LAW AND PRACTICE

RELATING TO

LETTERS PATENT FOR INVENTIONS.

TREATISE

ON THE

LAW AND PRACTICE

RELATING TO

Letters Patent for Inventions.

WITH

AN APPENDIX

OF

STATUTES, INTERNATIONAL CONVENTION, RULES, FORMS AND PRECEDENTS, ORDERS, &c.

BY

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ABBREVIATIONS USED IN THIS WORK.

A. & E. .....Adolphus and Ellis' Reports.

B. & Ad. .....Barnewall and Adolphus' Reports.
B. & Ald. .....Barnewall and Alderson's Reports.
B. & C. .....Barnewall and Cresswell's Reports.
Beav. .....Beavan's Reports.
B. & S. .....Best and Smith's Reports.
Bing. N. C. .....Bingham's New Cases.
B. & P. N. R. .....Bosanquet and Puller's New Reports.
Brod. & Bing. .....Broderip and Bingham's Reports.
Bull. N. P. .....Buller's Nisi Prius.

Camp. .....Campbell's Reports.
C. B. .....Common Bench Reports.
C. B. N. S. .....Common Bench Reports, New Series.
Car. & K. .....Carrington and Kirwan's Reports.
Car. & P. .....Carrington and Payne's Reports.
Carp. P. C. .....Carpmael's Patent Cases.
C. L. R. .....Common Law Reports.
Cl. & F. .....Clark and Finnelly's Reports.
Co. R. .....Coke's Reports.
Coop. Ch. Ca. .....Cooper's Chancery Cases.
Cr. M. & R. .....Crompton, Meeson, and Roscoe's Reports.

D. & L. .....Danson and Lloyd's Reports.
Dav. P. C. .....Davies' Patent Cases.
De G. F. & J. .....De Gex, Fisher, and Jones' Reports.
De G. & J. .....De Gex and Jones' Reports.
De G. M. & G. .....De Gex, Macnaghten, and Gordon's Reports.
De G. J. & S. .....De Gex, Jones, and Smith's Reports.
Dowl. & Ry. .....Dowling and Ryland's Reports.
Dr. & S. .....Drowry and Smale's Reports.

E. & B. .....Ellis and Blackburn's Reports.
E. B. & E. .....Ellis, Blackburn, and Ellis' Reports.
E. & E. .....Ellis and Ellis' Reports.
Eng. .....The Engineer (a weekly publication).
Eq. Rep. .....Equity Reports.
Exch. .....Exchequer Reports.

F. & F. .....Foster and Finlason's Reports.

Giff. .....Giffard's Reports.
Griff. L. O. C. .....Griffin's Patent Cases decided by the Comptroller-General and Law Officers in 1887.
Griff. P. C. .....Griffin's Patent Cases.
G. P. C. .....Goodeve's Patent Cases.
G. P. P. .....Goodeve's Patent Practice.

H. Bl. .....H. Blackstone's Reports.
H. & M. .....Hemming and Miller's Reports.
H. L. C. .....House of Lords Cases.
Holt N. P. .....Holt's Nisi Prius Cases.
H. & N. .....Hurlstone and Norman's Exchequer Reports.

I. O. J. .....The Illustrated Official Journal (Patents).
Ir. Ch. Rep. .....Irish Chancery Reports.
Iron .....Iron (a weekly publication).

Johns. .....Johnson's Reports.
J. & H. .....Johnson and Hemming's Reports.
Jur. N. S. .....Jurist, New Series.
Jur. O. S. .....Jurist, Old Series.

K. & J. .....Kay and Johnson's Reports.

L. J. N. S. Ch. ....Law Journal Reports, New Series, Chancery.
L. J. N. S. C. P.... „ „ „ Common Pleas.
L. J. N. S. Ex. .... „ „ „ Exchequer.
L. J. N. S. Q. B. .. „ „ „ Queen's Bench.
L. J. O. S. .....Law Journal Reports, Old Series.
L. O. C. .....Griffin's Patent Cases decided by the Comptroller-General and Law Officers in 1887.
L. R. App. Cas.....Law Reports, Appeal Cases.
L. R. Ch. ..... „ Chancery Appeals.
L. R. Ch. D. ..... „ Chancery Division.
L. R. C. P. ..... „ Common Pleas Cases.
L. R. E. & I. App... „ English and Irish Appeal Cases.
L. R. Eq. ..... „ Equity Cases.
L. R. Ex. ..... „ Exchequer Cases.
L. R. H. L. ..... „ House of Lords.
L. R. P. C. ..... „ Privy Council Cases.
L. R. Q. B. D. ..... „ Queen's Bench Division.
L. T. .....Law Times, Old Series.
L. T. N. S. .....Law Times, New Series.

M. & G. .....Manning and Granger's Reports.
M. & S. .....Maule and Selwyn's Reports.
M. & W. .....Meeson and Welsby's Reports.
Mac. & G. .....Macnaghten and Gordon's Reports.
Macr. P. C. .....Macrory's Patent Cases.
Marsh. .....Marshall's Reports.
Mer. .....Merivale's Reports.
Moo. P. C. N. S. ...Moore's Reports of Cases in the Privy Council, New Series.
Moo. P. C. O. S. ...Moore's Reports of Cases in the Privy Council, Old Series.
Myl. & Cr. .....Mylne and Craig's Reports.

N. R. .....The New Reports.
Newt. L. J. C. S. ..Newton's London Journal of Arts and Sciences, Conjointed Series.
Newt. L. J. N. S. ..Newton's London Journal of Arts and Sciences, New Series.

Parl. Rep. .....Parliamentary Reports.
Phill. .....Phillips' Reports.
P. O. R. .....Patent Office Reports of Patent Cases.

Q. B. .....Queen's Bench Reports.

R. .....The Reports.
R. P. C. .....Patent Office Reports of Patent Cases.
R. S. C. .....Rules of the Supreme Court.
Russ. .....Russell's Reports.
Russ. & M. .....Russell and Mylne's Reports.
Ry. & M. .....Ryan and Moody's Reports.

Scott N. R. .....Scott's New Reports.
Stark. R. .....Starkie's Reports.

Taunt. .....Taunton's Reports.
T. R. .....Term Reports.
Times R. .....Times Law Reports.
Tyr. .....Tyrwhitt's Reports.

Ves. .....Vesey's Reports.

W. N. .....Weekly Notes.
W. P. C. .....Webster's Patent Cases.
W. R. .....The Weekly Reporter.

Y. & C. .....Younge and Collyer's Reports.

TABLE OF CONTENTS.

VOLUME II.

PAGE

ABBREVIATIONS USED IN THIS WORK v

TABLE OF CASES xi

NOTES OF RULINGS BY THE COMPTROLLER-GENERAL lxv

LIST OF DEFENDANTS IN ACTIONS lxvii

CHAPTER I.

OBTAINING LETTERS PATENT FOR INVENTIONS.

Prerogative of the Crown 1
Patent Agents 2
Application 4
Examination and Acceptance 7
Statutory Offences 13
Filing and Examination of the Complete Specification . . 14
Acceptance of the Complete Specification 20
Patents of Addition 23
Cognate Inventions 25
Applications under International and Colonial Arrangements . . 27
Opposition 35
General 35
Grounds of Opposition 36
First Ground of Opposition 43
Second Ground of Opposition 48
Third Ground of Opposition 67
Fourth Ground of Opposition 69
Sealing the Patent 71
Extent and Duration of Letters Patent 73
Illustrated Journal and Report of Cases 77
Patent Office Museum 78
Register of Patents 78

CHAPTER II.

REVOCATION ON APPLICATION TO THE COMPTROLLER.

PAGE
Under sect. 26 of the Patents and Designs Act, 1907 . . . 84
Under sect. 27 of the Patents and Designs Act, 1907 . . . 89

CHAPTER III.

AMENDMENT OF THE SPECIFICATIONS.

PART I.

General 102
Nature of Allowable Amendments 103
Amendment by the Court 110
Disclaimer 113
Correction and Explanation 118
Conditions 121
Retrospective Effect of Amendments 129
Amendment after Action for Infringement 130
Amendment after Order for Revocation 131

PART II.

Practice 131
No Action for Infringement or Petition for Revocation Pending . 131
Amendment Pending Action for Infringement or Petition for Revocation 138

CHAPTER IV.

ASSIGNMENT OF LETTERS PATENT.

Origin of Power to Assign 144
Assignment by Deed 149
Co-owners 156
Assignment of Improvements 160
Estoppel 162
Warranty 165
Rights of Assignees 169
Assignment and Partnership 171
Assignment by Act and Operation of Law 172
Registration of Assignments 175

CHAPTER V.

LICENCES.

Origin of Power to Grant Licences 178
How Licences may be Granted 179
Classification of Licences 181
Express or Implied 181
Compulsory or Voluntary 183
Revocable or Irrevocable 187
General, Limited, or Exclusive 189
Assignable or Not Assignable 192

PAGE

Right of Crown to Use of Inventions 193
Consideration 195
Covenants 195
Estoppel 201
Registration 205
Recovery of Royalties 206
Licensor's and Licensee's Powers to Sue in respect of an Infringement . 209

CHAPTER VI.

EXTENSION OF LETTERS PATENT.

Historical 211
The Petitioner 214
The Petition 217
Opposition 223
Hearing of the Petition 225
Grounds for Extension 227
Merit 229
Insufficient Remuneration owing to no Fault of the Patentee . . 233
Accounts 235
The New Grant 243
Costs 247

APPENDIX.

STATUTES.

Statute of Monopolies (21 Jac. I. c. 3) 251
Patents and Designs Act, 1907 (7 Edw. VII. c. 29) . . . 256
Patents and Designs Act, 1908 (8 Edw. 7, c. 4) . . . 301
Interpretation Act, 1889, Extracts from (52 & 53 Vict. c. 62) . . 302

INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY 309
Final Protocol 321
Accession of Her Majesty's Government 326
Declaration of Acceptance of Accession 327
Additional Act Modifying the Industrial Property Convention of March 20, 1883 328

RULES.

Patents Rules, 1908 346
Law Officers' Rules 424
Register of Patent Agents Rules, 1908 426
Rules of the Supreme Court (Patents and Designs), 1908 . . 433

PRECEDENTS. PAGE

Assignment of Letters Patent 443
Licence to use Patented Invention 445
Mortgage of Letters Patent 448
Action of Infringement—
Indorsement on Writ 451
Statement of Claim 451
Particulars of Breaches 455
Defence 456
Particulars of Objections 459
Order for further and better Particulars of Objections . . 461
Order for Amendment of Particulars of Objections by adding further Objections 462
Notice of Motion for Amendment of a Complete Specification pending Action for Infringement 463
Order Allowing Application to Proceed . . . 463
Advertisement of Application 464
Order Allowing Amendment 465
Notice of Motion for Interlocutory Injunction . . . 465
Order for Inspection 466
Order for Reference to Independent Expert . . . 467
Order for Experiments before Scientific Expert, and his Report to the Court 467
Judgment for Plaintiff after Trial of Action . . . 468
Judgment for Defendant after Trial of Action . . . 470
Notice of Appeal to Court of Appeal 472
Judgment of Court of Appeal Affirming the Judgment of the Court Below 472
Judgment of Court of Appeal Varying the Judgment of the Court Below 473
Certificate of Validity 474
Action to restrain Threats of Legal Proceedings—
Indorsement on Writ 475
Statement of Claim 475
Defence 477
Reply 478
Rejoindure 479
Revocation of Letters Patent—
Petition for Revocation 480
Fiat of Attorney-General 482
Memorial to the Attorney-General for his Fiat . . . 482
Order for Revocation of Letters Patent 483
Extension of Letters Patent—
Advertisement of Intention to present Petition . . . 485
Notice of Opposition 485
Advertisement of "the Appointed Day" 486
Petition for Extension of Letters Patent 486
Particulars of Objections to Extension of Term of Patent . 495

INDEX.

TABLE OF CASES.

PAGE

A. B.'s Patent (1902), 19 R. P. C. 403 ..... ii. 72
A. B.'s Patent (1902), 19 R. P. C. 556 ..... ii. 73
A. & B.'s Patent (1896), 13 R. P. C. 63 ..... ii. 72
A. & B.'s Application (1911), 28 R. P. C. 454 ..... ii. 12
Abel's Patent (1876), Johns. Pat. Man. 178 ..... ii. 120
Acetylene Illuminating Co., Ld. *v.* Midland Acetylene (Paren[t]) Syndicate (1900), 17 R. P. C. 534 546
Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld., [1902] 1 Ch. 494; 19 R. P. C. 213; 20 R. P. C. 161; 22 R. P. C. 145 ..34, 63, 90, 539, 540, 545 : ii. 29
Ackroyd and Best, Ld. *v.* Thomas (1904), 21 R. P. C. 403, 737 ..... 57, 200
Actien Gesellschaft für Cartonagen Industrie *v.* Remus (1895), 12 R. P. C. 94 492
Actien Gesellschaft für Cartonagen Industrie *v.* Temler (1899), 16 R. P. C. 447; 18 R. P. C. 6 .....438 : ii. 79, 148
Actien Gesellschaft für Cartonagen Industrie *v.* Schroeder (1896), 13 R. P. C. 466..... 42
Adair *v.* Young (1879), L. R. 11 Ch. D. 136; 12 Ch. D. 13; (1879) W. N. 8 .....338, 385, 386, 395, 505, 512, 555, 556
Adair's Patent (1881), L. R. 6 App. Cas. 176; L. J. P. C. 68 ....ii. 218, 219, 236, 240, 241, 243
Adam's Patent (1896), 13 R. P. C. 548 ..... ii. 63
Adam's Patent (1898), 16 R. P. C. 1 ..... ii. 219
Adamant Stone Paving Co. *v.* Corporation of Liverpool (1896), 14 R. P. C. 11, 264 .....45, 95, 98, 176, 191, 249, 384
Adams *v.* North British Railway Co. (1873), 25 L. J. N. S. 367 394
Adamson's Patent (1856), 6 De G. M. & G. 420; 25 L. J. Ch. 456.... 121
Adhesive Dry Mounting Co., Ltd. *v.* Trapp & Co. (1910), 27 R. P. C. 341 376
Adolph Spiel's Application (1888), 5 R. P. C. 281 .....ii. 43, 46
Adie *v.* Clark (1876), L. R. 2 App. Cas. 423. *See also* Clark *v.* Adie .. ii. 203
African Gold Recovery Co. *v.* Sheba Gold Mining Co. (1897), 14 R. P. C. 660 ..... ii. 207
Ainsworth's Patent (1895), 13 R. P. C. 76..... ii. 122
Aire and Calder Glass Bottle Works, and Walker's Application (1888), R. P. C. 345 .....ii. 51, 53, 54
Ai[r]. Patent (1888), 5 R. P. C. 348 .....ii. 37, 51, 64
Aktiebolaget Separator *v.* Dairy Outfit Co. (1896), 13 R. P. C. 725; 14 R. P. C. 473 .....279, 314, 370, 423

