times*, 24th May, 1847.

an agreement with the defendant company, authorising the company to use his invention, which was practically identical with that of the plaintiff's. By the terms of the agreement the company was to try the invention by use for a certain time, and then either adopt it, or refuse to use it permanently; in such case the company was to keep the invention secret from all persons whatever. It was decided that the transaction between the company and M. did not amount to publication so as to avoid the plaintiff's patent.

Hunt v. Stevens (g). This case referred to a design for a gas chandelier, and it appeared that before registration the plaintiffs had been in the habit of placing the designs in the hands of their travellers, who took them about for the purpose of obtaining orders prior to their registration. This was held to be a prior publication of the design.

Design exhibited by traveller before registration.

In *Bentley v. Fleming (h)*, a machine was lent to a second person to have its quality tested; that person used it for some weeks in a public work-room, and the Judge was of opinion that there had been no publication. The report, however, is very short, and the decision, it is submitted, cannot be much relied upon. In *Westley, Richards and Co. v. Perkes (i)*, it appeared that a gun was made in open shop, without any injunctions as to secrecy; it was known to many of the workmen, and was sold. On these facts, Kay, L.J., found that the invention had been published. *Morgan v. Seaward (k)* was distinguished on the ground that in that case the engineer who was instructed to make the wheels there in question had instructions to act secretly, and did so.

Gun made in open shop without any secrecy.

In *Humpherson v. Syer (l)*, prior to the plaintiff's application for a patent, S. sent for Widmer, who was a tradesman making water waste preventers, and instructed him to make an appliance to prevent the waste of water, and he directed Widmer to make it in accordance with a model which had been prepared by a man in the service of the defendant. This was sufficiently like the plaintiff's invention to be an anticipation, if the instructions to Widmer amounted to publication. Widmer caused the appliance to be made in his public warehouse, and it was exposed in his shop. Widmer was not a servant of S.'s, but a tradesman.

(g) W. N. (1878) 79.

(h) 1 Car. & K. 587.

(i) (1893) 10 R. P. C. 181.

(k) 1 W. P. C. 170; 2 M. & W. 514.

(l) (1887) 4 R. P. C. 407.

Bowen, L. J., said: "I put aside questions of public use, and treat this as a question of whether there has been a prior publication; that is, in other words, had this information been communicated to any member of the public who was free in law or equity to use it as he pleased? Was Widmer a person to whom this communication had been made in a manner which left him free both in law and equity to do what he liked with the information? If so, the information, of course, had been given to a member of the public, and there was nothing further to serve as consideration for any patent. The question is not a very easy one to settle as regards Widmer in my view. It is perfectly true that Mr. Widmer said, and Mr. Syer adopts the view, that there was no secrecy about the employment of Mr. Widmer to make a particular article. But it seems to me one must look at the whole case, and ask oneself, not merely by the light of what they say were the oral instructions which passed between them, but also by the light of the understood relations between the two men, whether Widmer really could, in good faith, have disposed of the information which he received from Syer after he received it—whether he could have used it for his own purposes against the person who gave it him. I think when a man sends a patent to be made to a shop, you must take what passes orally; you must take all the circumstances of the case, and ask yourself whether there was any confidential relation established between the two parties—whether it was an implied term of the employment that the information should be kept by the shopman to himself, or whether he might afterwards, without any breach of good faith, use the matter, and use it as he chose." Fry, L. J., thus deals with the point: after finding on the evidence, that Widmer made the machine without any obligation to secrecy, he proceeded: "But supposing that I am wrong in that, and supposing that Widmer was under an obligation to secrecy, that obligation was broken by him because he made the machine in the open shop. Now, I am at a loss to find any obligation of secrecy which it can be suggested that Widmer had placed upon the workmen of Widmer, and upon all the persons who passed through the shop, and if that is so, though there may have been a breach of confidence in making it in the shop, nevertheless, according to the law, as laid down by Lord Blackburn, if the public have become possessed of the invention by any means

Breach of confidence may amount to publication.

whatever, no such patent can be taken out. Therefore, I think the probability is so strong that it would be seen by the workmen in the shop some time during the interval between the 16th and the 26th, that on that ground again I think there is strong and cogent evidence to lead to the conclusion that there was publication of the very thing itself."

In *Blank v. Footman* (m), which was a design case, the inventor of a design showed it to and consulted Hummel, his sole agent, and the agent consulted another person, and also showed it to two customers, and asked them for orders; Kekewich, J., decided that a registration subsequent to the date when the design was shown to the customers was invalid. On the other hand, he decided that the communication to the agent would not affect a subsequent registration. He said, after quoting Bowen, L. J., (in *Humpherson v. Syer* (n)): "The patentee, whether it be a chemical patent or a scientific patent or a machinery patent, frequently (generally I might say) is unable to carry out the manufacture of the patented article in all its details himself personally. He must employ others, and for that purpose the Lord Justice says he is entitled to do so without in the slightest degree damaging his patented rights to claim protection, provided it is done confidentially. It is a step further to say that a man like Mr. Blank is entitled to take into his confidence a man like Mr. Hummel, who is only a commission agent, a man through whom the profits are to be made. He does not occupy, to my mind, a position at all similar to that of the shopman. But I think it is only a fair stretch of the same principle to say, as I have already said, that I think a man in Mr. Blank's position might consult with those through whom he would put goods on the market, particularly, as I say, having regard to the relation existing between them, and doing it confidentially, without avoiding his rights to be obtained by registration."

In *Winfield & Son v. Snow Brothers* (o) it appeared that Major, a buyer for Messrs. Olney & Sons, suggested to plaintiffs to produce lace of a certain pattern, and the plaintiffs caused a design to be prepared, from which they manufactured a sample, and showed it to Major. He gave an order for 12,000 yards, and took away a piece as a sample. The design was registered, and

Confidential publication. Communication to agent. Communication by agent to others.

Publication by delivery of a sample.

(m) (1888) 39 Ch. Div. 678; 57 L. J. Ch. 909; 5 R. P. C. 653. And see *Tickle-penny v. Army & Navy Co-operative*

Society (1888), 5 R. P. C., at p. 410.

(n) (1887) 4 R. P. C. 413.

(o) (1891) 8 R. P. C. 15.

subsequently the bulk of the lace was delivered; it was decided by Hawkins, J., that the registration was bad, the disclosure to Major being a publication. The Judge said that the argument for the defendant was "that that which took place between Mr. Winfield and Mr. Major was no publication, but a mere confidential communication with a view to ascertaining from Mr. Major himself whether his suggestion made at their first interview had been carried out by the designer, and whether the specimen of lace manufactured from that design was such as to be likely to suit the spring market, with a view to registration of the design, if his opinion were favourable. Had such been the sole character and object of the communication I should undoubtedly have held that it did not amount to such a publication as to defeat the subsequent registration, for I should, under such circumstances, have looked upon the production of the specimen of lace to Mr. Major as an exhibition of it with a view to seeking the advice of an experienced friend, without any reference to the employment as buyer to the firm with which he was connected, and the more particularly should I have thought so had Mr. Major been made aware of the plaintiffs' intention to register the design." This case is an authority for saying that the fact of dealing commercially with a design or invention amounts to a publication vitiating any subsequent registration of or patent for the same matter (*p*).

Commercial dealing with design.

In *Heinrichs v. Bastendorff* (*q*) H., previously to registering his design, and whilst perfecting it, consulted D. (with whom H. had trade relations) and sent him samples for inspection. D. slightly altered the samples, and returned them; eventually, but after registration, D. bought some of the designed goods. Mr. Justice Day held, that there had been no publication under these circumstances.

Sample sent for inspection only.

In *Patterson v. Gas Light & Coke Co.* (*r*) plaintiff had been appointed one of three referees to inquire on behalf of the Board of Trade into the purification of gas; they drew up a report, one part of which was said to have been communicated confidentially by plaintiff to his colleagues. The plaintiff obtained a patent for an invention communicated in this report to his colleagues. The House of Lords decided against the

(*p*) And see *Morgan v. Seaward* (1836), 1 W. P. C. 170, 194, 195; 6 L. J. Ex. 153; 2 M. & W. 514.

(*q*) (1893) 10 R. P. C. 160.
(*r*) (1817) 3 App. Ca. 239; 47 L. J. Ch. 402.

patent on the grounds that (a) when a report by referees specially appointed is made to a public office, the knowledge of the referees is at once public knowledge, though the report be not yet published; and (b) the knowledge of one becomes public knowledge when he communicates it to his colleagues, though they agree to treat the communication as confidential.

(D.) *Publication at Public Exhibitions.*

Publication at an industrial or international exhibition is provided for by sect. 39 of the Act of 1883, thus:—

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

(a) “The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so; and

(b) “The application for registration must be made before or within six months from the date of the opening of the exhibition.”

And sect. 3 of the Act of 1886 provides:—

“And whereas it is expedient to provide for the extension of this section to industrial and international exhibitions held out of the United Kingdom, be it therefore enacted as follows:

“It shall be lawful for her Majesty, by Order in Council, from time to time to declare that sections thirty-nine and fifty-seven of the Patents, Designs, and Trade-marks Act, 1883, or either of those sections, shall apply to any exhibition mentioned in the Order, in like manner as if it were an industrial or international exhibition certified by the Board of Trade, and to provide that the exhibitor shall be relieved from the conditions, specified in

the said sections, of giving notice to the comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as to her Majesty in Council may seem fit."

See notes to these sections, *post*, p. 632, and Forms, pp. 815, 872, in the Appendix. Also Patent Rules, 1890, r. 15, p. 686.

SECT. III.—AMOUNT OF INVENTION.

Broader meaning of the term subject-matter.

The term "subject-matter" of a patent as applied to an invention is used in more senses than one. In its broader and proper meaning it includes everything necessary to bring an invention within the meaning of sect. 6 of the Statute of Monopolies; that is to say, it involves that the invention is a manufacture, is novel, and is useful. A chapter on subject-matter, therefore, should include a section on the meaning of the term "manufacture;" a section on Novelty in its various aspects; and another on Utility; and, therefore, we have headed this entire chapter "subject-matter."

Narrower meaning, equivalent to "invention" or "ingenuity."

But to the term is often given a narrower signification, in which sense it is used as meaning that amount of invention which is sufficient, according to the decision of the Courts, to sustain the patent. For instance, when a defendant pleads as distinct defences that the invention is not subject-matter, and that it has been already anticipated, it is obvious that the term "subject-matter" is not used in its wider sense. And the sense in which it is used becomes more clearly shown when the wording of the former of these pleas is expanded, and reads thus: "That the alleged invention is not subject-matter, inasmuch as it is merely what any person conversant with the matter could have done without ingenuity"—see, *e.g.*, the pleadings in *Sudbury v. Lee* (s). This restricted use of the term is more usual than its use in the wider signification, but it is submitted that, as a matter of terminology, this is not correct. It would seem that "amount of invention," though a branch, and a very important branch, of the law relating to Letters Patent for Invention, is, nevertheless, but a sub-division of the law of subject-matter. It should take its place alongside of Publication, Prior User, and Utility, and should not appropriate the generic name which includes each of these.

(s) (1894) 11 R. P. C. 58; see especially objection (3), where novelty and subject-matter are contrasted.

It is by no means certain that "amount of invention" is not in reality but a sub-division of novelty. Take *Newton v. Vaucher* (t), for instance; would the objection to the patent in that case be nowadays want of invention or want of novelty? In *Vickers v. Siddell* (u) Lord Herschell said that the objections of want of novelty and want of subject-matter cover to some extent the same ground, but he thought it expedient to deal with them separately. See also the judgments in *Thomson v. American Braided Wire Co.* (x) and *Blakey v. Latham* (y): "To be new in a patent sense it is necessary that the novelty must show invention." If an "amount of invention" be not one of the requisites of novelty, it is strange that to within the last twenty years there is probably no reported case in which a patent has been held to fail for want of ingenuity alone, in clear contradistinction to want of novelty. The cases cited below will, it is suggested, bear out these statements.

"Amount of invention" probably a branch of "novelty."

Moreover, it is difficult in many a modern case to say at first blush whether the Court has decided against an invention on the ground of want of novelty or of want of invention. If "novelty" involves nothing more than that the invention is not identical with another, then, of course, novelty can exist without ingenuity. But this is not the original meaning of novelty in patent law. The leading case of *Harwood v. Great Northern Railway Co.* (z)—which will be dealt with hereafter—suffices to shew this. Lord Blackburn—then Mr. Justice Blackburn—was called in with the other Judges to advise the House of Lords, and referring to the invention he said: "We quite agree with the Court of Exchequer Chamber that a mere application of an old contrivance in the old way to an analogous subject, *without any novelty or invention* in the mode of applying such old contrivance to the new purpose, is not a valid subject-matter of a patent." More recent cases undoubtedly make a clearer distinction between the two requisites; and a modern Judge would probably change the word "or" in the italicised passage into "and," but even now the language used in the Court does not always imply that "sufficient invention" and "novelty" are distinct requisites. See, *e.g.*, *Goddard v. Lyon* (a). Referring to the apparatus in question in

Dicta in *Harwood v. Great Northern Railway Co.*

(t) (1852) 6 Ex. 859; 21 L. J. Ex. 395; see also *Brunton v. Hawkes* (1821), 4 B. & Ald. 541.

(u) (1890) 15 App. Ca. 496; 60 L. J. Ch. 105; 7 R. P. C. 292.

(x) (1889) 6 R. P. C. 518.

(y) (1889) 6 R. P. C. 184, 187.

(z) (1860) 35 L. J. Q. B. 27; 11 H. L. C. 654.

(a) (1894) 11 R. P. C. 121, 354; in the House of Lords (1894), 11 R. P. C. 354.

Opinion of
Lord Her-
schell in
Godlard v.
Lyon.

the last-mentioned case and an alleged anticipation of it, Lord Herschell said: "It was indeed said that the difference between the plaintiff's apparatus and the Aberdeen apparatus was so slight that it could not be said to be the subject-matter of a patent." It would be difficult from this to say whether the Lord Chancellor was not stating the point of an argument based on want of novelty. In fact, however, he proceeded to explain that he was referring to an objection of want of ingenuity. But in the Court of First Instance, Wright, J., had treated the objection as one going to the novelty point, and gave little attention to want of invention. The facts of this case are mentioned below. Perhaps as striking an example as is to be found is furnished by *Longbottom v. Shaw (b)*, which reached the House of Lords in 1891. The patentee in that case had obtained a patent for an invention consisting of a row of hooks on a foundation of metal, the row of hooks so formed being then attached to a reel or frame for the purpose of holding pile. Reels or frames with a row of hooks were admittedly old; so also was the idea of attaching a row of hooks to a strip of metal in such manner that the hooks and the strip might be fixed where required—every row of hooks in a movable hat rack involves the same idea. But the patentee said that though a row of hooks on a movable piece was an old contrivance, and though reels were in common use, nobody had ever before put the row of hooks to the frame for holding piles. The House of Lords had no difficulty in upholding a decision adverse to this patent, and on the ground that the alleged invention was deficient in ingenuity. But it is submitted that in reality there was nothing new. Again, in *Sudbury v. Lee (c)*, it was decided that there was no invention in applying to the heel of a stocking a process which was already in use in connection with other parts. This example could be matched by many another; and, on the whole, logically arranged, the objections raised under the plea of "want of invention" could, in most cases, it is submitted, be dealt with under the heading of "want of novelty."

The modern
practice is to
treat novelty
and subject-
matter
separately.

Nevertheless, it must be admitted that modern practice treats "amount of invention" as a requisite of a patentable invention distinct from novelty, and more often than not, dignifies it with the name "subject-matter," excluding from that term all other requisites of a valid patent.

(b) 8 R. P. C. 333.

(c) (1894) 11 R. P. C. 58.

Lord Esher in *Edison Phonograph Co. v. Smith* (d), said: Lord Esher's dictum in *Edison v. Smith*.
 "What is the meaning of want of subject-matter? It is not the same thing as want of invention, or rather, I should say, a want of novelty; it is not the same thing as want of utility, but where you cannot maintain either of those propositions, which would be sufficient to destroy the patent, it is something else, which some one or other, at some time, has invented as an idea for destroying patents. And what is it? It really comes to this, that although the invention is new—that is, that nobody has thought of it before—and although it is useful, yet, when you consider it, you come to the conclusion that it is so easy, so palpable, that everybody who thought for a moment would come to the same conclusion; or in more homely language, hardly judicial, but rather business-like, it comes to this,—it is so easy that any fool could do it." Though the opening sentence is somewhat obscurely worded, it is certain that the Master of the Rolls regards want of subject-matter and want of invention as equivalent terms, conveying an idea distinct from want of novelty.

Several cases might be quoted in which the same view has been taken by modern eminent Judges; but it suffices to mention *Cole v. Saqui* (e), decided by Cotton, Lindley, and Bowen, L. JJ.; *Morgan v. Windover* (f), decided in the Court of Appeal, but reversed by Lords Halsbury, Watson, Herschell, and Morris; *Vickers v. Siddell* (g), in the House of Lords; *Gadd v. Mayor of Manchester* (h), in the Court of Appeal; *Thierry v. Rickmann* (i); and *Lancashire Explosive Co., Ltd. v. Roburite Explosives Co.* (k). In *Morris v. Young* (l), it was pointed out, *arguendo*, that particulars of novelty are required to be given; particulars relating to subject-matter need not.

The extract from Lord Esher's judgment quoted above is of considerable interest on another point connected with this "want of ingenuity" question. He seems to treat want of subject-matter as a somewhat new form of objection to a patent. Want of subject-matter, he says, is something which somebody has at some time invented as a ground for invalidating a patent otherwise good. His lordship does not show any very great

(d) (1894) 11 R. P. C. 398.

(e) (1889) 6 R. P. C. 41.

(f) (1890) 7 R. P. C. 131, and see 449.

(g) (1890) 15 App. Cas. 496; 60 L. J. Ch. 105; 7 R. P. C. 292.

(h) (1892) 9 R. P. C. 516.

(i) (1895) 12 R. P. C. 412, 543. Reversed on the facts in the House of Lords, 15 Dec., 1896.

(k) (1895) 12 R. P. C. 470.

(l) (1895) 12 R. P. C. 455.

respect for the plea, but what is somewhat important is to observe that he treats it as an objection due to the ingenuity of the lawyer and of somewhat recent origin, not as one of the old objections based on the wording of the Statute of Monopolies (ll).

Want of ingenuity a modern objection.

There is reason to believe that Lord Esher's *dictum* conveys a true impression, and that, in fact, want of invention or ingenuity, so far as it is distinct from the defence of want of novelty, is a modern defence to an action for infringement, and was introduced as a brake upon the too rapid progress of patents for analogous uses.

Query whether the objection might not formerly have been raised in another form.

In saying this it is not intended to convey the idea that the courts have gone beyond the terms of the Statute in supporting the plea. There seems ample reason for saying (assuming novelty), that when there is a want of ingenuity, the manufacture is not one which can be patented under the exception entertained in sect. 6 of the Statute of Monopolies. If for no other reason, a manufacture which falls within the category of those which (to use Lord Esher's expression) any fool could make, would not be patentable, because it would be "mischievous to the statute . . . or generally inconvenient" (m). Moreover, it has long been considered that the monopoly is the result of a bargain with the Crown, the consideration for which given by the patentee is the increase to the general knowledge contributed by him. Such consideration would fail were the patentee to disclose nothing but what any member of the community, acquainted with the industry in question would certainly be able to do for himself.

The development of the doctrine of "want of invention."

According to this view, the objection in question might have been taken at any period since the Statute of Monopolies (probably it was so taken in fact), but would then have been merged in the attack upon the novelty of the invention. But circumstances have made it more prominent of late, and have widened the scope of the objection. The history of the matter may be dealt with under three periods:—

1. Up to about 1857.
2. From 1857 to 1884.
3. Since 1884.

1. From James I. to 1857.

There is no case of any real importance on the present subject between the year when the Statute of Monopolies was passed

(ll) See the remarks of the same Judge in *Hayward v. Hamilton*, quoted *post*, at the top of p. 93.
(m) Stat. Monopolies, sect. 6.

and the year 1822. In the latter year the case of *Hall v. Jarvis* (n) *Hall v. Jarvis.* was tried before Abbott, C. J., and a jury in the King's Bench, and afterwards came before the Court. The invention related to a means of destroying the furs and fibres of lace by flame glass. Prior to the plaintiff's invention, a flame of charcoal, waste paper, wood, shavings, pit coal, had been used for many years to singe fibres from silk, cotton, or lace sleeves. The apparatus of the plaintiff's was different to that formerly in use; the plaintiff's drew up the air and flame by means of a chimney; the draught hitherto had been caused by means of bellows; this, however, the Chief Justice considered unimportant. Counsel for the defendant urged that the mere doing with gas what had already been done with other kinds of flame, could not be subject-matter. The jury thought otherwise, and the Court refused to interfere with the verdict. Now here was a somewhat vague attempt to set up against the patent what is now known as "want of invention;" but once being convinced that the process was novel, the jury, and with the Judge's approval, rejected the defence. The objection was not one which was pointedly urged nor was it ready for judicial opinion.