PAGE

Albo-Carbon Light Co. *v.* Kidd (1887), 4 R. P. C. 535; 5 R. P. C. 581; 6 R. P. C. 194 540
Alcock *v.* Cooke (1829), 5 Bing. 340 198
Alexander *v.* Henry (1895), 12 R. P. C. 360 522
Alexander Turnbull & Co., Ltd. *v.* Cruikshank (1905), 22 R. P. C. 363, 521 289
Allan's Patent (1867), L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 443 .... 477: ii. 231, 232
Allen *v.* Doulton (1887), 4 R. P. C. 377 ..... ii. 125, 142
Allen *v.* Duckett (1893), 10 R. P. C. 397 ..... 193, 222, 490
Allen *v.* Flood, (1898) A. C. 1 376
Allen *v.* Horton (1893), 10 R. P. C. 412 ..... 424, 490
Allen *v.* Oates (1898), 15 R. P. C. 298, 744 422
Allen *v.* Pyatt (1898), 15 R. P. C. 723; 16 R. P. C. 135 346
Allen *v.* Rawson (1845), 1 C. B. 551 ..... 18, 19, 20, 21, 73
Allen's Patent (1887), Griff. L. O. C. 3 ..... ii. 113, 122
Alliance Pure White Lead Syndicate *v.* MacIvor's Patents (1891), 8 R. P. C. 321; 39 W. R. 487 ..... 433, 456
Allison's Patent (1898), 15 R. P. C. 408 ..... ii. 122
Allison's Patent (1900), 17 R. P. C. 298, 513 ..... 302: ii. 128, 142
Alma Veneer Felt Co. *v.* Fisher (1897), 14 R. P. C. 159 ..... ii. 208
Alsop Flour Process, Ld. *v.* Flour Oxidizing Co., Ld., In the matter of Andrews' Patent (1908), 25 R. P. C. 477 ..... 148, 373, 467
Alsop's Patent (1905), 23 R. P. C. 65; 24 R. P. C. 684, 733; [1906] 1 Ch. 85 ..... 60, 165: ii. 102, 129
Aluminium Co. *v.* Domeiere (1897), 15 R. P. C. 32 500
American Braided Wire Co. *v.* Thomson (1887), 4 R. P. C. 316; 5 R. P. C. 113, 375, 538, 696; 6 R. P. C. 518; 7 R. P. C. 47, 152; L. R. 44 Ch. D. 274; (1890) W. N. 68. *See* Thomson *v.* Braided American Wire Co. 41, 89, 98, 100, 478, 496, 512, 522, 524, 525
American Steel and Wire Co. *v.* T. W. Glover & Co., Ld. (1902), 19 R. P. C. 111; (1902), W. N. 17 ..... 539, 540
Amory *v.* Brown (1869), L. R. 8 Eq. 663; 38 L. J. Ch. 593 ..... 471, 473
Amos *v.* Chadwick (1876), L. R. 4 Ch. D. 869 493
Anderson and McKinnell's Application (1887), Griff. L. O. C. 23 ..... ii. 57, 62
Anderson *v.* Bank of British Columbia (1875), L. R. 2 Ch. D. 644 458
Anderson *v.* Liebig's Extract of Meat Co. (1881), 45 L. T. N. S. 757 .. 312, 323
Anderson *v.* Patent Oxonite Co. (1886), 3 R. P. C. 279 ..... 393, 446
Anderton, *In re* (1887), Griff. L. O. C. 25 ..... ii. 52, 66
Andrew *v.* Crossley (1892), 9 R. P. C. 165; [1892] 1 Ch. 492; 61 L. J. Ch. 437 ..... ii. 130
Andrew's Patent (1906), 23 R. P. C. 441; 24 R. P. C. 349; 25 R. P. C. 477 ..... 148, 373
Anglo-American Brush Electric Light Corporation *v.* Crompton (1886), L. R. 34 Ch. D. 152; 4 R. P. C. 27; 59 L. J. Ch. 167 427
Anglo-American Brush Electric Light Corporation *v.* King, Brown & Co. (1891), 9 R. P. C. 313 146
Annand *v.* Taylor. *See* Taylor *v.* Annand.
Anti-Vibration Incandescent Lighting Co., Ld. *v.* Crossley (1904), 22 R. P. C. 157, 441 99
Anti-Vibration Incandescent Lighting Co., Ld. *v.* Wholesale Incandescent Fittings Co. (1906), 23 R. P. C. 399 549

PAGE

Appleby's Twin Roller Chain, Ld. *v.* Albert Eadie Chain, Ld. (1899), 16 R. P. C. 318 ..... 321, 322, 329, 432, 480, 487
Appostoloff's Patent (1896), 13 R. P. C. 275 ..... ii. 22
Arkwright *v.* Nightingale (1785), 1 W. P. C. 60; Dav. P. C. 55 .... 15, 20, 201, 214, 390, 413, 415, 525
Armstrong's Patent (1896), 13 R. P. C. 501; 14 R. P. C. 747; 77 L. T. N. S. 267 ..... 305, 306, 307: ii. 113, 142
Arnold *v.* Bradbury (1871), L. R. 6 Ch. App. 706; 24 L. T. N. S. 613..49, 249, 274, 275, 427
Arnold's Application (1882), Griff. L. O. C. 5 ..... ii. 135
Arnot *v.* Dunlop Pneumatic Tyre Co., Ld. (1904), 22 R. P. C. 105, 472; 25 R. P. C. 309 42
Ashenhurst's Patent (1853), 2 W. R. 3 ..... ii. 8
Ashton and Knowles' Application (1910), 27 R. P. C. 181 ..... ii. 44
Ashworth *v.* English Card Clothing Co., Ld. (1901), 18 R. P. C. 367; 19 R. P. C. 463; 20 R. P. C. 790; 21 R. P. C. 553 .....55, 57, 278, 337, 358, 462, 499
Ashworth *v.* Law (1890), 7 R. P. C. 231 .....409: ii. 162, 201
Ashworth *v.* Roberts (1890), L. R. 45 Ch. D. 623; 7 R. P. C. 451; 9 R. P. C. 89, 309; 60 L. J. Ch. 27.....432, 454, 456: ii. 203
Ashworth's Application (1878), Griff. L. O. C. 6..ii. 114, 117, 119, 121, 122, 133
Atherton's Patent (1889), 16 R. P. C. 547 ..... ii. 58
Atkins and Applegarth *v.* Castner-Kellner Alkali Co. (1891), 18 R. P. C. 281 .....63, 161, 162, 196
Atkinson *v.* Britton (1910), 27 R. P. C. 81, 469 38
Attorney-General *v.* Emerson (1899), L. R. 24 Q. B. D. 56 556
Attorney-General *v.* Vestry of Bermondsey (1883), L. R. 23 Ch. D. 60. 395
Aube's Patent (1854), 9 Moo. P. C. 48 ..... ii. 187
Automatic Coal-Gas Retort Co. *v.* Mayor of Salford (1897), 14 R. P. C. 450 .....95, 184, 508, 509
Automatic Diversions Syndicate *v.* Urry (1897), 14 R. P. C. 365 352
Automatic Weighing Machine Co. *v.* Combined Weighing Machine Co. (1889), 6 R. P. C. 121, 367 .....57, 150, 312, 339, 367, 415, 548
Automatic Weighing Machine Co. *v.* Fearby (1893), 10 R. P. C. 442.. 368, 527, 549
Automatic Weighing Machine Co. *v.* International Hygienic Society (1889), 6 R. P. C. 475.....150, 368, 548, 554
Automatic Weighing Machine Co. *v.* Knight (1889), 6 R. P. C. 113, 297; W. N. (1888) 250..57, 67, 70, 150, 266, 269, 270, 355, 360, 361, 367, 431, 480, 481, 532, 545, 553
Automatic Weighing Machine Co. *v.* National Exhibitions Association (1891), 8 R. P. C. 345; 9 R. P. C. 41 .....57, 150, 278, 367, 368
Aveling *v.* Maclaren (1881), L. R. 17 Ch. D. 139..... 425
Avery's Patent (1887), 4 R. P. C. 152, 322; L. R. 36 Ch. D. 307; 56 L. J. Ch. 580, 1007 .....24, 293, 297, 298, 299, 300: ii. 5, 34
Axman *v.* Lund (1874), L. R. 18 Eq. 330; 43 L. J. Ch. 655 ....308, 417, 418: ii. 205
Aylott's Patent (1911), 28 R. P. C. 227 304

PAGE

Babcock and Wilson, Ld. *v.* Edwin Danks & Co. (Oldbury), Ld. (1910), 27 R. P. C. 713 390

Babcock and Wilson, Ld. *v.* Water Tube Boiler and Engineering Co. (1910), 27 R. P. C. 626 542

Bacon *v.* Jones (1839), 4 M. & C. 436 .....436, 437, 447, 448

Bacon *v.* Spottiswood (1839), 1 Beav. 382 ..... 500, 514

Badham *v.* Bird (1888), 5 R. P. C. 238 ..... 473, 489

Badische Anilin und Soda Fabrik *v.* Basle Chemical Works. *See* Badische Anilin und Soda Fabrik *v.* Johnson.

Badische Anilin und Soda Fabrik *v.* Chemische Fabrik vormals Sandoz (1903), 20 R. P. C. 413; 21 R. P. C. 345, 533 399

Badische Anilin und Soda Fabrik *v.* Dawson (1889), 6 R. P. C. 387 .. 483, 484

Badische Anilin und Soda Fabrik *v.* Hickson (1904), 22 R. P. C. 63; [1905] 2 Ch. 495; 23 R. P. C. 433 .....380, 492, 528

Badische Anilin und Soda Fabrik *v.* Isler, [1906] 1 Ch. 605; [1906] 2 Ch. 449; W. N. 163; 23 R. P. C. 173, 633 ..... 382, 383

Badische Anilin und Soda Fabrik *v.* Johnson, [1896] 1 Ch. 25; [1897] 2 Ch. 322; [1898] A. C. 200; 65 L. J. Ch. 174; 12 R. P. C. 535; 14 R. P. C. 211, 405, 919.....379, 380, 389, 396, 399, 555

Badische Anilin und Soda Fabrik *v.* La Société des Usines du Rhône (1897), 14 R. P. C. 875; 15 R. P. C. 359 .....63, 142, 196, 202, 203, 214, 219, 277, 426, 490, 545, 552

Badische Anilin und Soda Fabrik *v.* Levinstein (1883, 1885, 1887), L. R. 24 Ch. D. 156; 29 Ch. D. 366; 12 App. Cas. 710; 52 L. J. Ch. 704; 2 R. P. C. 73, 143; 4 R. P. C. 449; 6 R. P. C. 387 .... 55, 63, 67, 81, 116, 149, 161, 162, 163, 196, 198, 204, 205, 208, 213, 214, 225, 232, 281, 282, 342, 355, 373, 455, 471, 477, 478, 485, 489, 526, 535

Badische Anilin und Soda Fabrik *v.* Nobel's Explosive Co., Ld. (1909), 26 R. P. C. 638 ..... 447, 461

Badische Anilin und Soda Fabrik *v.* Spivey (1904), 22 R. P. C. 65 499

Badische Anilin und Soda Fabrik *v.* Thomson (W. G.), Ld. (1902), 19 R. P. C. 502; 20 R. P. C. 422; 21 R. P. C. 469 .....172, 399, 504

Bagot Pneumatic Tyre Co. *v.* Clipper Pneumatic Tyre Co., [1901] 1 Ch. 196; [1902] 1 Ch. 146; 19 R. P. C. 69 ..... ii. 168

Bailey, *Ex parte* (1872), L. R. 8 Ch. 61 ..... ii. 73

Bailey, *Re* (1884), Griff. P. C. 269 ..... ii. 55

Bailey, *Re* (1887), Goodeve, P. C. 57 ..... ii. 51

Bailey *v.* Airey (1905), 22 R. P. C. 461; 23 R. P. C. 277 358

Bailey *v.* Roberton (1878), L. R. 3 App. Cas. 1055..131, 171, 178, 182, 186, 187, 202, 218, 247, 510