In 1838 the case of *Losh v. Hague* (o) came before Lord Abinger and a jury. The patent was for an improvement in the construction of wheels for carriages to be used on railways. In the course of the summing up, the learned Judge, referring to an alleged anticipation by one Paton, said: "The learned counsel has stated to you, and very properly . . . that Mr. Losh has taken out his patent to use his wheels on railways. Now, he says, the wheels made by Mr. Paton . . . were never applied to railways at all. That opens this question, whether or not a man who finds a wheel ready made to his hand, and applies that wheel to a railway, shall get a patent for applying it to a railway. There is some nicety in considering that subject . . . it is a different thing when you take out a patent for applying a new contrivance to an old object, and applying an old contrivance to a new object—that is a very different thing; if I am wrong I shall be corrected. In the case the learned counsel put, he says, if a surgeon goes into a mercer's shop, and sees the mercer cutting velvet or silk with a pair of scissors with a knob to them, he seeing that would have a right to take out a patent, in order to apply the

Importance
of Lord
Abinger's
summing up
in *Losh v.
Hague.*

(n) (1822) 1 W. P. C. 100.

(o) (1837), 1, W. P. C. 202, 207.

same scissors to cutting a sore, or a patient's skin. I do not quite agree with that law. I think if the surgeon had gone to him and said, 'I see how well your scissors cut, I can apply them as well as a lancet, by putting a knob at the end,' that would be quite a different thing, and he might get a patent for that; but it would be a very extraordinary thing to say, that because all mankind have been accustomed to eat soup with a spoon, that a man could take out a patent because he says that you might eat peas with a spoon. The law on the subject is this: that you cannot have a patent for applying a well-known thing which might be applied to 50,000 different purposes, for applying it to an operation which is exactly analogous to what was done before. . . . I must own, therefore, that it strikes me, if you are of opinion that this wheel has been constructed . . . long before the plaintiff's patent, that although there were no railroads then to apply them to, and no demand for such wheels, yet that the application of them to railways afterwards . . . will not give effect to his patent . . . that is my opinion on the law, and on that I am bound to direct you substantially."

These remarks are quoted at length, and from them, it is submitted, that much of the modern law relating to "ingenuity" is to be traced. They contain some of the earliest direct statements on the law of "analogous user." But there are one or two other points worthy of notice. In the course of the argument counsel had made use of an illustration referred to by the Judge, which could never have been placed before even a jury, had the law in 1830 been what it is in 1896. The Judge did not express his dissent in any very emphatic language, "I do not quite agree," is all he said. But his own illustration of the spoon and the peas seems to have given him courage, and towards the end of the summing up, he directs the jury definitely, that the application of a known object to a use, "exactly" analogous to one already known, is not patentable. The "nicety" in considering the subject which Lord Abinger refers to, would not be appreciated nowadays.

Losh v. Hague
was correctly
decided.

There cannot be any question but that his Lordship's direction was right. What was the manufacture or manner of manufacture? If it existed at all, it was the particular form of wheel. But this was not novel. The application, which was novel, could not in the then state of the authorities, be styled a manufacture. Webster mentions, as a further example of the same

dilemma, the discovery that a medicine, known to be valuable for one disease, is valuable for another disease. The discovery may have far-reaching consequences; but it is not patentable, the medicine is old; the new use not a manufacture. A double use, merely as such, was unpatentable. But so far, amount of invention is not expressly referred to, nor indeed thought of. If the patent is invalidated, it is either because the invention is not a manufacture, or because it is old.

About the same time, *R. v. Cutler* (p) was decided, both Denman, C. J., and Wightman, J., holding that the mere application of a known article to a new use could not be the subject-matter of a valid patent. This was Lord Abinger's view as he expressed it in *Losh v. Hague*.

But about this time, two very celebrated inventions were patented, and the grants made in their favour were reviewed by the Court:—the hot blast patents. In the one, *Neilson v. Harford* (q), the patent in dispute had been granted for an improved means of applying air to produce heat in fires and furnaces. All that the patentee invented was the introduction into the furnace of a hot in the place of a cold blast (the heat to the blast being applied by passing the cold air into a receptacle of any suitable material and shape, intermediate between the bellows and the furnace), and applying heat to the receptacle. The discovery was of immense importance to the smelting industry. Baron Parke started, by telling the jury that patent-rights were not to be construed with a special view to their defeat. The patent was upheld. Subsequently the case of *Crane v. Price* (r) was fought in connection with an invention consisting of an application of the Neilson's hot blast for the purpose of utilising anthracite beds of coal in the smelting and manufacturing of iron, *i.e.*, the combination of a hot blast and anthracite coal with ironstone for the production of iron.

Influence of
the hot blast
cases.

The results of Crane's discovery can hardly be overrated; the invention was of the greatest utility and merit. But, was it patentable? Was it more than the application to anthracite coal of a known hot blast, previously in use for pit coal? This was the line taken by Serjeant Bompas for the defence: the stone-coal was known as a fuel; the hot blast was known for the

(p) (1847) 4 Q. B. 372, n; 3 C. & K. 215.

(q) (1841) 8 M. & W. 806; 11 L. J. Ex. 20; 1 W. P. C. 331.

(r) (1842) 4 M. & G. 580; 1 W. P. C. 393; 12 L. J. C. P. 81.

Judgment of
Tindal, C. J.

A new inven-
tion not bad
because
it resulted
from a lucky
thought or an
accident.

manufacture of iron, the using them together in a known manner was not a new manufacture; the anthracite and the hot blast were put together in a way well known for purposes well known. Novelty was not disputed. The argument was, therefore, that the invention was not a manufacture. No suggestion of want of invention could have been made with success, but the principle expounded by Lord Abinger in *Losh v. Hague* was pressed in aid—a new use of old contrivances is not subject-matter. The Court upheld the patent. Said Tindal, C. J.: “We are of opinion, that if the result produced by such a combination be either a new article, or a better article, or a cheaper article to the public, than that produced by the old method, that such a combination is an invention or manufacture intended by the statute, and may well become the subject of a patent.” And later on he adds: “There are numerous instances of patents which have been granted, where the invention consisted in the use of things already known, and acting with them in a manner already known, and producing effects already known, but producing effects so as to be more economically, or beneficially enjoyed by the public.” Then, dealing with a suggestion of counsel, that the degree of invention was so small that it could not be subject-matter, the Chief Justice says that if the invention be new and useful, it is not material whether it be the result of experiment or profound research, or the result of a lucky thought of accident.

From these “hot blast” cases it may be gathered (1) that the Court was desirous of upholding meritorious patent; (2) that it considered that the application to a new use of old contrivances and substances might be patentable; and (3) that the degree of invention and ingenuity would not be considered. It may also be observed that amount of invention had so far been not a matter for inquiry.

Bush v. Fox (s) and *The Patent Bottle Envelope Co. v. Seymer* (t), the one decided in 1853-1855, and the other in 1859, are further examples of the principle that a patent cannot be granted for the application to a new purpose of an old contrivance. “Indeed to hold otherwise,” said Willes, J., “might tend to produce oppressive monopolies in the application of old and

(s) (1852) 23 L. J. Ex. 275; 25 L. J. Ex. 251; 5 H. L. C. 707. The patent was held to be bad because the subject-matter was not a manner of “manufacture”; it was not invalidated for

want of ingenuity.

(t) (1859) 5 C. B. N. S. 164; 28 L. J. C. P. 22. And see *Tetley v. Easton* (1857), 2 C. B. N. S. 706; 26 L. J. C. P. 269.

well-known implements to new material, without any further novelty or merit than the discovery of the material in that form into which it is to be worked." The conclusion that may be drawn from a review of the cases up to about 1857 is this: that whilst many show that analogous user of a known object is not sufficient to enable the discoverer to get a patent (not because of want of novelty, but because there is no new manufacture given to the public), the Judges were straining to support patents for meritorious discoveries, and were breaking in upon the old rule (*u*). On the other hand, there was an anxiety to protect the public against monopolies where the alleged inventions were not of any real merit. Amount of invention has so far not consciously become a matter of serious consideration.

State of the law in 1857.

2. From 1857 to 1884.

During this period it will be found that novelty, merit, and amount of invention are all considered in determining whether there is good subject-matter. At first the tendency was to confound them more or less together; later "novelty" becomes distinct whilst merit and ingenuity remain linked together, ingenuity being in the nature of a test of merit; and finally we reach the modern idea, that an analogous application is good subject-matter, if it be ingenious, and not otherwise. Ingenuity, at first the test of merit, becomes finally a matter of importance in itself (*v*).

General idea of the decision up to 1884.

Brook v. Aston (*y*) is the first case of importance in this period. A patent had been granted for exposing threads of cotton and linen in a distended state to beaters. Subsequently a patent was obtained for applying the same to wool and hair. The second patent was held to be void from want of subject-matter. Lord Campbell, C. J., said that it might well be that a patent should be obtained for the application of an old invention to a new purpose; but to make it valid, there must be some invention, some "novelty in the application." So said Coleridge, J. It will be observed that the learned Judges speak of invention, which they treat as novelty in the application. In the course of hearing in the Exchequer Chamber (*yy*), Baron Bramwell said that the two specifications were "identical." It may be said that "invention,"

Lord Campbell treats the matter as one of novelty.

u) See *Newton v. Vaucher* (1852), 21 L. J. Ex. 305; 6 Ex. 859.

v) See *Booth v. Kennard* (1857), 26 L. J. Ex. 305; see especially the dictum of Pollock, C. B., at p. 307; 1

H. & N. 84; 2 H. & N. 84.

(*y*) (1857) 8 E. & B. 478; 27 L. J. Q. B. 145.

(*yy*) 28 L. J. Q. B. 175.

as a requisite in the modern sense, is the same as "novelty in application," in the sense used by the Court in 1857.

Harwood v. Great Northern Railway.

We now come to the leading authority on "want of invention"—*Harwood v. Great Northern Railway* (z).

This case—which the House of Lords decided, after consulting the Judges—arose on the following state of facts:—A patent was granted for the purpose of connecting the ends of the rails of railways by means of fishes. It was proved that these fishes had been used before to connect timbers in the construction of bridges, and the question for the decision of the House (according to Lord Westbury) was, whether there could be any invention in taking that thing which was a fish for a bridge and having it applied as a fish to a railway. Blackburn, J., said: "In order to bring the subject-matter of a patent within this exception [i.e., sect. 6 of the Statute of Monopolies] there must be *invention* so applied as to produce a practical result. And we quite agree with the Court of Exchequer Chamber, that a *mere* application of an old contrivance in the old way to an analogous subject, *without any novelty or invention* in the mode of applying such old contrivance to the new purpose, is not a valid subject-matter of a patent . . . and we think it must always be a question of degree; a question of, more or less, whether the analogy or cognateness of the purpose is so close as to prevent there being an invention in the application" (a).

Novelty and ingenuity not clearly distinguished in this case.

To this statement of the law all the Judges consulted adhered: on the question of fact there was a disagreement; but, in the result the House declared the patent invalid. Lord Westbury adopted the view of the law as just stated, but it would be difficult to find anything in the opinions of the Law Lords showing that they treated want of ingenuity or invention as something altogether different to novelty.

Although patent lawyers ordinarily treat this case as the great precedent for saying that want of ingenuity is fatal to a patent, though the invention be novel, it will be found that in the speeches of the Lords the decision was treated as one invalidating a patent for want of novelty (see especially per Lord Wensleydale) (aa).

Whilst *Harwood's* case was awaiting the final decision, *Ormsson*

(z) (1865) 11 H. L. C. 651; 35 L. J. Q. B. 27.

(a) The words are italicised as in the Law Journal report.

(aa) See also per Cockburn, C. J., 2 B. & S. 208. And *Thompson v. James* (1863), 32 Beav. 570.

v. *Clark* (b) came before the Common Pleas. In that case, the defendant objected that there was no new invention, and no invention to sustain the patent; and he was successful. Invention and novelty were here pleaded distinctly, but the judgments do not throw much light on the subject of present inquiry. In *Horton v. Mabon* (c) Willes, J., said that "a new combination of old materials, producing a new effect, may be the subject of a patent, but there must be some invention." The other Judges based their decision on the reasoning of the Court in *Losh v. Hagne*.

These cases were quickly followed by *Jordan v. Moore* (d) (in the course of which Grove, Q.C., referring to *Harwood's case*, said that it turned on the question of novelty) and *Penn v. Bibby* (e). In the course of the latter we get the first clear indication that novelty and sufficient of invention are distinct matters, and that both are requisite. Lord Chelmsford said (f): "It is very difficult to extract any principle from the various decisions on this subject, which can be applied with certainty to every case; nor, indeed, is it easy to reconcile them with each other. The criterion given by Lord Campbell in *Brook v. Aston* (ante) has been frequently cited that a patent may be valid for the application of an old invention to a new purpose, but to make it valid there must be some novelty in the application. I cannot help thinking that there must be some inaccuracy in the report of his Lordship's words, because, according to the proposition, as he stated it, if the invention is applied to a new purpose, there cannot but be some novelty in the application." After quoting with appreciation Lord Chief Justice Cockburn's dictum in *Harwood's case* (g), that the question in every case is one of degree—viz., whether the amount of affinity or similarity which exists between the two purposes is such that they are substantially the same, and that determines whether the invention is sufficiently "meritorious to be deserving of a patent"—the Lord Chancellor proceeds: "In every case of this description, one main consideration seems to be, whether the new application lies so much out of the track of the former use as not naturally

Later cases.

Penn v. Bibby.

(b) (1862) 82 L. J. C. P. 29, and 13 C. B. N. S. 337; affirmed 14 C. B. N. S. 475.

(c) (1862) 31 L. J. C. P. 255; 12 C. B. N. S. 437; on appeal 16 C. B. N. S. 141.

(d) (1866) L. R. 1 C. P. 624; 35 L. J. C. P. 268.

(e) (1866) L. R. 2 Ch. 127; 36 L. J. Ch. 455.

(f) P. 135.

(g) 2 B. & S. 194; 29 L. J. Q. B. 193.

to suggest itself to a person turning his mind to the subject, but to require some application, thought, and study."

Parkes v. Stevens (h) and *Murray v. Clayton* (i) are worth referring to as examples, but do not advance or retard the growth of the law in the direction indicated above.

Jessel, M. R.,
and the test
of merit.

A passage in the judgment of the late Master of the Rolls in *Hinks & Son v. Safety Lighting Co.* (k), should be observed. He says, referring to an objection of want of novelty, "A new part of a machine is very uncommon indeed; consequently that is an objection which, *per se*, is not of great weight; but, like every combination which is new, it must have merit, and now, how is a Judge to apportion merit? I do not know. As far as I can ascertain from the authorities, the merit very much depends on the result produced. Where a slight alteration turns that which was practically useless into that which is very useful and important, Judges have considered that, though the invention was small, yet the result was so great as fairly to be the subject of a patent; and, so far as a rough test goes, I know of no better." Here, then, we have merit, not ingenuity, given as the test of subject-matter.

*The Pavement
Light case.*

Hayward v. Hamilton (l) is a remarkable and useful case. The patent was for pavement lights. The frame of the pavement light was glazed, the glass being so moulded that the under side was of prism-like form; one of the sides of the prism was nearly upright, and the other side inclined at such an angle that the light passing through the upper surface might strike the inclined side, and be reflected within the prism, and issue from the upright side in any direction required. Deck lights with prisms were old, but different in many respects to the light in question; there was also an old prism like those constituting part of the pavement light here, but it had not been applied to pavement lights. The Court of Appeal decided that the patent was valid. The present Master of the Rolls showed that want of respect for the defence of "no invention," which he still exhibits; he said: "There was a point raised and discussed, which for a time did seem to me a difficulty, namely, whether although this was new and useful it could be said to be an invention. Now the difficulty that that proposition presented to

(h) (1869), 5 Ch. 36; 38 L. J. Ch. 627.

(i) (1872) 7 Ch. 570, 587.

(k) (1876) 4 Ch. Div. 607, 615; 46 L. J. Ch. 185.

(l) (1879-81) Griff. P. C. 115.

me was this: that I did not recollect of myself any case in which, where a thing had been pronounced to be new and useful, the question of whether it was an invention had ever been discussed, or left to a jury for instance. It seemed to me that in all previous cases it had been taken for granted that if the thing were new and useful there must have been invention in order to arrive at a thing that can be so described, and I should say that in 999 cases out of a 1,000 that must be so." So said Lord Esher in 1879. In 1894 he recognized that want of invention (a want of subject-matter as it is now called) could be an objection distinct from want of novelty, but he said: "Whenever I hear the objection taken to a patent which has been used, which has been bought and sold, which has been theretofore treated by men of business as a useful thing, that it is wanting in subject-matter, I look upon it, I confess, with an amused contempt (*m*)."

Hayward v. Hamilton proves that in 1879 the plea of "no invention" was considered as a different plea to want of novelty, but that a Judge of the experience of Brett, L. J., could not remember a case where the two had been separated. But since the time of *Hayward v. Hamilton*, cases may be found by the score, in which the plea of no ingenuity has been raised, though seldom without an accompanying allegation of no novelty. Since 1880 "want of invention" has been regarded as a separate and distinct bar to the validity of a patent. It may be added that though *Hayward v. Hamilton* went, as far as relates to invention, further in favour of the patentee than any other case, with the possible exception of *Thomson v. American Braided Co.* (*n*), the principles upon which it was decided have never been attacked; see *Blakey v. Latham* (*o*); *Williams v. Nye* (*p*).

3. Since 1884.

The Patents Act, 1883, does not affect the law on this subject. It throws us back on the Statute of Monopolies for the meaning of invention: see sects. 5 (2) and 46. In *Williams v. Nye* (*q*), Cotton, L. J., said that to maintain a patent, there must be a substantial exercise of the inventive power, though it may be that very slight alterations may have important results, and involve the exercise of ingenuity; and the Court loyally followed *Harwood v. Great Northern Railway Co.*

(*m*) *Edison Bell Corporation v. Smith*,
11 R. P. C. 389.

(*n*) 6 R. P. C. 518.

(*o*) (1889) 6 R. P. C. 184.

(*p*) (1890) 7 R. P. C. 62, 67.

(*q*) (1890) 7 R. P. C. 62.

The modern law requires a substantial exercise of the inventive power to support a patent.

In *Elias v. Grovesend Tinplate Co. (r)*, Smith, J., says, "to constitute good subject-matter of a patent, besides utility, the process must be new, and there must be invention." The Court of Appeal assented, and Bowen, L. J., in the course of his judgment said, "It seems to me that the law to be applied is tolerably clear, and that there never has been for many years any doubt about it; that the application of a well-known thing to a new and analogous use is not the subject-matter of a patent, unless there is invention in the application or the mode of application." The Lord Justice notes that in Lord Westbury's judgment invention is hardly referred to, but he says that when Lord Westbury said that you cannot have a patent "merely" for a new application of a well-known contrivance, the Lord Chancellor meant "unless there is invention in the adaptation or mode of application." This is the accepted judicial construction of the word merely.

In *Morgan v. Windover (s)*, Lord Halsbury said: "It cannot but be certain that the Statute of Monopolies and the whole hand of the law founded on that statute makes it an absolute condition to the validity of a patent, that there should be what may properly be called invention; and the application of well-known things to a new analogous use is not properly the subject of a patent." This is in accordance with every modern case if the word "mere" be prefixed to the word "application." This the other Law Lords pointed out: the effect of the word "mere" has just been given in the words of Lord Bowen.

Summary of the law by Lindley, L. J., in *Gadd v. Mayor of Manchester*.

In 1892 *Gadd and Mann v. Mayor, etc., of Manchester (t)*, came before the Court of Appeal, when Lindley, L. J., summed up the state of the law thus:—(1) "A patent for the mere use of a known contrivance without any additional ingenuity in overcoming fresh difficulties, is bad, and cannot be supported. If the new use involves no ingenuity, but is in manner and purpose analogous to the old use, although not quite the same, there is no invention; no manner of new manufacture within the meaning of the Statute of James. (2) On the other hand, a patent for a new use of a known contrivance is good, and can be supported if the new use involves practical difficulties which the patentee has been the first to see and overcome by some ingenuity of his own. An improved thing produced by a new

(r) (1890) 7 R. P. C. 455.

(s) (1890) 7 R. P. C. 131.

(t) 9 R. P. C. 516.

and ingenious application of a known contrivance to an old thing, is a manner of new manufacture within the meaning of the statute."

This is entirely in accordance with *Longbottom v. Shaw* (u), decided the year before by the House of Lords, and with *Goddard v. Lyon* (c), also a House of Lords' case. In the former the patent was held invalid; in the latter it was held to be good; but in both the principles upon which the decision rested were the same as those enunciated by Lindley, L. J.

Whether or not there be sufficient ingenuity to support a patent is a question of fact to be determined in each case (see *Elias v. Grovesend Tinsplate Co.* (y); *Blakey v. Latham* (z); *Gadd v. Mayor of Manchester* (a); *Boyd v. Horrocks* (b); *Morgan v. Windorer* (c); *Thierry v. Rickmann* (d)), but some ingenuity is requisite to support a patent for the application of an old object to a new use. In *Thierry v. Rickmann*, Kay, L. J., said this principle is of "the very essence of patent law."