Bailey *v.* Taylor (1829), 1 Russ. & M. 73 510

Bailey's Patent (1884), 1 R. P. C. 1 .....ii. 241, 243, 247

Bailey's Patent (1887), Goodeve, P. C. 57 ..... ii. 53

Bainbridge *v.* Wrigley (1810), Parl. Rep. 192; 1 Carp. P. C. 270..... 175, 199

Baird *v.* Moule's Earth Closet (1881), L. R. 17 Ch. D. 139 425

Baird *v.* Neilson, 8 Cl. & Fin. 726 .....418: ii. 201

Bairstow's Patent (1888), 5 R. P. C. 286 .. ..ii. 8, 46, 49

Baker *v.* Kinnell (1892), 9 R. P. C. 441 435

Baker *v.* White (1884), 1 Times R. 64..... 446

Bakewell's Patent (1862), 15 Moo. P. C. 385 .....477: ii. 232, 234

PAGE
Bamlett *v.* Picksley (1875), Griff. P. C. 40 ..... 60, 95
Bancroft *v.* Smith (1897), 14 R. P. C. 172 496
Bancroft's Application (1905), 23 R. P. C. 89 ..... 244 : ii. 15
Barber *v.* Grace (1847), 1 Exch. 339 ; 17 L. J. Ex. 122 ..... 57, 58, 67, 282
Barff and Bower's Patent (1895), 12 R. P. C. 383 ; [1895] A. C. 675 ; 73 L. T. N. S. 36 ; 11 R. 579 ..... ii. 239
Barker *v.* Shaw, 1 W. P. C. 126, n. 20
Barlow *v.* Bayliss (1875), Griff. P. C. 44 117
Barnett *v.* Barnett's Screw Stopper Bottling Co., Ld. (1884), 1 R. P. C. 9 ..... 312, 328 : ii. 210
Barney *v.* United Telephone Co. (1885), 2 R. P. C. 173 ; L. R. 28 Ch. D. 394 ..... 312, 326, 327
Bartlett's Patent (1892), 9 R. P. C. 511 ..... ii. 51, 55
Bassett *v.* Graydon (1897), 13 R. P. C. 79, 537, 608 ; 14 R. P. C. 701 .. 384, 505 : ii. 183, 190, 193
Bateman *v.* Gray (1853), Macr. P. C. 102 354
Bateman and Moore's Patent (1854), Macr. P. C. 116 ..... ii. 109, 110
Bates *v.* Horsfall (1905), 22 R. P. C. 519 542
Bates *v.* Redgate (1876), L. R. 4 Ch. 577 ; 38 L. J. Ch. 501 ..... ii. 73
Bates' Patent (1836), 1 W. P. C. 739 ..... ii. 233
Batley *v.* Kynock (1874), L. R. 19 Eq. 90, 229 ; L. R. 20 Eq. 642 ; 44 L. J. Ch. 891, 565 ; 31 L. T. N. S. 573 ; 33 L. T. N. S. 45 .. 403, 405, 460, 461, 551
Baxter *v.* Combe (1850), 1 Ir. Ch. R. 284 ..... 436, 437
Beard *v.* Egerton (1846), 2 Car. & K. 667 ; 3 C. B. 97 ; 8 C. B. 165 ; 15 L. J. C. P. 270 ; 19 L. J. C. P. 36 .... 25, 175, 197, 211, 213, 225, 232, 261, 274
Beard *v.* Turner (1866), 13 L. T. N. S. 746 509
Beardsell *v.* Schwan, Setou, 3rd ed. 910 ..... 449, 463
Beavis *v.* Rylands Glass and Engineering Co., Ld. (1899), 17 R. P. C. 93, 704 ..... 46, 150, 472
Beck and Justice, *Re* (1877), Griff. L. O. C. 10 ..... ii. 119
Beddon *v.* Beddon (1878), L. R. 9 Ch. D. 89 309
Beldam's Patent, [1910] 1 Ch. 60 ; 27 R. P. C. 758 ..... ii. 88, 100
Bell, *Re* (1887), Griff. L. O. C. 10 ..... ii. 135, 136, 137
Bell and Coleman's Patent, Griff. P. C. 320 294
Bell's Patent (1846), 2 W. P. C. 160 ; 10 Jur. 363 ; 1 Moo. P. C. N. S. 49 ..... 74 : ii. 229
Bennett *v.* Lord Bury (1880), L. R. 5 C. P. 339 493
Bennington *v.* Hill (1891), 8 R. P. C. 326 536
Benno Jaffé und Darmstaedter Lanolin Fabrik *v.* Richardson (1893), 10 R. P. C. 136 ; 11 R. P. C. 93, 261 ; 62 L. J. Ch. 710 .... 42, 65, 109, 263, 271, 344, 454, 455, 456
Bentley *v.* Flemming (1844), 1 C. & K. 587 ; 1 C. B. 479 ..... 123, 127
Bentley *v.* Keighley (1844), 7 M. & G. 652 ; 8 Scott. N. R. 372 433
Bereham *v.* Wren (1904), 21 R. P. C. 683 ..... ii. 167
Berdan's Patent (1875), L. R. 20 Eq. 346 ..... ii. 82, 120, 136
Bereton *v.* Richardson (1884), 1 R. P. C. 165 ..... 119, 122, 123
Bergman *v.* McMillan (1881), L. R. 17 Ch. D. 423 ..... 393, 514 : ii. 159, 206
Berliner *v.* Edison Bell Consolidated Phonograph Co., Ld. (1899), 16 R. P. C. 336 321

PAGE

Berrington's Patent, cited L. R. 1 P. C. 509; 4 Moo. P. C. N. S. 445; Coryton, 225 ..... ii. 232
Berry's Patent (1850), 7 Moo. P. C. 187 ..... ii. 216, 217
Beryl, The, L. R. 9 P. D. 137 487
Bessmans *v.* Wright (1858), 6 W. R. 719 ..... ii. 201
Beston *v.* Watts (1907), 24 R. P. C. 219; 25 R. P. C. 19 ..... 84, 280
Bethell *v.* Gage (1897), 14 R. P. C. 699 ..... 530, 539
Bett's Patent (1862), 1 Moo. P. C. N. S. 49; 9 Jur. N. S. 137; 7 L. T. N. S. 177 ..... ii. 229, 231, 242
Betts *v.* De Vitre (1864—73), L. R. 3 Ch. App. Cas. 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. N. S. 9, 217, 445; Seton, 4th ed. 354 ..143, 395, 396, 499, 525, 550
Betts *v.* Gallairs (1870), L. R. 10 Eq. 392 500
Betts *v.* Menzies (1857—62), 1 E. & E. 990; 3 Jur. N. S. 357; 4 Jur. N. S. 477; 27 L. J. Q. B. 154; 28 L. J. Q. B. 361; 30 L. J. Q. B. 81; 31 L. J. Q. B. 233; 7 L. T. N. S. 110; 10 H. L. C. 117 ..108, 123, 128, 137, 141, 144, 148, 242, 243, 263, 264, 270, 273, 274
Betts *v.* Neilson (1866—71), W. N. (1866) 170; 2 De G. J. & S. 82; 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 .....108, 124, 137, 218, 260, 385, 387, 395, 450, 470
Betts *v.* Noel, Seton, 4th ed. 355 512
Betts *v.* Walker (1850), 14 Q. B. 363 409
Betts *v.* Willmott (1870), L. R. 6 Ch. 239; 16 W. R. 305; 18 W. R. 946 .....381, 392, 482, 484: ii. 181, 182, 196
Bevan *v.* Welsbach Incandescent Gas Light Co., Ld. (1902), 20 R. P. C. 69 ..... 315, 330
Bibby and Baron, Ld. *v.* Duerden (1910), 27 R. P. C. 283; 28 R. P. C. 305 ..... 456, 531
Bickford *v.* Skewes (1837—41), 1 W. P. C. 211; 8 L. J. Ch. 188; 10 L. J. Q. B. 302; 1 Q. B. 938 ....196, 205, 211, 214, 236, 261, 280, 440, 443, 447
Bidder *v.* Bridges (1885), L. R. 29 Ch. D. 29 ..... 451, 452
Bimm *v.* Shoppee (1911), 28 R. P. C. 265 472
Birch *v.* Harrap (1895), 12 R. P. C. 431; 13 R. P. C. 615 .....80, 358, 432
Birch *v.* Mather (1883), L. R. 22 Ch. D. 629; 52 L. J. Ch. 292 ..... 450, 451
Birmingham Pneumatic Tyre Syndicate *v.* Reliance Tyre Co. (1900), 17 R. P. C. 277; 19 R. P. C. 298; 20 R. P. C. 288.....427, 428, 430, 495
Birt's Patent (1892), 9 R. P. C. 489 ..... ii. 70
Bishop *v.* Inman (1900), 17 R. P. C. 749 .....314, 318, 323
Blackett *v.* Dixon and Mann, Ld. (1909), 26 R. P. C. 73 408
Blackwell *v.* Crabb, 36 L. J. Ch. 504 334
Blake's Patent (1873), L. R. 4 P. C. 535; 9 Moo. P. C. N. S. 373 .... ii. 240
Blakey *v.* Latham (1888), 6 R. P. C. 29, 184 ....41, 71, 84, 424, 474, 496, 497, 535, 536, 554
Blamond's Patent (1860), 3 L. T. N. S. 800 ..... ii. 121
Blank *v.* Footman (1888), 5 R. P. C. 653; L. R. 39 Ch. D. 678; 57 L. J. Ch. 909 135
Blofield *v.* Payne, 4 B. & A. 410 334
Bloxam *v.* Elsee (1825-27), 1 C. & P. 558; 6 B. & C. 169; 1 Cowp. 444; 1 W. P. C. 132, n.; 9 Dowl. & Ry. 215; 3 L. J. (O. S.) Q. B. 93....18, 19, 110, 164, 165, 169, 175, 198, 218, 285, 393, 467: ii. 173

PAGE

Boake, Roberts & Co. *v.* Stevenson (1895), 12 R. P. C. 228 530
Board's Patent (1908), 25 R. P. C. 537 .....ii. 233, 246
Bodmer's Patent (1849), 6 Moo. P. C. 468.....ii. 170, 214, 216
Bodmer's Patent (1853), 8 Moo. P. C. 282 .....ii. 229, 245
Booth *v.* Kennard (1856), 1 H. & N. 527; 2 H. & N. 84; 26 L. J. Ex. 23, 305 .....49, 61, 67, 79, 82, 202, 247, 411, 474
Borrowman's Patent (1902), 19 R. P. C. 156; (1902) W. N. 56 303
Bosch's Application (1909), 26 R. P. C. 710 ..... 51, 53
Bostock *v.* Ramsey Urban District Council, [1900] 1 Q. B. 357 581
Boult's Patent (1893), 10 R. P. C. 275 .....ii. 51, 53
Boult's Patent (1909), 26 R. P. C. 219 .....ii. 93, 100
Boult's Patent (1909), 26 R. P. C. 383 .....ii. 96, 97
Boulton *v.* Bull (1795), 2 H. Bl. 463, 482, 493; Dav. P. C. 162; 3 Ves. 140 .....16, 29, 31, 47, 48, 58, 66, 70, 73, 82, 155, 201, 224, 270, 285, 393
Bovill *v.* Cowan (1867), W. N. 115 457
Bovill *v.* Crate (1865), L. R. 1 Eq. 388 .....391, 436, 437, 448, 500, 512
Bovill *v.* Finch (1870), L. R. 5 P. C. 523; 39 L. J. C. P. 277 ..... ii. 244
Bovill *v.* Goodier (1865-71), L. R. 1 Eq. 35; L. R. 2 Eq. 195; 35 L. J. Ch. 174; 36 L. J. Ch. 360; 35 Beav. 427; Griff. L. O. C. 47....409, 444, 445, 488, 548
Bovill *v.* Hadley (1864), 17 C. B. N. S. 435; 10 L. T. N. S. 650..... 544, 548
Bovill *v.* Hitchcock (1868), L. R. 3 Ch. 417 ..... 486, 488
Bovill *v.* Keyworth (1857), 7 E. & B. 725; 29 L. T. 194; 5 Jur. N. S. 817 ..... 73, 78
Bovill *v.* Moore (1815), 2 Coop. Ch. Ca. 56, n.; Dav. P. C. 361; 2 Marsh. R. 211; reported as Brown *v.* Moore, 3 Bli. 178 ..73, 78, 156, 160, 227, 237, 238, 285, 460, 463, 472
Bovill *v.* Pimm (1856), 11 Exch. 718 .....57, 67, 261, 358
Bovill *v.* Smith (1866-68), L. R. 2 Eq. 459; W. N. (1867) 240; Griff. L. O. C. 52 .....398, 438, 444, 447, 452, 457, 473, 476, 480
Bovill's Patent (1863), 1 Moo. P. C. N. S. 348.....ii. 171, 215, 229
Bowden's Patent (1904), 22 R. P. C. 49..... 306
Bowden's Patents Syndicate (E. M.), Ld. *v.* Smith (1904), 2 Ch. 122; 21 R. P. C. 438, 596; 22 R. P. C. 498 ..... ii. 169
Bowden's Patent Syndicate, Ld. *v.* Wilson (1905), 20 R. C. P. 644.... 377
Bower-Barff's Patent (1895), 12 R. P. C. 383; [1895] A. C. 675. *See* Barff and Bower's Patent .....ii. 216, 217
Bowman *v.* Taylor (1834), 1 W. P. C. 292; 2 A. & E. 278 ..127, 417: ii. 162, 201, 205
Bown *v.* Centaur Cycle Co. (1891), 8 R. P. C. 119 552
Bown *v.* Humber (1889), 6 R. P. C. 9 ..... ii. 192
Boxwell *v.* Cochran (1895), 12 R. P. C. 169 ..... 432, 480
Boyd *v.* Farrar (1887), 5 R. P. C. 33 ..... 423, 430
Boyd *v.* Horrocks (1886-89), 3 R. P. C. 285; 5 R. P. C. 557; 6 R. P. C. 152, 528; 9 R. P. C. 77 ....77, 270, 281, 339, 357, 358, 360, 361, 370, 430, 475, 533, 536, 539, 540
Boyd *v.* Tootal Broadhurst Lee Co. (1894), 11 R. P. C. 175 .....507, 518, 524
Bradford Dyers Association *v.* Bury (1901), 18 R. P. C. 161; 19 R. P. C. 125 .....218, 337, 552
Bramah *v.* Hardcastle (1789), Holroyd, 8; 1 Carp. P. C. 168; 1 W. P. C. 44, n. 128, 130