Invention a question of fact.

"Merit" is no longer sufficient to uphold a patent for an analogous use; in *Longbottom v. Shaw* (c), Lord Herschell said: "You may have an alteration in an existing machine or apparatus which undoubtedly constituted an improvement, and results in the machine being free from some defect which previously existed, but which yet is only the application of known methods to analogous purposes, and cannot be the subject-matter of a patent." So also, the degree of merit will not be too jealously inquired into. An ingenious invention resulting from a happy flash of inspiration and one resulting from long experiment are equally patentable (*Longbottom v. Shaw*) (cc). Again, invention does not depend upon whether the result is or is not for the public good; *Thomson v. American Braided Wire Co.* (f).

Merit not sufficient to support a patent.

The conclusion arrived at is this:—

(1) Formerly "ingenuity," as distinct from "novelty," was not a requisite to validity. (2) But a patent could not be granted for a new use of an old contrivance (*Losh v. Hague* (g)). (3) This was found to be detrimental to public policy, and when a really advantageous use for an old object

Conclusions arrived at.

(u) 8 R. P. C. 333.

(v) (1894) 11 R. P. C. 354.

(w) 1890, 7 R. P. C. 455.

(x) 1889, 6 R. P. C. 29, 181.

(y) 1892, 9 R. P. C. 516.

(z) 1891, 9 R. P. C. 77.

(a) (1890), 7 R. P. C. 131.

(d) (1895) 12 R. P. C. 543; in the House of Lords 15 Dec., 1896.

(e) (1891) 8 R. P. C., at p. 336.

(cc) *Supra*.

(f) (1889) 6 R. P. C. 518.

(g) (1837) 1 W. P. C. 200.

was discovered, the Courts struggled to support it; see, e.g., *Crane v. Price* (h). It may be questioned whether, in principle, this was correct. No *new manufacture* was produced. (4) Under this state of the law many discoveries would be admitted to patent rights which were not within the spirit of sect. 6 of the Statute of Monopolies, and a test between the good and the bad was needed. Novelty and Merit were usually the touchstones, and Ingenuity was a proof of either. Hence meritorious discoveries of analogous uses, especially when the novelty of the use was marked and the difficulty of arriving at it great, were protected, others were rejected. This is the state of affairs between 1857 and 1880. Finally (5) ingenuity or invention is of itself taken as the test of merit that will support a patent for an analogous use. From "analogous users" ingenuity, as a requisite, has spread to every class of alleged invention.

If this be true, it follows that "ingenuity" is a requisite to be treated distinct from novelty, but one which has been added to patent law by modern Judges (i). It is a counterpoise, so to speak, to the admission of "analogous use" on the subject-matter of a patent. It is justified by the words of sect. 6 of the Statute of Monopolies, and is now firmly fixed in our law. A comparison of the language of Lord Abinger in *Losh v. Hays*, and of Lord Justice Lindley in *Gadd v. Mayor, etc., of Manchester*, gives an excellent idea of the contrast between the law in the "thirties" and in the year 1892.

Nevertheless, in reality, "ingenuity" is often but a variation of the novelty issue, and in all cases a requisite akin to novelty. The question, when want of ingenuity is alleged, is not whether the discovery or invention is a "*manufacture*," but is it so far out of the track of previous inventions as not to be the mere result suggested by previous effort? In other words, is it a *new manufacture*?

The present state of the law was laid down by Lindley, L.J. in *Gadd v. Mayor of Manchester* (k), as previously stated (l).

In *Penn v. Bibby* (m), Lord Chelmsford stated the test thus:

(h) (1842) 1 W. P. C. 393; 4 M. & G. 580; 12 L. J. C. P. 81.

(i) But see Kay, L.J., in *Thierry v. Rickmann* (Dec., 1895), 12 R. P. C. 543, 548.

(k) (1892) 9 R. P. C., at p. 524.

(l) *Ante*, p. 94; see also *Morgan v. Windorer* (1890), 7 R. P. C. 131, a case which was heard in the House of Lords, and which was to the same effect.

(m) (1866) 2 Ch. 127, 136; 36 L. J. Ch. 455.

"A main consideration is whether the new application lies so much out of the track of the old, as not naturally to suggest itself to a person turning his mind to the subject, but to require some application of thought and study."

But the validity of the patent does not depend upon the amount of ingenuity, provided only that there be some real ingenuity. "Where a slight alteration in a combination turns that which was practically useless before into that which is very useful and important, Judges have considered that, though the invention was small, yet the result was so great as fairly to be the subject of a patent" (n). Bramwell, L. J., spoke to the same effect in *Hayward v. Hamilton* (o), and Lord Herschell in *Vickers v. Siddell* (p). In short, though to maintain a patent there must be a substantial exercise of the inventive powers, it may be that slight alterations are proof of ingenuity (q). Nor does it always matter whether the improvements are the result of a sudden happy idea or of prolonged study and experiment (r).

Slight amount of invention may suffice.

Whether or not an alleged invention is sufficiently ingenious is a question of fact (s).

Amongst tests may be noted: (1) usefulness (t) (of itself not always proof of ingenuity (u)), especially when others failed to produce the results (v); (2) a demand for the article or process—this is matter for consideration (y), especially if the want of the thing was felt before the invention was discovered. That skilled workmen could have made the article in question without much difficulty goes strongly against the ingenuity of the patented invention; though if for many years the want was felt, and yet no skilled workmen, in fact, produced the invention, there is strong evidence in favour of the requisite ingenuity (z).

Tests of invention.

(n) Jessel, M. R., in *Hinks v. Safety Lighting Co.* (1876), 4 Ch. Div. 607; 46 L. J. Ch. 185.

(o) (1879) Griff. P. C. 115.

(p) (1890) 15 A. C. 496; 60 L. J. Ch. 105; 7 R. P. C. 292.

(q) *Williams v. Nye* (1890), 7 R. P. C. 62.

(r) *Longbottom v. Shaw* (1891), 8 R. P. C. 333, 337.

(s) *Gadd v. Mayor of Manchester* (1892), 9 R. P. C. 516; *Goddard v. Lyon* (1893-4), 10 R. P. C. 334; 11 R. P. C. 354; *Morgan v. Windover* (1890), 7 R. P. C. 131; *Cropper v. Smith* (1884), 26 Ch. Div. 700; 53 L. J. Ch. 891; 1 R. P. C. 81, 90; *Saxby v. Gloucester*

Waggon Co. (1883), 7 Q. B. D. 305; 50 L. J. Q. B. 577; Griff. A. P. C. 54.

(t) *Elias v. Grovesend Tinplate Co.* (1890), 7 R. P. C. 455, 461; *Thierry v. Rickmann* (1895), 12 R. P. C. 412.

(u) *Morgan v. Windover* (1890), 7 R. P. C. 131; *Sudbury v. Lee* (1894), 11 R. P. C. 58.

(v) *Duckett v. Whitehead* (1895), 12 R. P. C. 376.

(y) *Longbottom v. Shaw* (1891), 8 R. P. C. 333, 336, 337; and see per Lord Herschell in *Thomson v. American Braided Wire Co.* (1889), 6 R. P. C. 518.

(z) *Dowling v. Billington* (1890), 7 R. P. C. 191.

Recent
decisions.

The following are some recent decisions which may be useful as illustrating the above statement of law :—

Gadd v. Mayor of Manchester (a). Plaintiffs were the patentees of improvements relating to gas holders. The object of the invention was to support a rising gas holder in a vertical position without the aid of the vertical framework usually employed. It was alleged that the mechanism employed had previously been used for guiding pontoons, and that there was no invention in applying to gasometers an idea which had already been applied to pontoons. But the Court (Lopes, L. J., *dubitante*) upheld the patent on the ground that, in adapting the method to gasometers which had hitherto been in use for pontoons, there were practical difficulties to be overcome, and that the mode of overcoming them would be by no means obvious to persons of ordinary skill acquainted with gasometers.

Godlard v. Lyon (b). Plaintiff's patent was for an apparatus for purifying, disinfecting, &c. It consisted of an arrangement of an inner chamber into which steam was admitted, and the surrounding of the inner chamber by a steam jacket, also heated by steam. The steam in the inner chamber, at a certain degree of pressure, penetrated the articles to be disinfected and purified them without damage. A previous disinfector had been made, which closely resembled the plaintiff's invention, but was unsuitable for the use of steam in the inner chamber, save at a much lower pressure than was possible in the plaintiff's chamber. The door of the earlier apparatus would have burst open if the pressure had exceeded a certain measure; the door of the plaintiff's would stand the pressure. High pressure steam was very advantageous for disinfecting processes such as those in point. It was held that, though the actual change was but small, the unquestionable utility of the result and the fact that it had never before been attained was evidence from which the requisite ingenuity could be inferred (c).

In *Blakey v. Latham (d)* the patent was for an improved heel plate for boots and shoes. Formerly the heel plate was attached

(a) (1892) 9 R. P. C. 516. A comparison of this case with *Harwood v. Great Northern Railway* (1865), 35 L. J. Q. B. 27, 11 H. L. C. 654, shows how entirely the question is one of fact.

(b) (1894) 11 R. P. C. 355.

(c) Amongst other recent cases in

which the Court has supported patents attacked for want of ingenuity, see *Vickers v. Siddell* (1890), 15 A. C. 49; 7 R. P. C. 292; *Edison-Bell Pione-graph Co. v. Smith* (1894), 11 R. P. C. 389; *Duckett v. Whitehead* (1895), 12 R. P. C. 376.

(d) (1889) 6 R. P. C. 184.

to the heel of the boot by means of nails driven through holes in the heel plate; the plaintiff made the heel plate and projecting prongs in one piece, so that the prongs could be driven into the boot and then the plate would be fixed. Prior to the date of the patent, toe plates existed with two prongs solidly fastened to the inner surface of the plate. The Court decided that, in view of this, the plaintiff's discovery showed no invention.

Lombottom v. Shaw (c) has already been referred to (*f*). The invention claimed was the formation of a row of hooks upon a foundation piece of metal, either by stamping the hooks out of the metal or by soldering the hooks on to the metal in a groove, and then attaching the row of hooks so formed to a reel or frame for the purpose of holding pile. Reels or frames with a row of hooks were admittedly old, and the idea of attaching a row of hooks to a strip of metal so that the strip could be applied where required. It was decided that the application of a strip of metal with hooks to reels or frames for the purpose of holding pile lacked ingenuity and was not patentable.