PAGE
Brandon's Patent (1884), 1 R. P. C. 154; 53 L. J. P. C. 84; L. R. 9 App. Cas. 589 ..... ii. 219, 220
Brand's Patent (1895), 12 R. P. C. 102 ..... ii. 39, 65
Bray *v.* Gardner (1887), 4 R. P. C. 40, 400 ..... 143, 212, 280: ii. 130, 142
Bremer's Patent (1909), 26 R. P. C. 114, 449 ..... 173: ii. 90, 96, 97
Bridge's Patent (1901), 18 R. P. C. 267 ..... 40: ii. 53
Bridson *v.* Benecke (1849), 12 Beav. 1 ..... 436, 439
Bridson *v.* McAlpine (1846), 8 Beav. 230 ..... 440, 446
Bridson's Patent (1852), 7 Moo. P. C. 499 ..... ii. 247
Briggs *v.* Lardeur (1884), 1 R. P. C. 126; 2 R. P. C. 13 ..... 395, 436, 442, 446
Britain *v.* Hirsch (1888), 5 R. P. C. 74, 226 ..... 33, 423, 465, 466
British Dynamite Co. *v.* Krebs (1875-79), G. P. C. 88; 13 R. P. C. 190.. 207, 208, 217, 254, 255, 261, 262, 287
British Insulated Wire Co., Ld. *v.* Dublin Tramway Co., Ld. (1899), 17 R. P. C. 14 ..... 480, 510, 519
British Liquid Air Co., Ld. *v.* British Oxygen Co., Ld. (1907), 25 R. P. C. 218, 577; 26 R. P. C. 509 ..... 90, 95, 100, 343
British Motor Syndicate, Ld. *v.* Andrews & Co. (T. E. H.), Ld. (1899), 16 R. P. C. 577; 18 R. P. C. 85 ..... 262, 280, 282
British Motor Syndicate, Ld. *v.* Friswell (1901), 18 R. P. C. 497 247
British Motor Syndicate, Ld. *v.* Taylor & Sons (John), Ld. (1899), 17 R. P. C. 189; [1900] 1 Ch. 577; [1901] 1 Ch. 122 ..... 379, 381, 385, 389, 519, 524
British Motor Syndicate, Ld. *v.* Sherrin (1901), 18 R. P. C. 265 539
British Mutoscope and Biograph Co., Ld. *v.* Homer (1901), 18 R. P. C. 177 ..... ii. 174, 175
British Ore Concentration Syndicate, Ld. *v.* Minerals Separation, Ld. (1908), 25 R. P. C. 741; 26 R. P. C. 124; 27 R. P. C. 33 ..... 200, 428, 472
British Tanning Co. *v.* Groth (1889), 7 R. P. C. 1; 8 R. P. C. 113; 60 L. J. Ch. 235 ..... 358, 443, 448: ii. 29
British Thomson-Houston Co., Ld. *v.* Mayor of Manchester (1903), 20 R. P. C. 461 550
British United Shoe Machinery Co., Ld. *v.* Claughton (Hugh), Ld. (1906), 23 R. P. C. 321 ..... 269, 278
British United Shoe Machinery Co., Ld. *v.* Fussell (A.) & Sons, Ld. (1908), 25 R. P. C. 365, 631; 27 R. P. C. 205 ..... 28, 73, 237, 241, 243, 244, 511, 521
British United Shoe Machinery Co., Ld. *v.* Simon Collier, Ld. (1908), 26 R. P. C. 21, 534; 27 R. P. C. 567 385
British United Shoe Machinery Co., Ld. *v.* Thomson (1904), 22 R. P. C. 177 ..... 39, 240, 241, 370
British Vacuum Cleaners Co., Ld. *v.* London and South Western Rail. Co. (1910), 27 R. P. C. 638; 28 R. P. C. 77 ..... 45, 62, 556
British Vacuum Co., Ld. *v.* Exton Hotels Co., Ld. (1908), 25 R. P. C. 617 ..... 342, 550
British Vacuum Cleaners Co., Ld. *v.* Suction Cleaners, Ld., 21 R. P. C. 300, 303 ..... 41, 45, 62, 506
British Westinghouse Electric and Manufacturing Co., Ld. *v.* Branlick (1910), 27 R. P. C. 209 ..... 75, 479
British Westinghouse Electric and Manufacturing Co., Ld. *v.* Electrical Co., Ld. (1911), 28 R. P. C. 517 75

PAGE
Broard's Patent (1908), 25 R. P. C. 537 ..... ii. 246
Brockie's Patent (1908), 25 R. P. C. 813 .....ii. 59, 63
Brodribb *v.* Brodribb (1886), L. R. 11 Pr. D. 66 506
Brook *v.* Aston (1857-59), 8 E. & B. 478; 27 L. J. Q. B. 145; 28 L. J. Q. B. 175; affirmed 5 Jur. N. S. 1025 .....36, 42, 96, 159
Brooke *v.* Wigg (1878), L. R. 8 Ch. D. 510 488
Brookes' Patent (1909), 26 R. P. C. 161 ..... ii. 100
Brooks *v.* Hall (1903), 21 R. P. C. 29 542
Brooks *v.* Lamplugh (1897), 15 R. P. C. 33; 16 R. P. C. 41 .....98, 189, 280, 352, 357, 358, 369, 370, 412, 543
Brooks *v.* Lycett (E.), Ld. (1902), 19 R. P. C. 166, 364; 20 R. P. C. 390 .....492, 511, 530, 546
Brooks *v.* Lycett's Saddle and Motor Accessories Co., Ld. (1903), 20 R. P. C. 575; 21 R. P. C. 651; [1904] 1 Ch. 512.....446: ii. 140
Brooks (J. B.) & Co., Ld. *v.* Rendall, Underwood & Co., Ld. (1907), 24 R. P. C. 17 544
Brooks *v.* Steel (1896), 14 R. P. C. 47.....340, 470, 471
Brown, *Re* (1887), Griff. L. O. C. 1 ..... ii. 8
Brown *v.* Evered (1904), 21 R. P. C. 501 507
Brown *v.* Hastie (1904), 21 R. P. C. 390; 22 R. P. C. 85; 23 R. P. C. 361.....336, 369, 370, 424, 426
Brown *v.* Jackson (1895), 12 R. P. C. 324; [1895] A. C. 446; 64 L. J. P. C. 180 .....84, 360, 361
Brown *v.* Sansom (1888), 5 R. P. C. 510..... 458
Brown's Patent, Griff. L. O. C. 1 280
Brown's Patent (1906), 23 R. P. C. 792; 24 R. P. C. 61, 313; 25 R. P. C. 86 .....99, 149, 174, 280, 429, 432, 450
Brownhill's Patent (1889), 6 R. P. C. 135 .....ii. 51, 67
Brunton *v.* Hawkes (1820), 1 Carp. P. C. 405; 4 B. & Ald. 541 ....73, 82, 111, 156
Buchan *v.* Hill, W. N. (1888) 233 ..... ii. 173
Bulnois *v.* Mackenzie (1837), 1 W. P. C. 260; 4 Bing. N. S. 127..... 409
Bunge *v.* Higginbottom (1901), 18 R. P. C. 20; 19 R. P. C. 187 .... 278, 337, 344
Burgess *v.* Hanley (1859), 26 Beav. 249 ..... 391, 529
Burgess *v.* Hills (1859), 26 Beav. 244..... 391
Burlington's Patent (1898), 15 R. P. C. 195 ..... ii. 229
Burnett *v.* Tate (1882), 45 L. T. N. S. 743.....310, 312, 354
Burt *v.* Morgan (1887), 4 R. P. C. 278; W. N. (1887) 123.....314, 318
Bush *v.* Fox (1852-1856), Macr. P. C. 152, 166, 178; 23 L. J. Ex. 275; 24 L. J. Ex. 251; 5 H. L. C. 707 .....66, 92, 143, 412, 474
Butler *v.* Butler (1888), L. R. 13 Pr. D. 73 506

C.'s Patent (1890), 7 R. P. C. 250 ..... ii. 17
Caldwell *v.* Van Vlissingen (1851), 9 Hare, 415; 21 L. J. (N. S.) Ch. 97; 16 Jur. 115 .....385, 388, 396, 441
Campion *v.* Benyon (1821), 6 B. Moo. 71; 3 Brod. & Bing. 5 ..... 175, 200
Canham *v.* Jones, 2 Ves. 218..... ..... ii. 146

PAGE
Cannington *v.* Nuttall (1871), L. R. 5 H. L. 205; 40 L. J. Ch. 739 .. 79, 107, 117, 354, 384: ii. 118, 132
Cardiff Steamship Co. *v.* Barwick (1885), 53 L. J. N. S. 56 554
Cardwell's Patent (1856), 10 Moo. P. C. 488.....ii. 227, 228, 234
Carey's Application (1889), 6 R. P. C. 552 .....26: ii. 28
Carmont's Patent (1897), 14 R. P. C. 239 .....ii. 217, 235
Carnegie Steel Co. *v.* Bell Bros., Ld. (1907), 24 R. P. C. 82; 26 R. P. C. 265 429
Carpenter *v.* Smith (1841), 1 W. P. C. 530, 540; 11 L. J. Ex. 213; 9 M. & W. 300 .....73, 119, 122, 123, 124, 128, 136, 144, 238
Carpenter's Patent, 2 Moo. P. C. (N. S.) 191, n. ..... ii. 245
Carr's Patent (1873), L. R. 4 P. C. 530; 9 Moo. P. C. 379 ..... ii. 243
Cars *v.* Bland Light Syndicate, Ld. (1911), 28 R. P. C. 33 311
Carter *v.* Leyson (1901), 18 R. P. C. 508; 19 R. P. C. 473.....37, 86, 94, 105
Cartsburn Sugar Refining Co. *v.* Sharp (1884), 1 R. P. C. 181 ..... 379, 484
Cartwright *v.* Amatt (1799), 2 Bos. & Pul. 43 ..... ii. 149
Cartwright *v.* Eamer (1807), 14 Ves. 131 .....192, 332
Case *v.* Cressey (1900), 17 R. P. C. 255; 18 R. P. C. 419 ..... 34, 94
Cassel Gold Extracting Co *v.* Cyanide Gold Recovery Syndicate (1894), 11 R. P. C. 638; 12 R. P. C. 232 ....48, 64, 147, 149, 178, 184, 187, 190, 248, 277, 280, 536
Cassella *v.* Levinstein (1891), 8 R. P. C. 473 .....403, 450
Castner-Kellner Alkali Co. *v.* The Commercial Development Corporation (1898), 15 R. P. C. 645; 16 R. P. C. 251; 17 R. P. C. 593; [1899] 1 Ch. 803.....186, 187, 188, 390, 543, 552
Cera Light Co. *v.* Dobbie (1892), 11 R. P. C. 10 189
Cerokel's Patent (1898), 15 R. P. C. 500..... 305
Chadburn *v.* Mechan (1895), 12 R. P. C. 120 .....109, 187, 249, 432, 556
Chadburn's (Ship) Telegraph Co. *v.* Robinson (1905), 22 R. P. C. 468 546
Challender *v.* Royle (1887), L. R. 36 Ch. D. 425; 56 L. J. Ch. 995; 4 R. P. C. 363 .....312, 317, 319, 320, 321, 322, 323, 324, 326, 327
Chamberlain and Hookham, Ld. *v.* Mayor, &c. of Bradford (1900), 17 R. P. C. 762; 19 R. P. C. 78; 20 R. P. C. 673.....55, 57, 159, 340, 342, 357, 358, 550
Chamberlain and Hookham, Ld. *v.* Mayor, &c. of Huddersfield (1901), 18 R. P. C. 454 ..... 530, 550
Chambers *v.* Crichley (1864), 33 Beav. 374..... 418
Chameleon Patents Manufacturing Co., Ld. *v.* Marshalls, Ld. (1900), 17 R. P. C. 527..... 335
Chandler's Patent (1884), Griff. P. C. 270 ..... ii. 66
Chanter *v.* Dewhurst (1844), 12 M. & W. 823; 13 L. J. Ex. 198..... ii. 180
Chanter *v.* Johnson (1845), 14 M. & W. 408 ..... ii. 180
Chanter *v.* Leese (1838), 8 L. J. Ex. 58; 9 L. J. Ex. 327; 4 M. & W. 295; 5 M. & W. 698; 1 W. P. C. 295 ..... ii. 204
Chappell *v.* Davidson (1856), 8 De G. M. & G. 1 447
Chappell *v.* Purday (1845), 14 M. & W. 310 25
Chartered Institute of Patent Agents *v.* Lockwood (1893), 10 R. P. C. 167; 11 R. P. C. 374 ..... ii. 3
Chatwood's Patent (1899), 16 R. P C. 370 ..... ii. 128
Chatwood's Patent, 37 Eng. 285 ..... ii. 243

PAGE

Chatwood's Patent Safe and Lock Co., Ld. *v.* Mercantile Bank of Lancashire, Ld. (1899), 17 R. P. C. 23 ..... ii. 142
Chatwood's Patent Safe and Lock Co., Ld. *v.* Ratner Safe Co., Ld. (1899), 16 R. P. C. 449 ..... ii. 143
Cheavin *v.* Walker (1877), L. R. 5 Ch. D. 858; 46 L. J. Ch. 265; 35 L. T. 757 ..... ii. 13
Cheeseborough's Patent (1884), Griff. P. C. 303 ..... ii. 40, 123
Cheetham *v.* Nuttall (1893), 10 R. P. C. 321 ..... ii. 187, 189, 196
Cheetham *v.* Oldham (1888), 5 R. P. C. 617, 622, 624; 7 R. P. C. 116.. 130, 403, 405, 460, 461, 463, 464
Cheltenham and Swansea Railway Carriage and Waggon Co., *In re* (1868), L. R. 8 Eq. 58 506
Chemische Fabrik vorm. Sandoz *v.* Badische Anilin und Soda Fabrik (1904), 21 R. P. C. 533 399
Child's Patent, 56 Eng. 435 ..... ii. 243
Chollet *v.* Hoffman (1857), 7 E. & B. 686; 26 L. J. Q. B. 249..... ii. 176, 177
Church (Walter C.) Engineering Co. *v.* Wilson (1886), 3 R. P. C. 123 . 405
Church's Patent (1886), 3 R. P. C. 95 ..... ii. 215, 218, 229, 245, 246
Claridge's Patent (1851), 7 Moo. P. C. 394 ..... ii. 215, 216, 217
Clark *v.* Adie (1873), L. R. 10 Ch. 667; 3 Ch. D. 134; 2 App. Cas. 315; 46 L. J. Ch. 583; 21 W. R. 456 ....78, 79, 237, 239, 241, 243, 251, 262, 263, 266, 268, 270, 273, 274, 283, 285, 286, 340, 345, 349, 353, 357: ii. 196, 201, 203
Clark *v.* Nicholls (1895), 12 R. P. C. 310 448
Clark's Patent (1870), L. R. 3 P. C. 421; 7 Moo. P. C. N. S. 255 .... ii. 218, 226, 235, 236, 243
Clark's Patent (1899), 16 R. P. C. 431 ..... ii. 216, 236, 239
Claughton *v.* Foster (1903), 21 R. P. C. 17 547
Clay *v.* Allcock & Co., Ld. 1906), 23 R. P. C. 381, 745..... 220, 538
Cleaver *v.* Wallwork (1896), 13 R. P. C. 277..... 358
Clement, Talbot & Co., Ld. *v.* Wilson (1909), 24 R. P. C. 511; 26 R. P. C. 467 518
Clifton's Patent, [1904] 2 Ch. 357; 21 R. P. C. 515 304
Clothworkers of Ipswich Case (1615), Godb. R. 252; S. C. 1 Roll. R. 4..2, 22, 103
Cochrane (I. P.) & Co. *v.* Martins (Birmingham), Ld. (1911), 28 R. P. C. 284 ..... ii. 210
Cochrane *v.* Smethurst (1816), 2 Coop. Ch. Cas. 57; 1 Stark. R. 205 .. 174
Cochrane's Patent (1885), Griff. P. C. 304.....ii. 103, 113, 114
Cocking's Patent (1885), 2 R. P. C. 151 .....ii. 230, 232, 243, 244
Codd, *Re* (1884), Griff. P. C. .....305; ii. 29, 88, 95
Codd *v.* Bratby (1884), 1 R. P. C. 209 .....ii. 124, 137
Coghlan *v.* Cumberland, [1898] 1 Ch. 704 498
Colburn *v.* Simms (1843), 2 Hare, 543; 12 L. J. Ch. 338 529
Cole *v.* Saqui (1888), 5 R. P. C. 489; 6 R. P. C. 41; 58 L. J. Ch. 237; L. R. 40 Ch. D. 132 .....198, 232, 478, 518, 537, 538, 539, 544, 553
Coles *v.* Baylis (1886), 3 R. P. C. 178..... 444
Collard *v.* Allinson (1839), 4 My. & Cr. 487 442
Colley *v.* Hart (1888), 6 R. P. C. 17; 7 R. P. C. 101; L. R. 44 Ch. D. 179; 38 W. R. 501; 62 L. T. 424 .....313, 321, 322, 327, 331
Collinge *v.* Bowman (1834), 1 W. P. C. 295 ..... ii. 207
Collins *v.* Walker (1859), 7 W. R. 222 511

PAGE

Collyer *v.* Isaacs (1882), 45 L. J. N. S. 567; 30 W. R. 71 552
Combination Hubs, Ld. *v.* Seabrook (1906), 23 R. P. C. 205..... 354
Combined Weighing Machine Co. *v.* Automatic Weighing Machine Co. (1889), 6 R. P. C. 502; L. R. 42 Ch. D. 665; 61 L. T. 474; 58 L. J. Ch. 709; 38 W. R. 233 .....314, 320, 321, 323, 328, 331
Commercial Development Corporation *v.* Castner-Kellner Alkali Co. (1897), 14 R. P. C. 939 310
Commissioners of Sewers *v.* Glace (1873), L. R. 15 Eq. 302 452
Conniff's Application (1872), Johns. Pat. Man. 6th ed. 165 21
Consolidated Car Heating Co. *v.* Came (1903), 20 R. P. C. 745 ..... 55, 57, 340, 343, 346, 352, 353
Consolidated Pneumatic Tool Co., Ld. *v.* Churchill & Co., Ld. (1905), 22 R. P. C. 209, 367 .....425, 531, 546
Consolidated Pneumatic Tool Co., Ld. *v.* Clark. *See* Ingersoll Sergeant Drill Co. *v.* Consolidated Pneumatic Tool Co., Ld.
Consolidated Pneumatic Tool Co., Ld. *v.* Ingersoll Sergeant Drill Co. (1906), 23 R. P. C. 666; 24 R. P. C. 593; 25 R. P. C. 574 551
Continental Gas Glühlicht Actien Gesellschaft (Meteor) Petition (1897), 15 R. P. C. 732 .... ii. 187
Cook *v.* Pearce (1844), 8 Q. B. 1044, 1054; 13 L. J. Q. B. 189; 12 L. J. Q. B. 187 175
Cooper *v.* Cooper (1875), L. R. 2 Ch. D. 492 556
Cooper *v.* Whittingham (1880), L. R. 15 Ch. D. 501; 49 L. J. Ch. 752. 529
Cooper & Co. (Birmingham), Ld. *v.* Baedeker (1899), 16 R. P. C. 363; 17 R. P. C. 209 96
Cooper Patent Anchor Rail Co., Ld. *v.* British Electric Equipments Co., Ld. (1896), 23 R. P. C. 606 539
Cooper Patent Anchor Rail Joint Co., Ld. *v.* London County Council (1906), 23 R. P. C. 289 539
Cooper's Patent (1901), 19 R. P. C. 53.....31, 32: ii. 7
Copeland *v.* Webb (1862), 11 W. R. 134; 1 N. R. 119 449
Coppin *v.* Lloyd (1898), 15 R. P. C. 373 ..... ii. 188
Cornish *v.* Keen (1835—37), 1 W. P. C. 501, 513; 6 L. J. C. P. 225; 3 Bing. N. S. 570.....15, 31, 66, 104, 117, 118, 122, 130, 131, 136, 162, 163, 471, 472, 473, 479, 480
Corrigal *v.* Armstrong, Whitworth & Co., Ld. (1903), 20 R. P. C. 523; 22 R. P. C. 268 .....274: ii. 127
Couchman *v.* Greener (1884), 1 R. P. C. 197 .....284: ii. 203
Crabtree's Patent, Eng. Rep. Jan. to Mar. 1881 .....ii. 123, 124
Craig *v.* Dawding (1907), 25 R. P. C. 1, 259 ..... 311, 321
Craig and Macfarlane's Application, P. M. J. vol. iv. 3 series 366..ii. 12, 47, 64
Crampton *v.* Patents Investments Co. (1888), 5 R. P. C. 382; 6 R. P. C. 287..... 183, 184, 190, 234, 312, 314, 322, 329, 470, 554
Crane *v.* Price (1842), 1 W. P. C. 377, 393; 12 L. J. C. P. 81; 4 M. & G. 580..... 15, 29, 35, 39, 58, 59, 60, 61, 65, 71, 74, 75, 78, 83, 480
Craven *v.* Pinto Leite (1871), L. R. 7 Ch. App. 90 452
Crighton's Patent, 3 Eng. 135 .... ii. 226
Crist's Patent (1903), 20 R. P. C. 475..... ii. 22
Crocker *v.* Aerators, Ld. (1903), 20 R. P. C. 621 360
Crofts *v.* Peach (1830), 1 W. P. C. 268 462
Croll *v.* Edge (1847), 9 C. B. 479; 19 L. J. C. P. 261 175

PAGE

Crompton *v.* Anglo-American Brush Corporation (1886), L. R. 35 Ch. D. 283; 56 L. J. Ch. 802; 4 R. P. C. 197 434
Crompton *v.* Ibbotson (1828), 6 L. J. O. S. 214; 1 W. P. C. 83 208
Cropper *v.* Smith (1884), 1 R. P. C. 81; 2 R. P. C. 17, 61; L. R. 24 Ch. D. 305; L. R. 26 Ch. D. 700; L. R. 28 Ch. D. 148; L. R. 10 App. Cas. 249; 53 L. J. Ch. 891; 54 L. J. Ch. 287; 55 L. J. Ch. 12 ....110, 247, 251, 259, 268, 271, 273, 318, 420, 426, 524, 544, 545, 555: ii. 139, 141, 165
Cross, Bevan and Beadle's Patent (1906), 23 R. P. C. 485 .....ii. 236, 246
Crossdale *v.* Fisher (1884), 1 R. P. C. 21 124
Crossley *v.* Beverley (1829), 1 W. P. C. 106, 112; 3 Car. & P. 513; 1 Russ. & M. 166, n.; 9 B. & C. 63 .....55, 110, 204, 224, 234, 280, 342, 470, 501
Crossley *v.* Coates (1904), 21 R. P. C. 282 ..... 121, 490
Crossley *v.* Derby Gas Co. (1829), 1 W. P. C. 119; 44 L. J. Ch. 25; 3 My. & Cr. 428 .....501, 508, 509, 510, 514
Crossley *v.* Dixon (1863), 10 H. L. C. 293; 32 L. J. Ch. 617 ....417: ii. 180, 188, 201, 203
Crossley *v.* Potter (1853), Macr. P. C. 240 .....48, 158, 178, 199, 247, 250
Crossley *v.* Stewart (1863), 1 N. R. 426; 7 L. T. N. S. 848 ..... 452, 457
Crossley *v.* Tomey (1876), L. R. 2 Ch. D. 533 ..... 450, 456
Crossthwaite *v.* Moorwood (1894), 11 R. P. C. 558 414
Crossthwaite *v.* Steel (1888), 5 R. P. C. 220; 6 R. P. C. 190 ..... 284, 419
Crossthwaite Fire Bar Syndicate *v.* Senior, [1909] 1 Ch. 801; 26 R. P. C. 260, 713 ..... 281, 429
Crow *v.* Wallis (1886), 3 R. P. C. 1 125
Crowther *v.* United Flexible Metallic Tubing Co., Ld. (1905), 22 R. P. C. 549 317
Croysdale *v.* Fisher (1884), 1 R. P. C. 21 124
Cumming's Patent (1884), Griff. P. C. 277 ..... ii. 51
Cunningham *v.* Collings, Seton, 4th ed., p. 355 512
Currie and Timmis's Patent, [1898] A. C. 347; 15 R. P. C. 63....244, 246, 247
Curtis and André's Patent (1892), 9 R. P. C. 495 ..... ii. 56
Curtis *v.* Cutts (1839), 8 L. J. Ch. 184; 2 Coop. C. C. 60, n.; 3 Jur. 34 ..... .399, 440, 442
Curtis *v.* Platt (1863-66), 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; 10 Jur. N. S. 823; Good, P. C. 102; Griff. L. O. C. 53 .....57, 67, 68, 177, 280, 340, 342, 357, 358, 361, 363, 370, 413, 423, 427, 433, 466
Cutlan *v.* Dawson (1896), 13 R. P. C. 710; 14 R. P. C. 249 .....485: ii. 188
Cutler *v.* Bower (1848), 11 Q. B. 973; 17 L. J. Q. B. 217 ....417: ii. 201, 207

Dalglish *v.* Jarve (1850), 2 Mac. & G. 231 440
Dangerfield *v.* Jones (1865), 13 L. T. N. S. 142 .....52, 417: ii. 205
Daniel's Application (1888), 5 R. P. C. 413 .....51, 53, 54, 55
Daniell's Patent, Godson Pat. 274 74
Dansk Rekylriffel Syndikat Aktieselskab *v.* Snell, [1908] 2 Ch. 127; 25 R. P. C. 421 ..... ii. 168

PAGE
Darby's Patent (1891), 8 R. P. C. 380 .....ii. 217, 228, 237, 246
Darcy *v.* Allin (1602), Noy, R. 178, 182; 1 W. P. C. 1; Moore's Reps. 675; 11 Co. R. 84 .....2, 103, 155, 290: ii. 1
Darrah *v.* Purser (1889), 6 R. P. C. 365..... 425
Dart's Patent, Griff. P. C. 307 ..... ii. 21
Davenport *v.* Goldberg (1865), 2 H. & N. 282 ..... 444, 445
Davenport *v.* Jepson (1862), 4 De G. F. & J. 440; 1 N. R. 173, 307 .. 398, 441, 444, 460, 463
Davenport *v.* Phillips (1865), 5 N. R. 485 487
Davenport *v.* Richards (1860), 3 L. T. N. S. 503 .....393, 443, 484
Davenport *v.* Rylands (1865), L. R. 1 Eq. 302; 35 L. J. Ch. 204 .... 338, 379, 501, 510, 512, 513, 521, 549, 550
David *v.* Woodley (1884), Griff. L. O. C. 26 ..... 18, 21
Davidson *v.* Sun Fan Co., Ld. (1906), 23 R. P. C. 493 ..... 208, 505
Davies *v.* Curtis and Harvey, Ld. (1902), 19 R. P. C. 580; 20 R. P. C. 561 ..... ii. 161
Davies *v.* Davies' Patent Boiler, Ld. (1908), 25 R. P. C. 823..... ii. 161
Davies and Davies' Patent (1911), 28 R. P. C. 50..... ii. 122
Davies *v.* Townsend (1899), 16 R. P. C. 497 337
Davies' Patent (1893), 11 R. P. C. 27.....ii. 214, 246
Daw *v.* Eley (1865-67), 2 H. & M. 925; 36 L. J. Ch. 482; L. R. 1 Eq. 38; L. R. 3 Eq. 496; 14 W. R. 126.....149, 245, 424, 451, 452, 505, 506
Day *v.* Davies (1904), 22 R. P. C. 34 395
Day *v.* Foster (1890), 7 R. P. C. 54; W. N. (1890) 36; L. R. 43 Ch. D. 435..... 319, 321
De Joung *v.* United Motor Co. (1903), 20 R. P. C. 472. *See* Addenda.
De la Rue *v.* Dickinson (1857), 29 L. T. 194; 7 E. & B. 738; 3 K. & J. 388 .....453, 456, 507
De Mare's Patent (1899), 16 R. P. C. 150 316
De Vitre *v.* Betts (1873), L. R. 6 H. L. 319; 21 W. R. 705..... 507, 515
Deacon's Patent (1887), 4 R. P. C. 119 ..... ii. 239
Dedge's Patent (1895), 12 R. P. C. 448 ..... 294, 305
Deeley *v.* Perks (1896), 13 R. P. C. 581; 14 R. P. C. 3; 65 L. J. Ch. 912; [1896] A. C. 496; 75 L. T. N. S. 233 ....305, 306, 307, 390: ii. 126, 129, 131
Deeley's Patent (1894), 11 R. P. C. 72; 12 R. P. C. 65, 192; 13 R. P. C. 581; [1895] 1 Ch. 687; [1896] A. C. 496; 64 L. J. Ch. 480; 65 L. J. Ch. 912; 72 L. T. N. S. 702; 75 L. T. N. S. 233; 43 W. R. 517; 12 R. 272 .....305, 307, 416, 498: ii. 77, 106, 112, 141
Defries *v.* Sherwood (1897), 14 R. P. C. 313 474
Dellwick's Patent (1896), 13 R. P. C. 591; 65 L. J. Ch. 905 .....ii. 108, 114
Dellwick's Patent (1898), 15 R. P. C. 682 ..... 63, 196
Delta Metal Co. *v.* Maxim Nordenfelt Guns and Ammunition Co. (1891), 8 R. P. C. 169, 247 .....435, 446, 447, 450, 456
Denley *v.* Bloro (1851), 38 Lond. Jour. 224 395
Dent *v.* Turpin (1861), 2 J. & H. 139; 50 L. J. Ch. 495 ..... ii. 112
Derosne *v.* Fairie (1835), 1 W. P. C. 154; 2 Cr. M. & R. 476; 5 Tyre, 393 .....175, 205, 216, 217, 228, 231, 232, 287, 414: ii. 204, 209
Derosne's Patent (1835-44), 2 W. P. C. 2; 4 Moo. P. C. 417; 24 Newton, L. J. O. S. 459; Carp. P. C. 698.....74: ii. 222, 227, 228, 230, 234, 247