In *Lancashire Explosives Co., Ltd. v. Roburite Explosives Co., Ltd. (g)*, the patent was for an explosive made by mixing solid nitrate of ammonia with dinitrobenzene, when the latter was liquefied by heat, so that on cooling the latter formed round the former a non-hygroscopic coating. A prior specification mentioned the subjects used, another described the coating of a nitrate by a hydrocarbon—not nitrated. The Judge considered, as a result of the evidence, that a chemist conversant with explosives would suppose that the ingredients used would be explosive if mixed as described, and that if solid particles be carefully treated with a liquid substance such as that used they would be completely coated thereby; hence he decided that the plaintiff's patent failed for want of invention. His decision was reversed on appeal.

Shaw v. Barton (h). Here the patent was for improved wire rings suitable for securing elastic tyres on bicycles, the main feature of the improvement being a particular form of joint. Joints of the kind claimed had been previously used in wirework for lamps and other purposes, but the plaintiff claimed that there was invention in the application to bicycle wheels, as in such

(c) (1891) 8 R. P. C. 333.

(f) *Ibid.*, p. 82.

(g) 1895, 12 R. P. C. 393, 470; 13

R. P. C. 429.

(h) (1895) 12 R. P. C. 282.

wheels the strain on the joint was very great. It was shown, however, that such joints had been used for centrifugal machines revolving at the rate of 1,000 turns a minute; hence Stirling, J., decided that there was not sufficient invention in plaintiff's application to support a patent. He said: "To a person acquainted with the state of knowledge in the wire trade at the time, the only problem that would suggest itself . . . was whether materials, such as steel and solder, could be found of sufficient tenacity to make a joint suitable for use in bicycle tyres. This might require experiment, but does not seem to me to call for the degree of invention necessary to support a patent. The explanation of the failure of bicycle-makers to make use of the joints appears to be that they were not aware of what had been done by wire-workers" (i).

SECT. IV.—UTILITY.

Utility
necessary to
support a
patent.

The ground on which patents are granted (k), the common law (l), and the recorded decisions under the Statute of Monopolies (m), make it clear that the subject-matter of a valid patent grant must be "useful and beneficial to the public." The absence of utility will be fatal to the patent (n). The statute does not in terms mention this requisite, but utility was necessary to support a patent at common law, and has since the statute been required to satisfy the requirement that the patent shall not be contrary to law or mischievous to the State (o).

The term "utility" as used in patent law is difficult satisfactorily to define. In *Young v. Rosenthal* (p) (an action for the infringement of a patent for improvements in stays and corsets), Mr. Justice Grove charged the jury in the following

(i) See also *Cole v. Saqui* (1889), 6 R. P. C. 11; *Sudbury v. Lee* (1894), 11 R. P. C. 58.

(k) See Form of Grant, *post*, p. 667.

(l) Shepherd's Abridgment, Part III. 61; Coke, 3 Inst. 184.

(m) *Darcy v. Allin* (1602), Noy, R. 182; *Boulton v. Bull* (1795), 2 H. Bl. 498; *Huddart v. Grimshaw* (1803), 1 Web. P. C. 86; Day, P. C. 278; *Manton v. Manton* (1815), Day, P. C. 318; *Hill v. Thomson* (1817-18), 8 Taunt. 401; 1 Web. P. C. 249; *Lewis v. Marling* (1829), 10 B. & C. 28; 4 C. & P. 58; 1 Web. P. C. 497; *Minter v. Wells* (1831), 1 Web. P. C. 129; *Russell v. Cowley* (1835), 1 Web. P. C. 467;

Morgan v. Seaward (1837), 2 M. & W. 562; 1 Web. P. C. 597; *Re Cutler's Patent* (1839), 1 Web. P. C. 426; *Craze v. Price* (1842), 4 M. & G. 605; 1 Web. P. C. 411; *Walton v. Bateman* (1842), 1 Web. P. C. 623; *Pow v. Taunton* (1844), 9 Jur. 1056; *Simpson v. Holliday* (1864), 20 New Lon. Jour. N. S. 107, 120.

(n) *Morgan v. Seaward* (1837), 1 Web. P. C. 197, per Alderson, B.; also 2 M. & W. 561, per Parke, B.; *United Horse Nail Co. v. Swedish Horse Nail Co.* (1889), 6 R. P. C. 8.

(o) *Elias v. Grovesend Tin Plate Co.* (1890), 7 R. P. C. 455, 467.

(p) (1884) 1 R. P. C. 29, 34.

terms:—"I think in law utility means an invention better than the preceding knowledge of the trade as to a particular fabric. It does not mean abstract utility. Therefore, even if you are of opinion . . . that stays are very bad things, you must not say this is useless because stays are bad things."

Meaning of utility.

Lindley, L. J., thus refers to utility (q): "The utility of the alleged invention depends not on whether by following the directions in the complete specification all the results now necessary for commercial success can be obtained, but on whether by such directions the effects which the patentee professed to produce could be produced, and on the practical utility of those effects. . . . To judge of the utility the directions in the amended specification must be followed, and, if the result is that the object sought to be attained by the patentee can be attained, and is practically useful at the time when the patent is granted, the test of utility is satisfied. Utility is often a question of degree, and has always reference to some object. 'Useful for what?' is a question which must be always asked, and the answer must be, useful for the purpose indicated by the patentee" (r). In *Wilson v. Union Oil Mills* (s) Charles, J., stated as the test of utility, does the invention when put into practice by a competent man do what it assumes to do? (t).

It is not necessary that a patent should be useful, commercially considered. In *Badische Anilin und Soda Fabrik v. Levinstein* (u) Lord Halsbury said: "The element of commercial pecuniary success has, as it appears to me, no relation to the question of utility in patent law generally, though of course where the question is of improvement by reason of cheaper production, such a consideration is of the very essence of the patent itself, and the thing claimed has not really been invented unless that condition is fulfilled . . . if in considering generally the requirement of utility there is an obligation to make it clear that the patent will be commercially successful and so profitable to the patentee, the burden is so great that no patentee could discharge it." Lord Herschell says (v): "I do not think it

Commercial utility not necessary.

(q) *Lane Fox v. Kensington, etc., Co.* 1892, 3 Ch. 424; 9 R. P. C. 417.
 (r) See per Tindal, C. J., in *Cornish v. Keene*, 1 W. P. C. at p. 506; *Edison v. Holland* (1889), 6 R. P. C. 243; *Badische Anilin v. Levinstein* (1887), 12 A. C. 712, 719, 720; 4 R. P. C. 449.
 (s) 1892, 9 R. P. C. at p. 70.

(t) See for an example, *Turner v. Winter* (1785), 1 T. R. 602; 1 W. P. C. 77; *Manton v. Parker*, Dav. P. C. 337; 1 W. P. C. 192, n.
 (u) (1887) 12 A. C. 712, 719, 720; 4 R. P. C. 449.
 (v) P. 719.

is a correct test of utility to inquire, whether the invented product was at the time of the patent likely to be in commercial demand, or capable of being produced at a cost which would make it a profitable speculation to manufacture it" (y). In *Edison v. Holland* (z) Cotton, L. J., said: "I am afraid we cannot consider commercial utility; it is a new term in patent law."

In *Neilson v. Harford* (a), Parke, B., said that an invention to support a patent must be productive practically of some beneficial result, no matter how great, provided it is sufficient to make it worth while (the expense being taken into consideration) to adopt the invention. But the comparison between expense and result must not be pushed too far.

In *Tetley v. Easton* (b), it was stated that where a machine can do that which apparently no other machine can be got to do, it must be pronounced useful, even though its cost is very considerable.

In *Wilson v. Union Oil Mills Co.* (c), Charles, J., said: "A patent may be a patent for a useful article; it may satisfy the condition of utility although it may be so expensive as to be commercially useless. That is not the test at all. The question is, does it do when put in practice by a competent man what it assumes to do? That is the test of utility" (d).

Utility may be provable though the invention has not actually been used (e). The question is, can it be used for the purpose intended? A patent is not to be defeated because subsequent inventions have improved the patented article, or because, in consequence of such improvements, practically no articles were made in accordance with the specification (f). It may be shown, for example—as may happen in the history of even the most original and valuable inventions—that the inventions first claimed were immediately superseded by simpler constructions involving the same principle (g).

It is not always necessary that there should be utility in every part of the invention (h), and where there is general utility in an

(y) See also *Siddell v. Vickers* (1888), 5 R. P. C. 96. 277; *Thompson v. Batty* (1889), 6 R. P. C. 84, 100.

(z) (1889) 6 R. P. C. at p. 257.

(a) (1811) 1 W. P. C. at p. 341.

(b) (1882) Macr. P. C. 63.

(c) (1892) 9 R. P. C. at p. 70.

(d) And see *Badische Anilin Co. v. Levinstein* (1887), 12 A. C. at p. 719; 4 R. P. C. 449.

(e) *Macnamara v. Hulse* (1842), Car. & M. 471; 2 W. P. C. 129, n.

(f) *Edison v. Holland* (1889), 6 R. P. C.

(g) See *Renard v. Levinstein* (1864), 11 L. T. N. S. 505; *Otto v. Linford* (1881), 46 L. T. N. S. at p. 41; *United Telephone Co. v. Bassano* (1886), 3 R. P. C. at p. 313; *Edison v. Holland*, *sup.*

(h) *Lewis v. Marling* (1829), 10 B. & C. 22; 1 W. P. C. 493; *Morgan v. Seaward* (1837), 1 W. P. C. 197; *Fretwell v. Loe* (1878), 9 Ch. D. 48.

The relation of utility to cost.

Non-user is consistent with utility.

Utility in every part not always necessary.

invention, it is necessary to show very little utility to support a second claim, which is only subsidiary; it is not a fatal objection to the patent that one part of the claim is not so useful as the other (i).

In *Haworth v. Hardeastle* (k) (an action for the infringement of a patent), the jury found as follows: "The invention is new and useful upon the whole; . . . but they also find that the machine is not useful in some cases for taking off goods." The verdict was entered for the plaintiff, and was subsequently supported by the Court of Common Pleas.

But if a part of the invention is separately and distinctly claimed, and as an integral part of the invention, the non-utility of that part may be fatal (l); this rule, however, is not construed very harshly against patentees (m).

It will not suffice that an invention is found useful for certain purposes, if it fail to have utility in regard to the purpose for which it is taken out. In *Cornish v. Keene* (n), Tindal, C. J., said: "It is a circumstance in the case that it is found useful for surgical purposes. The patent, however, is not taken out for that purpose, and it would not be sufficient, in order to maintain the patent, on the ground of its being an improvement, to show that it was an improvement in surgical cases, for bandages only, because the patent is not only confined to that, but they must also prove that it is generally an improvement with respect to the general uses of that fabric or manufacture which was intended, that is, with respect to braces, garters, and other articles that are made of it." This, in effect, is a statement that the invention itself, and not merely the result of the invention, must be useful.

Utility with regard to the purpose of the invention is required.

The amount of utility necessary to support a patent need not be very large. "It has been decided over and over again that the slightest amount of utility (I will not say an infinitesimal scintilla, but a very slight amount of utility), is sufficient to sustain a patent." So said Grove, J., in *Philpott v. Hanbury* (o).

Amount of utility.

(i) *Ehrlich v. Ihlee* (1888), 5 R. P. C. 203, 455. See also the remarks of Lord Herschell pending the argument in *Vickers v. Siddell* (1895), 15 App. Ca. 496; 60 L. J. Ch. 105; 7 R. P. C. 292. Also *Miller v. Barker* (1893), 10 R. P. C. 106.

v. Swedish Horse Nail Co. (1889), 6, R. P. C. 1, 8; *Templeton v. Macfarlane* 1 H. C. L. 595. And see *Easterbrook v. G. W. Railway* (1885-6), 2 R. P. C. 201; 3 R. P. C. 94.

(k) (1834) 1 W. P. C. 483; 1 Bing. N. C. 182; 3 L. J. C. P. 311

(m) *Ehrlich v. Ihlee* (1888), 5 R. P. C. 455; *Otto v. Linford* (1881), 46 L. T. N. S. 39.

(l) *United Horseshoe and Nail Co.*

(n) (1835) 1 W. P. C. 506.
(o) (1895) 2 R. P. C. at p. 37.

Chatterton, V.-C., in *Pirrie v. York Street Flax Spinning Co.* (p) said: "A very slight amount of utility will be sufficient, provided it does not appear that the Crown has been deceived as to the extent of the utility of the invention" (q).

But there are limits; and on this point the case of *Easterbrook v. Great Western Railway Co.* (r), is instructive. It was an action for the infringement of a patent for "improvements in machinery or apparatus for actuating and controlling railway points or signals," and it was proved at the trial that the plaintiff's apparatus could be so worked as to give conflicting signals, or signals conflicting with the points. It was strongly urged, however, on behalf of the plaintiff, that, inasmuch as the apparatus, when applied to very simple constructions of points and signals at Leith, had performed its work for three or four years without accident, and was shown to have some utility, and that as a very small degree of utility was enough to support a patent, the patent should not be invalidated on the ground of inutility. In disposing of this contention, Wills, J., said: "The specification here points to its universal application for railway signalling, including its use at the most complicated junctions and sidings. If it be useful for one very small and insignificant section of its proposed work, and for the rest is, as in my opinion it is proved to be, fraught with danger and death, the specification is bad as not distinguishing between its useful and its useless application. It is as consonant with good sense as I believe it to be with good law, that an inventor who invites the indiscriminate use of apparatus sure to bring about disaster in the long run, if generally applied according to his invitation, cannot maintain a patent for his invention because it will do some useful work at places and under circumstances where mechanical appliances for preventing conflict of signals are scarcely necessary at all, whilst elsewhere it is full of danger to the public."

A question of fact.

The utility of an invention is a question of fact (s). Where the Judge of first instance held on the evidence that there was utility the Court of Appeal refused to disturb his judgment (t).

(p) (1893) 10 R. P. C. at p. 39; Affd. 11 R. P. C. 429.

(q) See also per Lord Halsbury in *Badische Anilin, &c., Co. v. Levinstein* (1887), 12 A. C. at p. 712; 4 R. P. C. 449.

(r) (1885-6) 2 R. P. C. 201; 3 R. P. C. 94.

(s) *Hill v. Thompson* (1817), 3 Mer.

626; 1 Web. P. C. 237; *Bloxam v. Elsee* (1825), 1 C. & P. 565; *Cornish v. Keene* (1835), 1 Web. P. C. 506; *Macnamara v. Hulse* (1842), 2 Web. P. C. 128, n; Car. & M. 471.

(t) *Siddell v. Tickers*, supra at p. 430; *Erlich v. Ihlee* (1888), 5 R. P. C. 26; *Cole v. Saqui* (1888), 5 R. P. C. 495.

A large sale is good evidence of utility (*u*). So also is the fact that the patent has been infringed. In *Lucas v. Miller* (*x*), Kay, J., said: "As to the utility, I have not heard much said; and if anything had been said I should have answered it as I have intimated already, by saying that better evidence of the utility of an invention cannot possibly be had than the fact that the defendant has attempted to infringe it" (*y*).

Pecuniary success, especially where the value of an improvement claimed rests wholly or partially upon increased cheapness in production, is cogent evidence of utility (*z*). But want of pecuniary success is not inconsistent with utility (*a*).

SECT. V.—MISCELLANEOUS.

An invention which is "mischievous to the State, to the hurt of trade, or generally inconvenient," cannot by the very terms of the Statute of Monopolies be the subject-matter of a valid patent. Thus it has been said, a patent taken out so extensively as to deprive mechanics of the materials used in their trades (*b*), or a claim to *methods that may thereafter be discovered* of arriving at the result patented (*c*), or any patent for illegal inventions, such as a housebreaker's implement, would be invalid (*d*).

(*u*) *Moss v. Malings* (1886), 3 R. P. C. at p. 378; *Cole v. Saqui* (1888), 5 R. P. C. 459.

(*x*) (1885) 2 R. P. C. 155.

(*y*) See also *Miller v. Barker* (1893), 10 R. P. C. 106, 111.

(*z*) *Cole v. Saqui* (1888), 5 R. P. C. 495; *American Braided Wire Co. v. Thomson* (1888), 5 R. P. C. 113; *Ehrlich v. Ihler* (1888), 5 R. P. C. at p. 205; *Siddell v. Vickers* (1888), *ibid.* 96; *Edison Co. v. Holland* (1889), 6 R. P. C. 257.

(*a*) Cp. *Renard v. Levinstein* (1864), 11 L. T. N. S. 505; *Otto v. Linford* (1881), per Jessel, M. R., 46 L. T. p. 41;

United Telephone Co. v. Bassano (1886), 3 R. P. C. at p. 313; *Goulard v. Gibbs* (1886), 5 R. P. C. 536; see also under Extension of Patents, *post*, p. 496.

(*b*) Godson, p. 87.

(*c*) Cp. *Walton v. Potter* (1841), per Tindall, C. J., 1 Web. P. C. 601; 3 M. & G. 411; 11 L. J. C. P. 138; *Crossley v. Potter* (1853), Macr. P. C. 215; *Curtis v. Platt* (1863), per Lord Westbury, L. R. 3 Ch. D. 139; also 8 L. T. N. S. 657; 33 L. J. C. P. 255; 11 L. T. N. S. 245; 35 L. J. Ch. 852; L. R. 1 H. L. 337; *Dudgeon v. Thompson* (1877), L. R. 3 App. Cas. 34.

(*d*) Hindmarch, p. 142.

CHAPTER IV.

THE PATENT OFFICE.

SECT. 1. PATENT OFFICES BEFORE ACT OF 1852.

SECT. 2. THE GREAT SEAL PATENT OFFICE, 1852—1883.

SECT. 3. THE PATENT OFFICE UNDER ACT OF 1883.

We propose to give in this Chapter an account of the offices in which the business of obtaining patents for inventions has been and is now conducted. In doing this the chapter will most conveniently be divided up in the periods marked out by the Act of 1852 and the Act of 1883.

SECT. 1.—PATENT OFFICES BEFORE ACT OF 1852 (a).

Petition and
declaration
lodged at
Home Office.

Under the early procedure for taking out letters patent for inventions—which was regulated partly by statute (27 Hen. VIII. c. 11), and partly by long established practice—there were six offices through which an application for a patent passed, before the grant was issued under the Great Seal. The petition and declaration were

(a) The account given above is applicable to the practice as it existed prior to the Patent Law Amendment Act, 1852. There is, however, no reason to suppose that the procedure of the sixteenth century, under which the first monopoly patents were granted, differed materially from the above so far as the formal stages were concerned. In the reign of Elizabeth petitions were presented to the Queen either personally, or through some influential friend of the applicant, or again through the State Secretary. The business of the monopolies was largely the work of the Queen and Cecil, according to whose instructions, based upon preliminary agreements with the applicants, the law officers prepared the requisite instruments. The conditions, subject to which the grant was finally issued, differed materially according as the applicant was of native or foreign extraction, or again as the industry proposed to be introduced was of an

experimental nature, or new only as regards practice within the realm. It was usual to bind foreigners to come over within a stated period and to take and instruct a certain number of native apprentices in the new industry. In process of time, however, the form of the grant became stereotyped, and the patent issued more or less as a matter of course, provided the applicant was in a position to pay the fees exacted at the various stages. In the eighteenth century the whole theory of patent law was revolutionised by the introduction of the patent specification rendering a corresponding revision of the procedure a matter of necessity. The pitiless criticism of the system by Bentham in his "Manual of Political Economy," Chap. III., and of Dickens in his *Poor Man's Tale of a Patent*, brought the cause of patent law reform within the sphere of practical politics, and eventually secured the passing of the Patent Law Amendment Act of 1852.

lodged at the *Home Office*. There was then a reference of the petition to the *Chambers of the Attorney- or Solicitor-General (b)* for report. Upon the report of the law officer, the report was taken, with the petition, back to the Secretary of State for the Queen's warrant. This was an echo of the report, and gave authority to the law officer to prepare a bill. The warrant then issued, and was taken to the *Patent Bill Office (c)* as an authorization for the preparation of the Queen's Bill. The Queen's Bill, which was a draft of the patent, having been duly prepared, and two copies engrossed, one for the Privy Seal Office, and one for the Signet Office, was taken to the Home Office, and laid before her Majesty by the Secretary of State for the sign manual, which was always affixed at the commencement of the instrument. The Queen's Bill was next taken to the *Signet Office (d)* to be passed (e). The signet was a royal seal which was always in the custody of the Secretary of State, and he had clerks under him called clerks of the signet (f), whose duty it was (e) to pass the Queen's Bill on to the *Privy Seal Office* within eight days after its receipt at the Signet Office. The Queen's Bill, which was compared with copy previously filed, was filed at the Signet Office as the warrant to the clerk of the signet to prepare the Signet Bill, and issue it to the Lord Privy Seal. The Signet Bill having been completed, was taken to the *Privy Seal Office*, which was in the same building as the Signet Office; and the clerk of the Privy Seal, under the provisions of 27 Hen. VIII. c. 11, sect. 2, prepared the Privy Seal Bill, which, having been duly sealed by the Lord Keeper, or one of his officers in the case of his absence, was taken to the *Letters Patent Office*—the Patent Office properly so called—in Quality Court, Chancery Lane. Here the patent was prepared by the clerk of patents, in pursuance of the Privy Seal Bill, which then went to the *Lord Chancellor's Office (g)*, and in due course the impression of the Great Seal was attached to it.