PAGE

Deutsche Gasglühlicht Aktiengesellschaft's Application (1909), 26 R. P. C. 101 ..... ii. 51, 53
Deutsche Gold und Silber-Scheide Anstalt vorm. Kössler's Application (1907), 24 R. P. C. 209 ..... ii. 31
Deutsche Nähmaschinen Fabrik vorm. Wertheim *v.* Pfaff (1890), 7 R. P. C. 16, 251 82
Dewrance *v.* Fletcher (1899), 16 R. P. C. 150 121
Diamond Steel Manufacturing Co. *v.* Harrison Bros. (1910), 27 R. P. C. 451 420
Dick *v.* Ellams Duplicator Co. (1899), 16 R. P. C. 414; 17 R. P. C. 196.. 147, 247
Dick *v.* Haslam (1891), 8 R. P. C. 196 503
Dick *v.* Tullis (1826), 13 R. P. C. 149..... 473
Dicks *v.* Brooks (1880), L. R. 15 Ch. D. 22; 49 L. J. Ch. 812 ..... 310, 518
Dilly *v.* Doig (1794), 2 Ves. 486 397
Dismore's Patent (1853), 18 Beav. 538 ..... ii. 119
Dixon *v.* The London Small Arms Co. (1875), L. R. 10 Q. B. D. 130; L. R. 1 App. Cas. 632; 44 L. J. Q. B. 63; 46 L. J. Q. B. 617 ..... ii. 194, 245
Dobbie's Patent (1909), not reported ..... ii. 115
Dobbs *v.* Penn, 3 Exch. 427 136
Dolbear's Patent (1896), 13 R. P. C. 203 ..... ii. 234
Dollond's Case (1776), 1 W. P. C. 43; 2 H. Bl. 463 .....16, 114, 723
Donnersmarckhütte Oberschlesiche Eisen und Kohlenwerke Actiengesellschaft *v.* Electric Construction Co., Ld. (1910), 27 R. P. C. 321, 774 74
Douglass *v.* Pintsch's Patent Lighting Co. (1895), 13 R. P. C. 601, 673; 65 L. J. Ch. 919; [1897] 1 Ch. 176; 75 L. T. N. S. 332; 45 W. R. 108 .....315, 328
Dover (H. W.) and Dover, Ld. *v.* New Townsend Cycle Co., Ld. (1903), 21 R. P. C. 135 499
Dowler *v.* Keeling (1898), 15 R. P. C. 214..... 119
Dowling *v.* Billington (1890), 7 R. P. C. 191 ....45, 62, 265, 390, 407, 502, 503
Downes *v.* Hughes & Co. (1880), 69 L. T. 150 486
Downton's Patent (1839), 1 W. P. C. 565.....ii. 228, 232, 247
Dowson Taylor *v.* Drosophore Co. (1894), 11 R. P. C. 536; 12 R. P. C. 95 ..... 224, 225
Drake *v.* Muntz Metal Co. (1886), 3 R. P. C. 43 ..... 460, 463
Dredge *v.* Parnell (1896), 13 R. P. C. 392; 15 R. P. C. 84; 16 R. P. C. 625 .....37, 46, 86, 94, 310
Driffield *v.* Waterloo & Co. (1886), 3 R. P. C. 46; L. R. 31 Ch. D. 638; 55 L. J. Ch. 391 .....314, 315, 328
Drummond's Patent (1889), 6 R. P. C. 756 301
Dubowski *v.* Goldstein (1896), L. R. 1 Q. B. 478..... ii. 155
Duckett *v.* Sankey (1899), 16 R. P. C. 357..... 537
Duckett *v.* Whitehead (1895), 12 R. P. C. 187, 376 .....42, 74, 502
Dudgeon *v.* Thomson (1874-77), 30 L. T. N. S. 244; L. R. 3 App. Cas. 34; Sc. 22 W. R. 464 ....57, 244, 265, 336, 337, 339, 343, 419, 440, 442, 444, 503, 505: ii. 108, 114, 118, 130
Duncan and Wilson's Patent (1884), 1 W. P. C. 257 .....216, 241, 242
Dunlop Pneumatic Tyre Co., Ltd. *v.* Actien Gesellschaft für Motor, &c. (1902), 19 R. P. C. 46 386

PAGE

Dunlop Pneumatic Tyre Co., Ld. *v.* British and Colonial Motor Car Co., Ld. (1901), 18 R. P. C. 313 ..... 385, 386
Dunlop Pneumatic Tyre Co., Ld. *v.* Buckingham and Adams Cycle and Motor Co., Ld. (1901), 18 R. P. C. 423 ..... ii. 190
Dunlop Pneumatic Tyre Co., Ld. *v.* Clifton Rubber Co., Ld. (1902), 19 R. P. C. 433, 527; 20 R. P. C. 393 ..... 316, 348
Dunlop Pneumatic Tyre Co., Ld. *v.* Cresswell 1901), 18 R. P. C. 473 ..... ii. 190
Dunlop Pneumatic Tyre Co., Ld. *v.* Excelsior Tyre and Cement Co. (1901), 18 R. P. C. 209 .....377: ii. 182
Dunlop Pneumatic Tyre Co., Ld. *v.* Green (1900), 17 R. P. C. 234 521
Dunlop Pneumatic Tyre Co. *v.* Gunn (1900), 17 R. P. C. 234 520
Dunlop Pneumatic Tyre Co., Ld. *v.* Holborn Tyre Co., Ld. (1901), 18 R. P. C. 222 .....377: ii. 182
Dunlop Pneumatic Tyre Co., Ld. *v.* Hubbard Patents and Tyre Syndicate, Ld. (1902), 19 R. P. C. 546 436
Dunlop Pneumatic Tyre Co. *v.* Hyde Rubber Co., Ld. (1904), 21 R. P. C. 208 348
Dunlop Pneumatic Tyre Co., Ld. *v.* Moseley (David) & Sons, Ld. (1903), 21 R. P. C. 53, 274; [1904] 1 Ch. 612 ..... 375, 376
Dunlop Pneumatic Tyre Co., Ld. *v.* Neal, [1899] 1 Ch. 807; 16 R. P. C. 247 .....377, 483: ii. 182
Dunlop Pneumatic Tyre Co., Ld. *v.* New Lamb Tyre Co., 20 R. P. C. 303 348
Dunlop Pneumatic Tyre Co., Ld. *v.* New Ixion Tyre and Cycle Co., Ld. (1898), 15 R. P. C. 389; 16 R. P. C. 16 .....348, 500, 549
Dunlop Pneumatic Tyre Co., Ld. *v.* New Seddon Pneumatic Tyre and Self-closing Tube Co., Ld. (1897), 14 R. P. C. 332; 76 L. T. N. S. 405 316
Dunlop Pneumatic Tyre Co., Ld. *v.* North British Rubber Co. (1904), 21 R. P. C. 208 .....ii. 189, 190, 191
Dunlop Pneumatic Tyre Co., Ld. *v.* Rimington (1900), 17 R. P. C. 665.. 391
Dunlop Pneumatic Tyre Co., Ld. *v.* Stone and Corser (1897), 14 R. P. C. 263 438
Dunlop Pneumatic Tyre Co., Ld. *v.* United Rubber Works, Ld. (1902), 19 R. P. C. 406 348
Dunlop Pneumatic Tyre Co., Ld. *v.* Wapshaw Tube Co., Ld. (1900), 17 R. P. C. 433 348
Dunlop Pneumatic Tyre Co., Ld. *v.* Wilson (1900), 17 R. P. C. 332 .. 377, 549: ii. 182
Dunnicliff *v.* Mallett (1859), 7 C. B. N. S. 209; 29 L. J. C. P. 70 .... 393: ii. 154, 162, 179
Dutton *v.* Brierly (1897), 14 R. P. C. 685 119
Duvergier *v.* Fellows (1828), 10 B. & C. 829; 1 C. & F. 39 ..... ii. 147

Eades *v.* Starbuck Waggon Co. (1881), W. N. 160..... 223
Earl de la Warr *v.* Miles (1881), L. R. 19 Ch. D. 80 552
Earl of Devon's Case, 11 Co. R. 90 14

PAGE

Easterbrook *v.* Great Western Railway Co. (1885), 2 R. P. C. 201; 3 R. P. C. 94 .....55, 162, 165, 198, 245, 280, 336, 554
Edelston *v.* Edelston (1863), 1 De G. J. & S. 203..... 392
Edge *v.* Harrison (1891), 8 R. P. C. 74 487
Edge *v.* Johnson (1892), 9 R. P. C. 142 555
Edge's Patent (1890), W. N. 149. 304
Edgebury *v.* Stephens (1691), 2 Salk. 447; 1 W. P. C. 35; Dav. P. C. 36 23
Edie's Patent (1885), Griff. P. C. 279..... ii. 46
Edison Electric Co. *v.* Shippey (1887), 4 R. P. C. 471..... 424, 494
Edison Telephone Co. *v.* Indiarubber Co. (1881), L. R. 17 Ch. D. 137.. 425, 431
Edison United Phonograph *v.* Young (1894), 11 R. P. C. 489 492
Edison and Swan Co. *v.* Holland (1886-89), 3 R. P. C. 395; 5 R. P. C. 213, 459; 6 R. P. C. 243; 55 L. J. Ch. 943; L. R. 33 Ch. D. 497; L. R. 41 Ch. D. 28 ....74, 119, 147, 159, 160, 163, 208, 212, 213, 214, 216, 218, 219, 263, 270, 385, 397, 398, 415, 445, 459, 477, 478, 479, 481, 489, 525, 528, 536, 547, 554
Edison and Swan Co. *v.* Woodhouse (1886-87), 3 R. P. C. 167, 183; 4 R. P. C. 79, 99; L. R. 32 Ch. D. 520 .....74, 212, 217, 235, 245, 261, 274, 277, 281, 287, 483
Edison-Bell Consolidated Phonograph Co., Ld. *v.* Columbia Co. (1900), 18 R. P. C. 4 430
Edison-Bell Consolidated Phonograph Co., Ld. *v.* Rosenberg (1899), 16 R. P. C. 608 483
Edison-Bell Phonograph Corporation *v.* Bernstein (1897), 14 R. P. C. 153 444
Edison-Bell Phonograph Corporation *v.* Edison Phonograph Co. (1893), 11 R. P. C. 33 ..... 546, 547
Edison-Bell Phonograph Corporation *v.* Hough (1894), 11 R. P. C. 594 438
Edison-Bell Phonograph Corporation *v.* London Phonograph Corporation (1894), 11 R. P. C. 193, 471 ..... 447, 501
Edison-Bell Phonograph Corporation *v.* Smith (1894), 11 R. P. C. 148, 164, 389 .....41, 54, 93, 244, 245, 269, 274, 428, 493, 503, 504, 554
Edisonia, Ld. *v.* Forsa (1908), 25 R. P. C. 546 22
Edison's Patent (1877), No. 2909..... ii. 123
Edlin *v.* Pneumatic Tyre and Brooks' Cycling Agency (1893), 10 R. P. C. 311 .....314, 322, 328, 506
Edmonds' Patent (1888-89), 6 R. P. C. 355; W. N. (1888) 234 ..... 304, 307
Edmunds' Patent (1886), Griff. P. C. 281 .....24: 43, 46
Edwards & Co. *v.* Picard, [1909] 2 K. B. 903 ..... ii. 175
Edwards' Patent (1894), 11 R. P. C. 461 ..... ii. 70
Ehrlich *v.* Ihlee (1887-88), 4 R. P. C. 115; 5 R. P. C. 37, 198, 437 ....41, 143, 159, 160, 161, 167, 254, 339, 343, 354, 360, 361, 371, 425, 450, 451, 476, 477, 478
Elder *v.* Victoria Press Manufacturing Co. (1910), 27 R. P. C. 114..463: ii. 175
Electric Construction Co., Ld. *v.* Imperial Tramways Co., Ld. (1899), 16 R. P. C. 631; 17 R. P. C. 537 .....151, 259, 266, 285
Electric Telegraph Co. *v.* Brett (1851), 10 C. B. 838; 29 L. J. C. P. 123.. 53, 66, 84, 175, 393
Electric Telegraph Co. *v.* Nott (1847), 4 C. B 462; 11 Jur. 273; 2 Coop. C. C. 41; 16 L. J. C. P. 174.....405, 437, 440, 441, 445

PAGE
Electrolytic Plating Apparatus Co. *v.* Holland (1901), 18 R. P. C. 521. 125
Elias *v.* Grovesend Tinplate Co. (1890), 7 R. P. C. 455 .....36, 40, 41, 42
Ellam *v.* Martyn (1898), 16 R. P. C. 28 330
Ellington *v.* Clark (1888), 5 R. P. C. 135, 319; 58 L. T. N. S. 818....219, 284, 339, 554
Elliot *v.* Turner (1845), 2 C. B. 446; 15 L. J. C. P. 49 .....205, 262, 280
Ellwood *v.* Christy (1864), 17 C. B. N. S. 754; 18 C. B. N. S. 495; 34 L. J. C. P. 130 .....511, 513, 552: ii. 177
Elmer *v.* Creasy (1873), L. R. 9 Ch. App. 69; 43 L. J. Ch. 166 453
Elmore *v.* Pirrie (1887), 57 L. T. N. S. 333 510
Elmslie *v.* Boursier (1869), L. R. 9 Eq. 217; 39 L. J. Ch. 328..... 379
Elsas *v.* Williams (1884), 1 Times R. 144 499
Elsey *v.* Butler (1884), 1 R. P. C. 189..... 404
Elwes *v.* Payne (1879), L. R. 12 Ch. D. 468 446
Embossed Metal Plate Co. *v.* Saupe (1891), 8 R. P. C. 355..... 81, 94
Emperor of Austria *v.* Day (1861), 3 De G. F. & J. 217..... 525
Engels *v.* Hubert Unchangeable Eylet Syndicate (1902), W. N. 48; (1904), 19 R. P. C. 201.....314, 320, 326, 330
English and American Machinery Co. *v.* Gare Machine Co. (1894), 11 R. P. C. 627 .....311, 322, 325
English and American Machinery Co. *v.* Union Boot and Shoe Machine Co. (1894), 11 R. P. C. 137, 367 .....152, 349, 431, 523, 556
Errard's Patent (1835), 1 W. P. C. 557.....ii. 218, 226, 228, 229
European Eibel Co., Ld. *v.* Lloyd (Edward), Ld. (1911), 28 R. P. C. 349 223
Evans, *Re*, 9 T. R. 109 503
Evans and Otway's Patent (1884), Griff. P. C. 279 ..... ii. 47
Evans and Taunton, Ld. *v.* Hoskins and Sewell, Ld. (1904), 21 R. P. C. 675; 24 R. P. C. 517.....80, 276, 556
Everitt's Patent (1887), Griff. L. O. C. 28 .....179: ii. 17, 50

Fabriques de Produits Chimiques de Thann *v.* Caspers (1897), 15 R. P. C. 94 373
Fabriques de Produits Chimiques de Thann et Mulhouse *v.* Lafitte (1899), 16 R. P. C. 61 .....45, 339, 550
Fairburn *v.* Household (1885), 2 R. P. C. 195; 3 R. P. C. 128, 263 .. 223, 246, 280, 490
Fairfax *v.* Lyons (1891), 8 R. P. C. 401 110
Farbenfabriken vorm. F. Bayer *v.* Bowker (1891), 8 R. P. C. 389 .... 45, 434, 482, 491, 554: ii. 108, 141
Farbenfabriken vormals Friedrich Bayer & Co. *v.* Chemische Fabrik von Heyden (1905), 22 R. P. C. 501 ..... 72, 552
Farbenfabriken vorm. F. Bayer *v.* Laporte (1894), 11 R. P. C. 190 503
Fawcett *v.* Homan (1896), 13 R. P. C. 268, 398 ..41, 43, 77, 137, 153, 160, 161, 162, 163, 198, 255
Feather *v.* The Queen (1865), 6 B. & S. 257; 35 L. J. Q. B. 200 ..332: ii. 194
Fellows *v.* Brookes (1910), 27 R. P. C. 89 45
Felton *v.* Greaves (1829), 2 Stark. R. 249; 3 Car. & P. 611 ..... 174, 199
Fenner *v.* Wilson (1893), 10 R. P. C. 283 ..... 315, 316

PAGE
Fennessey *v.* Clarke (1888), L. R. 37 Ch. D. 184 ..... 452, 453, 507
Fernie *v.* Young (1866), L. R. 1 H. L. 63 491
Ferranti *v.* British Thomson Houston Co., Ld. (1902), 19 R. P. C. 147; 20 R. P. C. 145 346
Ferranti's Patent (1901), 18 R. P. C. 518 ..... ii. 218
Fiat Motors Ld.'s Application ..... 409, 767: ii. 91, 93
Fiechter, *Re* (1882), Griff. P. C. 284 ..... ii. 46
Finch's Patent (1898), 15 R. P. C. 674 ..... ii. 216, 217
Finnegan *v.* James (1874), L. R. 19 Eq. 72 450
Fisher *v.* Dewick (1838), 1 W. P. C. 264, 551 n.; 4 Bing. N. C. 706; 7 L. J. C. P. 279 ..... 175, 427, 430, 435
Fleet *v.* The Managers of the Metropolitan Asylums District (1886) .. 469
Fletcher *v.* Arden (1888), 5 R. P. C. 46 81
Fletcher *v.* Glasgow Gas Commissioners (1887), 4 R. P. C. 386.... 385, 392, 530
Fletcher, *Re* (1886), Griff. L. O. C. 30 ..... ii. 42, 51
Fletcher's Patent (1893), 10 R. P. C. 252 ..... ii. 80
Flour Oxidizing Co., Ld. *v.* Carr & Co., Ld. (1908), 25 R. P. C. 428 .. 137, 142, 147, 148
Flour Oxidizing Co., Ld. *v.* Hutchinson (1909), 26 R. P. C. 597 167
Flower *v.* Lloyd (1876-77), W. N. (1876) 169; 45 L. J. Ch. 746; 20 S. J. 860; Seton, 4th ed. 351 ..... 405, 423, 463, 464, 494
Foard's Patent (1855), 9 Moo. P. C. 376 ..... ii. 228, 233
Foden *v.* Wallis and Stevens, Ld. (1908), 15 R. P. C. 501, 783..... 280, 532: ii. 118
Ford *v.* Foster (1872), L. R. 7 Ch. App. Cas. 611 ..... 334, 509
Forsyth *v.* Riviere (1819), 1 Camp. Rep. 401; 1 W. P. C. 97 66
Fountain Livet's Patent (1892), 9 R. P. C. 327 ..... ii. 226, 230
Fowler *v.* Down (1797), 1 B. & P. 44 ..... ii. 173
Fowler *v.* Gaul (1886), 3 R. P. C. 247 ..... 427, 430
Fox *v.* Astrachans, Ld. (1910), 27 R. P. C. 377, 769 ..... 100, 140, 505
Fox *v.* Dellestable (1866), 15 W. R. 195 ..... 83, 510
Fox, *Ex parte* (1812), 1 V. & B. 67; 1 W. P. C. 431 n. ..... ii. 8
Fox's Patent (1878), No. 3988 ..... ii. 123
Foxwell *v.* Bostock (1863-64), 12 W. R. 723; 4 De G. J. & S. 298; 10 L. T. N. S. 144 ..... 73, 79, 182, 237, 239, 242, 353: ii. 103
Foxwell *v.* Webster (1863), 3 N. R. 103; 9 Jur. N. S. 1189; 2 Drew. & Sm. 250; 9 L. T. N. S. 362, 528 ..... 453, 493
Fradella *v.* Weller (1831), 2 Russ. & My. 247 ..... 392, 529
Francis' Application (1910), 27 R. P. C. 86 ..... ii. 43, 69
Franklin Hocking & Co. *v.* Franklin Hocking (1886-89), 3 R. P. C. 291; 4 R. P. C. 255, 434; 6 R. P. C. 69. *See* Hocking Co. *v.* Hocking ..... ii. 162
Franklin Hocking & Co. *v.* Fraser (1885), 3 R. P. C. 7. *See* Hocking *v.* Fraser 502
Fraser *v.* Province of Brescia Steam Tramways Co. (1887), 56 L. T. N. S. 771; 3 Times R. 587 553
Frearson *v.* Loe (1878), 26 W. R. 138; L. R. 9 Ch. D. 48 ..142, 249, 377, 390, 407, 423, 462, 499, 502, 525
Frentzell *v.* Dougill (1904), 21 R. P. C. 641 ..... ii. 179
Friese-Greene's Patent, [1907] A. C. 460; 24 R. P. C. 464 .....ii. 219, 223
Fryer's Patent, 47 Eng. 49 ..... ii. 241

PAGE

Fuller *v.* Handy (1903), 21 R. P. C. 6 42
Fullwood *v.* Fullwood (1878), L. R. 9 Ch. D. 176 500
Furnes's Patent (1885), 2 R. P. C. 175 .....ii. 243, 246
Fusee Vesta Co. *v.* Bryant and May (1887-88), 4 R. P. C. 71, 191; L. R. 34 Ch. D. 458; L. R. 37 Ch. D. 120; 56 L. J. Ch. 187 .. 312, 323: ii. 125

Gadd *v.* Mayor of Manchester (1892), 9 R. P. C. 259, 516 ..... 89, 135, 147, 184, 187, 190
Gale's Patent (1891), 8 R. P. C. 438 ..... 290, 303
Gall *v.* O'Neill and Brown (1910), 27 R. P. C. 18 546
Galloway *v.* Bleaden (1839), 1 W. P. C. 268 n., 521 .....118, 119, 121, 148, 201, 472, 473
Galloway's Patent (1843), 1 W. P. C. 724; 7 Jur. 453 .....160: ii. 229, 230
Gamble *v.* Kurtz (1846), 3 C. B. 425 339
Gammons *v.* Battersby (1903), 20 R. P. C. 540; 21 R. P. C. 322 ..41, 248, 415
Gammons *v.* Singer Manufacturing Co., Ld. (1901), 22 R. P. C. 129, 452.....415, 416, 495, 496, 552
Gandy *v.* Reddaway (1885), 2 R. P. C. 49.....217, 247, 277, 287
Gardner *v.* Broadbent (1856), 2 Jur. N. S. 1041; 4 W. R. 767....439, 442, 449
Gare's Patent (1884), L. R. 26 Ch. D. 105 ..... ii. 120
Garnett's Patent (1899), 16 R. P. C. 154 ..... ii. 22
Garrard *v.* Edge (1889-90), 6 R. P. C. 372, 563; 7 R. P. C. 139: L. R. 44 Ch. D. 224; 58 L. J. Ch. 397; 59 L. J. Ch. 379; 60 L. T. N. S. 557; 62 L. T. N. S. 510; 37 W. R. 501; 38 W. R. 455; W. N. (1890) 43, 68.....339, 354, 462, 495, 534, 541
Garthwaite's Patent (1856), Griff. P. C. 284..... ii. 47
Gascoine's Patent (1910), 27 R. P. C. 78 ..... ii. 85
Gaulard *v.* Lindsay (1888), 4 R. P. C. 189; 5 R. P. C. 192; L. R. 38 Ch. D. 38; 56 L. T. N. S. 506; 57 L. J. Ch. 687....315; ii. 126, 142, 143
Gaulard and Gibbs's Patent (1887-89), 5 R. P. C. 189, 525; 6 R. P. C. 215; L. R. 34 Ch. D. 396; 50 L. J. Ch. 606; 57 L. J. Ch. 209; Griff. P. C. 320; W. N. (1887) 211; W. N. (1888) 168; W. N. (1889) 60 ....137, 151, 184, 186, 190, 219, 294, 303: ii, 108, 109, 127, 142
Gaunt's Patent (1897), 14 R. P. C. 388 ..... ii. 60
Gavioli *v.* Shephard (1899), 17 R. P. C. 107 520
Gawthorp *v.* Mason (1906), 23 R. P. C. 401 335
Geary *v.* Norton (1846), 1 De G. & S. 9.....338, 392, 499, 529
Geipel *v.* Lord Mayor, &c. of Manchester (1903), 21 R. P. C. 48..... 98
Geipel's Patent, [1903] 2 Ch. 715; [1904] 1 Ch. 239; 20 R. P. C. 545; 21 R. P. C. 379 .....183, 184: ii. 129, 142
General Electric Co. (1900), Ld. *v.* Safety Lift and Elevator Co., Ld. (1903), 21 R. P. C. 109 450
Germ Milling Co. *v.* Robinson (1884-86), 1 R. P. C. 217; 3 R. P. C. 11, 264, 399; 55 L. J. Ch. 287; 53 L. T. N. S. 696; 34 W. R. 194 128, 129, 460, 461, 463, 464, 539, 540: ii. 204
Gibson *v.* Brand (1841-42), 1 W. P. C. 627; 4 M. & G. 179; 11 L. J. C. P. 177 .....16, 59, 110, 175, 193, 211, 220, 223, 374, 484