Reference to
Attorney-
General.
Report of
Attorney-
General.
Queen's
Warrant.
Patent Bill
Office.
Queen's Bill.

Signet Office.

Privy Seal
Office.

Patent Office.

Lord Chan-
cellor's Office.

(b) Caveats were also entered at the chambers of the law officer.

(c) The Patent Bill Office was in Old Buildings, and afterwards in Serle Street, Lincoln's Inn: it was an office of the Attorney- and Solicitor-Generals for the preparation of bills for patents which were to pass the Great Seal, and was usually, but incorrectly, called the Patent Office. The clerks of the Patent Bill Office were appointed by the Attorney-General for the time being, and prepared all bills for patents as his deputies.

(d) At 28, Abingdon Street, Westminster, and afterwards at Somerset House.

(e) 27 Hen. VIII. c. 11, s. 1.

(f) There were at first four clerks of the signet, who attended, in person or by deputy, in rotation for three months at a time; but the office of one was abolished, and the attendance of the remaining clerks was fixed at four months a year. The business of the office was chiefly transacted, however, by the record clerk.

(g) Formerly, the Privy Seal Bill went to the Hanaper Office, but this stage was afterwards dispensed with—the Hanaper fees being paid over by the Clerk of Patents at the Great Seal.

Enrolment
Office.
Petty Bag
Office.
Office of Rolls
Chapel.

Enrolment.

Differences
between
Enrolment
Office, Rolls
Chapel, and
Petty Bag
Office.

After having passed the Great Seal, the patent itself was delivered to the grantee, in order that he might have evidence of his title, and immediate possession of his privilege; and the patent was then enrolled from the Privy Seal Bill upon the rolls. The patent rolls were kept about two years in the *Enrolment Office*; thereafter they were transferred to the *Petty Bag Office*, along with the Privy Seal Bills and dockets, and having remained there till they were about fifteen years old, were finally sent to the *Office of the Rolls Chapel* together with the Privy Seal Bills. In one of these three offices was also enrolled the specification, which, from about 1712 to 1852, a patentee was required to enrol within six months after the date of his grant. Up to January 1st, 1849, a specification might be entered at the Enrolment Office, the Petty Bag Office, or the Rolls Chapel indifferently at the option of the patentee. There were, however, differences between these offices in points of detail. (1) A specification intended to be enrolled in the Enrolment Office required to be acknowledged before a Master (ordinary or extraordinary) in Chancery. At the Petty Bag and Rolls Chapel Office, no acknowledgment was demanded. (2) After 1 & 2 Vict. c. 94, the Rolls Office became a branch of the Public Record Office, created by that statute, and an enrolment could be proved by an authenticated copy, whereas a specification in the Enrolment or Petty Bag Office required to be proved by an examined copy. (3) At the Enrolment Office, specifications were entered upon what were called the *Close Rolls*, because upon those writs close were enrolled. In each of the other offices there was a Roll called the *Roll of Specifications and Surrenders*, upon which specifications and other instruments were entered together. (4) By an alteration introduced by Lord Langdale, M. R., a party inspecting the rolls at the Rolls Chapel Office was allowed to take extracts from, or copy any part of, the enrolment of a specification in pencil. This facility was not enjoyed at either of the other offices. (5) After January 1st, 1849, all specifications were, by order of Lord Langdale, M. R., enrolled at the Enrolment Office.

SECT. 2.—THE GREAT SEAL PATENT OFFICE, 1852 TO 1883.

Origin of
15 & 16 Vict.
c. 83.

The Patent Law Amendment Act, 1852, was founded practically upon three Bills, which were under consideration by a Select Committee of the House of Commons in 1851: (1) Lord Granville's Bill, (2) Lord Brougham's Bill, and (3) these two Bills modified and consolidated by Mr. Webster, at the request of the Committee.

In the parliamentary session of 1851, Mr. Webster's Bill, owing to

its being returned too late from the House of Commons, was lost; but in the following year two other Bills were prepared, which resulted in the Patent Law Amendment Act, 1852 (*i*).

Under the provisions of the Patent Law Amendment Act, 1852, three separate offices for the passing of patents might have been either continued in operation or newly constituted—the Great Seal Patent Office, the office of the Attorney-General for making the warrants, both of which were already in existence, and the office of the commissioners, which was new. The commissioners, however, upon consideration, decided that one office only should be constituted for the whole business of passing the patents, and accordingly they ordered (*h*) that their office should be combined with the Great Seal Patent Office (*l*): and by a subsequent order the Attorney- and Solicitor-General directed that the warrant of the law officer should be made in the combined offices. The commissioners appointed the clerk of the patents for the time being to be the clerk of the commissioners, and upon him the whole duties of the office came to be imposed. They also, with the consent of the Treasury, under the Act, appointed a staff of clerks, and an officer designated the superintendent of specifications, for the printing of specifications and other works. In pursuance of these orders, the whole business of the commissioners relating to patents, from the petition for the allowance of provisional protection to the printing, publication, and sale of the specification, was conducted in one office. By the consolidation of the three offices a large saving was effected in the salaries of officers and clerks, and in the rent and furnishing of offices; the business was placed under the immediate control of the Lord Chancellor and the commissioners: they communicated with one office. Simplicity and uniformity of practice was secured, and the applicant had the great advantage of one office of resort for information in all stages of the patent (*l*).

Offices under
15 & 16 Vict.
c. 83.

One office for
patents.

(*i*) This Bill originally contained a provision for the appointment of examiners, which, however, was struck out in Committee. The question of preliminary examination was apparently left to the discretion of the Commissioners, who at one time had under consideration a proposal to enlist the voluntary services of three experts to be selected from the Royal Society, the Chemical Society, and the Institution of Mechanical Engineers. Cf. Bramwell, *Efficacy of Protection for Inventions*, 1875, p. 54. In connection with this vexed question of examination, it may be worthy of note that in the reign of Charles II. "Sir Robert Moray gave

an account of His Majesty's favour to the Royal Society in declaring his pleasure that no patent should pass for any philosophical or mechanical invention but what was first put to the examination of the Society" (Birch, "Hist. Royal Society," i., p. 116). Hence the "Philosophical Transactions" and MS. journals of the Society are valuable sources of reference in investigating patents for inventions of the period.

(*h*) First set of Regulations, dated 1st October, 1852, r. VI. Cp. also Report, &c., 1865, p. 26.

(*l*) The offices originally provided were the ground-floor rooms of the

Work of
Patent Office
under 15 & 16
Vict. c. 83.

Under the Act of 1852, the work of the Patent Office was as follows:—It was divided into several departments: *the front public office*, in which applications, &c., were left, and where office copies might be obtained or specifications inspected; the *register office*, where documents were registered before being transmitted to the law officers; the *printing department*, under the superintendence of specifications; and the *sale department*, which was simply a warehouse, with some clerks who kept a record of the sales. There was a strong-room, where patents were kept for fourteen years prior to sending to the Record Office.

Procedure
under Act of
1852.

The procedure consisted of several stages (*m*). Applications were made personally at the Patent Office, were duly registered, and then sent on to the law officers, who reported on them. On the receipt of the returned document from the law officers, notices to proceed were published in the Commissioners of Patents Journal, and at the same time in the Gazette; and notices of opposition, if any, were entered and transmitted to the law officers for hearing. Then there might also be opposition before sealing, in which case the Office acted in a similar manner. When all oppositions were removed, the patents were sent down by a messenger to the House of Lords to be sealed and thereafter were returned to the Patent Office, and kept till the agents or patentees called for them. Letters patent were often kept for a long time in the Patent Office, on the ground of its security. All that was done, therefore, by the Patent Office, from the first application to the final sealing, was the mere receipt of documents, the advertising, and the transmitting them to the proper office. Besides this "forwarding work," as it was called, the Patent Office prepared and published specifications, indexes, and abridgments, and the Commissioners of Patents Journal.

Official
Publications.

SECT. 3.—THE PATENT OFFICE UNDER ACT OF 1883.

With the view of providing for the due administration of the new Act, which invests the Patent Office with some of the functions of a court of law, a joint committee was appointed in the autumn of 1883 by the Board of Trade and the Treasury to advise as to the reconstruction of the staff of the Office of the Commissioners of Patents, and as to the formation of a property

offices in Southampton Buildings, Chancery Lane, theretofore occupied by the Masters in Chancery, abolished by 15 & 16 Vict. c. 80. On 1st January, 1876, the Act 38 & 39 Vict. c. 93 came into operation, transferring to the Commissioners of Patents all

powers, duties, and authorities of the Board of Trade under the Copyrights of Designs Act.

(*m*) For a tabular statement of the procedure, see p. 309, note (*b*), where an extract from the Register of Patents is given.

qualified staff of examiners. The recommendations of the committee having been generally approved, a staff, including the majority of the officers of the Commissioners of Patents staff, was appointed by the Board of Trade, with the approval of the Treasury, under sects. 82 and 83 of the Act, in readiness to undertake the work of the new office, which was open to the public at 10 a.m. on 1st January, 1884, as required by sect. 3 of the Act (*n*).

The whole Office is under the control of the Comptroller-General of Patents (*o*), subject to the Board of Trade. Comptroller-general.

There is a large staff of examiners, who perform the examining functions thrown upon the Office by the new Act. The growth of the examining staff is thus traced by the present comptroller-general in his evidence before the Select Committee of 1887 (*p*):

“We started with one superintendent, with one assistant, and twenty assistant examiners. They are called in the Act examiners, but in the Office assistant examiners. Then we found that the superintendent was not able to manage the whole of the work, and he had two assistants, who were called examiners. We also had to increase the number of the staff; but it was a long time before we could get them. In 1884, the Treasury gave us permission to work overtime for so many months. At the end of 1884, we found that we were still not up to time, and we appointed another examiner and some additional assistant examiners, bringing them up at the present time to one superintendent, one assistant, three examiners, and six assistants to assist the examiners. We have really one superintendent, one assistant superintendent, and three examiners, and then each examiner has two assistant examiners to assist; that is the present staff, and forty-six assistant examiners.” Examiners.

“Assistant examiners” are the “examiners” of the Act.

The distribution of the business of the Patent Office among these officials may now be shortly described. Upon the receipt of the application, after numbering and dating the application, the first thing that has to be done by the Patent Office is the

(*n*) See First Report of the Comptroller-General, 1884, pp. 3, 10, Appendix A. There were numerous competitors for the first application under the new Act. No. 1 was eventually obtained by a Scotchman who came from Glasgow, and arrived at the Patent Office over-

night, and was the first person to enter the Office at its opening at 10 a.m. on the following morning.

(*o*) Sir H. Reader Lack was appointed, but is about to retire (February, 1897).

(*p*) Report, &c., 1887, p. 10.

(*q*) 50l.