PAGE
Gillett Safety Razor Co., Ld. *v.* Gamage (A. W.), Ld. (1907), 24 R. P. C. 1; 25 R. P. C. 492; 26 R. P. C. 745 ..... 438, 449
Gillett Safety Razor Co., Ld. *v.* Luna Safety Razor Co., Ld., [1910] 2 Ch. 373; 27 R. P. C. 527 ..... ii. 127
Gillett *v.* Wiltby (1839), 9 Car. & P. 334; 1 W. P. C. 270 ..... 409, 546
Glossop, *Re* (1884), Griff. P. C. 285..... .....ii. 48, 50
Glover (W. T.) & Co., Ld. *v.* American Steel and Wire Co. (1902), 19 R. P. C. 102 280
Goerz and Hough's Patent (1895), 12 R. P. C. 370..... 301
Goltstern's Application (1910), 27 R. P. C. 289.....ii. 42, 114, 132
Gonville *v.* Hay (1903), 21 R. P. C. 49.....418: ii. 202
Gordon *v.* Rolte (1849), 4 Exch. 365 395
Gormully and Jeffery Manufacturing Co., Ld. *v.* North British Rubber Co., Ld. (*See* North British Rubber Co., Ld. *v.* Gormully and Jeffery Manufacturing Co., Ld.) 279, 370
Gormully and Jeffery Manufacturing Co.'s Petition (1899), 16 R. P. C. 641 ..... ii. 187
Gosnell *v.* Bishop (1888), 5 R. P. C. 41, 151 .....41, 67, 357, 358, 360
Goucher *v.* Clayton (1865), 11 Jur. N. S. 107, 462; 34 L. J. Ch. 239; 13 L. T. N. S. 115 .....375, 419, 420: ii. 205
Goucher's Patent (1865), 2 Moo. P. C. N. S. 532..... ii. 246
Gozney's Patent (1888), 5 R. P. C. 597 .....ii. 57, 58
Grafton *v.* Watson (1884), 51 L. T. N. S. 141 554
Graham *v.* Campbell (1877), L. R. 7 Ch. D. 490 447
Graham *v.* Eli (1898), 15 R. P. C. 259 ..... ii. 3
Graham *v.* Fanta (1872), 9 R. P. C. 164..... ii. 3
Gramophone Co., Ld. *v.* Ruhl (1910), 27 R. P. C. 629; 28 R. P. C. 20.. 481
Gramophone and Typewriter, Ld. *v.* Ullmann (1906), 23 R. P. C. 260, 752 ..... 37, 39
Graphic Acts Co. *v.* Hunters, Ld. (1910), 27 R. P. C. 677 470
Greaves *v.* The Eastern Counties Ry. Co. (1859), 1 E. & E. 961; 28 L. J. Q. B. 290 520
Green, *Re* (1857), 24 Beav. 145..... ii. 82
Green's Application, [1911] 1 Ch. 754; 27 R. P. C. 540 ..... ii. 94
Green's Patent (1887), Griff. P. C. 286 .....ii. 51, 53, 70
Greenfell and McEvoy's Patent (1890), 7 R. P. C. 151 ..... ii. 14
Greenhalgh's Patent (1897), 14 R. P. C. 383 ..... ii. 44
Greenwell *v.* Howell, [1900] 1 Q. B. 535 551
Greer *v.* Bristol Tanning Co. (1885), 2 R. P. C. 268 438
Gregory *v.* Piper (1829), 9 B. & C. 591 395
Griffin *v.* Feaver (1889), 6 R. P. C. 396 540
Griffin's Patent (1888), 6 R. P. C. 296 .....ii. 43, 44
Griffith *v.* Blake (1884), L. R. 27 Ch. D. 474 447
Griffiths *v.* The Birmingham Stopper and Cycle Components Co. (1899), 16 R. P. C. 383 352
Grover and Baker Sewing Machine Co. *v.* Millard (1862), 8 Jur. N. S. 713 ..... ii. 206
Grover and Baker Sewing Machine Co. *v.* Wilson (1870), W. N. (1870) 78 ..... 423, 430
Guest and Barrow's Patent (1888), 5 R. P. C. 312 .....ii. 56, 57, 58, 61
Guilbert-Martin *v.* Kerr (1887), 4 R. P. C. 18 536

PAGE

Guyot *v.* Thompson (1894), 11 R. P. C. 541; 71 L. T. N. S. 416; 64 L. J. Ch. 32; [1894] 3 Ch. 388; 8 R. 174, n.....409 : ii. 188, 191, 192
Gwynne *v.* Drysdale (1885-86), 2 R. P. C. 160; 3 R. P. C. 65 ..... 354, 390

Haddan's Patent, *Re* (1884), 51 L. T. N. S. 190; 54 L. J. Ch. 126; W. N. (1884) 192..... 303, 450
Haddan's Patent, *Re* (1885), Griff. L. O. C. 12 .....ii. 124, 137
Haddon's Patent, *Re* (1885), 2 R. P. C. 218 .....299, 300, 307
Haggenmacher *v.* Watson (1897), 14 R. P. C. 349, 631 .....119, 494, 497, 498
Halden *v.* Hall (1904), 21 R. P. C. 609 99
Hall *v.* Conder (1857), 2 C. B. N. S. 22; 26 L. J. C. P. 138, 288..417 : ii. 166, 201, 207
Hall *v.* Jarvis (1822), 1 W. P. C. 100; 1 C. P. C. 423 .....59, 92, 483, 484
Hall *v.* Stepney Spare Motor Wheel, Ld. (1910), 27 R. P. C. 233 320
Hall *v.* Trigg, [1897] 2 Ch. 222 503
Hall *v.* Truman (1885), L. R. 29 Ch. D. 307..... 459
Hall's Patent (1817), 1 W. P. C. 97 74
Hall's Patent (1883), L. R. 23 Ch. D. 644..... 447
Hall's Patent (1895), 12 R. P. C. 401 ..... ii. 231
Hall and Hall's Patent (1888), 5 R. P. C. 283; L. R. 21 Q. B. D. 137; 57 L. J. Q. B. 494; 59 L. T. N. S. 37; 36 W. R. 892 .....ii. 57, 66
Hall and others (1888), 5 R. P. C. 306 .....ii. 112, 143
Halsey *v.* Brotherhood (1880-81), L. R. 15 Ch. D. 514; L. R. 19 Ch. D. 386; 49 L. J. Ch. 514, 786; 51 L. J. Ch. 233; 45 L. T. N. S. 640 .....309, 310, 311
Hamilton's Patent (1901), 19 R. P. C. 33 .....ii. 55, 66
Hampton and Facer's Patent (1887), Griff. L. O. C. 13 .....ii. 40, 106, 136
Hancock *v.* Bewley (1860), 1 Johns. 601..... ii. 179
Hancock *v.* Moulton (1852), Johns. Pat. 6th ed. 254 ..... 354, 374
Hancock *v.* Somervell (1851), 39 Newton, L. J. 158 ....122, 124, 127, 128, 132
Hardmuth *v.* Baker (1904), 21 R. P. C. 504; 22 R. P. C. 66 ..... 352, 357
Hardy's Patent (1849), 6 Moo. P. C. 441 .....ii. 240, 245
Harmer *v.* Plane (1807-9), 14 Ves. 130; 11 East, 101; Dav. P. C. 311.. 83, 102, 103, 154, 215, 225, 440, 443, 446
Harrild and Parkin's Patent (1900), 17 R. P. C. 617 .....ii. 22, 53, 67
Harris *v.* Rothwell (1886-88), 3 R. P. C. 243, 383; 4 R. P. C. 225; L. R. 35 Ch. D. 416; 56 L. J. Ch. 459 .....136, 137, 138, 139, 427, 430, 471, 473
Harrison *v.* Anderston Foundry Co. (1876), L. R. 1 App. Cas. 574.... 78, 79, 237, 240, 241, 242, 245, 246, 262, 265, 270, 336
Harrison *v.* Taylor (1865), 11 Jur. N. S. 408..... 509
Harrison's Patents Co. *v.* Nicholson (W. N.) & Sons, Ld. (1907), 24 R. P. C. 722; 25 R. P. C. 393 ..... 251, 336
Harrison's Patent (1853), Macr. P. C. 31 ..... ii. 123
Harrop *v.* Mayor of Ossett, [1898] 1 Ch. 525 550
Hartley's Patent (1777), 1 W. P. C. 54; 2 H. Bl. 493 60
Hart's Patent (1908), 25 R. P. C. 299.....ii. 245, 246

PAGE

Harwood *v.* Great Northern Ry. Co. (1860-65), 11 H. L. C. 654; 29 L. J. Q. B. 193; 31 L. J. Q. B. 198; 35 L. J. Q. B. 27; 6 L. T. N. S. 90; 12 L. T. N. S. 771; 10 W. R. 422; 14 W. R. 1; 2 B. & S. 194 ..... 33, 34, 35, 93, 100, 474

Haskell Golf Ball Co., Ld. *v.* Hutchinson (1904), 21 R. P. C. 497; 22 R. P. C. 205, 477; 23 R. P. C. 125; 25 R. P. C. 194; [1906] 1 Ch. 518 ..... 55, 57, 77, 78, 119, 121, 131, 218, 316, 321, 473, 531, 532, 536, 537, 552, 554

Haslam *v.* Hall (1887-88), 4 R. P. C. 203; 5 R. P. C. 1, 144; L. R. 20 Q. B. D. 491 ..... 143, 402, 404, 405, 458, 536, 545: ii. 139

Haslam Foundry and Engineering Co. *v.* Goodfellow (1888), 5 R. P. C. 28; L. R. 37 Ch. D. 118; 57 L. J. Ch. 245 ..... ii. 125

Haslett *v.* Hutchinson (1891), 8 R. P. C. 457 ..... ii. 80, 168

Hassall *v.* Wright (1870), L. R. 10 Eq. 509; 40 L. J. Ch. 145 ..... ii. 170, 177

Hasting's Case (1561), Noy, R. 182; 1 W. P. C. 6 ..... 2, 103, 526

Hastings *v.* Brown (1853), 1 E. & B. 450; 22 L. J. Q. B. 161 220

Hatschek's Patent (1909), 26 R. P. C. 1, 228 ..... ii. 90, 91, 93, 95, 96, 97

Hattersley *v.* Hodgson (1903), 20 R. P. C. 591; 21 R. P. C. 517; 22 R. P. C. 229; 23 R. P. C. 192 ..... 202, 247, 266, 278, 285, 286, 487, 505, 506: ii. 115, 118

Hattersley and Jackson's Patent (1904), 21 R. P. C. 233 ..... ii. 114, 115

Haworth *v.* Hardcastle (1834), 1 W. P. C. 485; 1 Bing. N. C. 122; 1 M. & Sc. 732; 3 L. J. C. P. 311 ..... 166, 202, 247, 266, 273

Haws *v.* Harding (1897), 14 R. P. C. 641, 930 33

Haydock *v.* Bradbury (1887), 4 R. P. C. 74 ..... 546, 547

Hayne *v.* Maltby (1789), 3 T. R. 439; 1 W. P. C. 291 ..... ii. 162, 204

Haythornthwaite's Application (1890), 7 R. P. C. 70 ..... 53, 54, 70

Hayward *v.* Hamilton (1879-81), Griff. P. C. 115 ..... 37, 43, 75

Hayward *v.* Pavement Light Co. (1884), 1 R. P. C. 207 ..... 339, 444

Hazeland's Patent (1894), 11 R. P. C. 467 ..... ii. 230, 243, 246

Hazelhurst *v.* Rylands (1892), 9 R. P. C. 1 ..... ii. 149, 167

Heald *v.* Incandescent Gas Light Co. (1893), 10 R. P. C. 165 408

Heald's Patent (1891), 8 R. P. C. 429 ..... 21: ii. 44

Healey's Application, Johns. Pat. 6th ed. 165 18

Heap *v.* Hartley (1888), 5 R. P. C. 603; 6 R. P. C. 495; L. R. 42 Ch. D. 461; 58 L. J. Ch. 790; 41 L. T. N. S. 538; 38 W. R. 136; 5 T. R. 710 ..... 381: ii. 81, 181, 191, 209, 216

Hearson's Patent (1884), 1 R. P. C. 213; Griff. P. C. 266 ..... ii. 9, 121

Heath *v.* Smith (1854), 2 W. P. C. 268; 23 L. J. Q. B. 166; 3 E. & B. 256 ..... 122, 123, 124, 129

Heath *v.* Unwin (1842-55), 10 M. & W. 684; 13 M. & W. 583; 1 W. P. C. 551; 2 W. P. C. 216, 236; 2 D. N. S. 482; 12 L. J. Ex. 46; 14 L. J. Ex. 153; 16 L. J. Ch. 283; 22 L. J. C. P. 7; 12 C. B. 522; 15 S. M. 55, n.; 5 H. L. C. 505: 16 C. B. 713; 25 L. J. C. P. 8 ..... 116, 130, 227, 228, 337, 338, 355, 373, 434, 435

Heath and Frost's Patent (1886), Griff. P. C. 288, 310 .... ii. 48, 49, 50, 51, 54, 109, 135

Heath's Patent (1853), 2 W. P. C. 247; 8 Moo. P. C. 217 .... ii. 226, 230, 235, 241, 243

Heathfield *v.* Braby, Seton, 6th ed. 684 463

Heathfield *v.* Greenway (1894), 11 R. P. C. 17 ..... 427, 434

PAGE
Hedge's Patent (1895), 12 R. P. C. 136 ..... ii. 54
Heine *v.* Conico Incandescent Light Co. (1904), 21 R. P. C. 262 99
Heine *v.* Norden (1904), 21 R. P. C. 513 444
Heine *v.* Spong (1904), 22 R. P. C. 110..... ii. 166
Henderson *v.* The Runcorn Soap and Alkali Co. (1868), W. N. (1868) 250; 19 L. T. N. S. 459..... 487
Henderson *v.* Shiels (1907), 24 R. P. C. 108 .....ii. 167, 202
Henderson's Patent, [1901] A. C. 616; 18 R. P. C. 449 ..ii. 216, 236, 237, 240
Hennebique *v.* Cowlin (1909), 26 R. P. C. 280 44
Hennebique's Patent (1910), 28 R. P. C. 41 ..... ii. 106
Henry's Patent (1872), L. R. 8 Ch. 167; 38 Eng. 343, 352 .....ii. 45, 73, 243
Hensee *v.* Hardie (1894), 11 R. P. C. 421 ..... 402, 409
Herbert *v.* Sayer (1844), 5 Q. B. 965 ..... ii. 173
Herberts' Patent (1867), L. R. 1 P. C. 399; 4 Moo. P. C. (N. S.) 300.....ii. 171, 232, 233, 244
Herrberger *v.* Squire (1888-89), 5 R. P. C. 581; 6 R. P. C. 194 ..... 80, 151, 311, 322, 323, 324, 329, 331
Hess *v.* Stevenson (1808), 3 Bos. & P. 505 ..... ii. 173
Hetherington's Patent (1889), 7 R. P. C. 419 ..... ii. 58
Heugh *v.* Chamberlain (1877), 25 W. R. 742 .... 418, 420
Heurteloup's Patent (1836), 1 W. P. C. 533 136
Hewett *v.* Nurse (1900), 17 R. P. C. 264 335
Heys *v.* Hallmark (1891), 9 R. P. C. 25..... 46, 541
Hicks *v.* Simmons (1904), 21 R. P. C. 413, 632..... 357
Hickton's Patent Syndicate *v.* Patents and Machine Improvements Co., Ld. (1908), 26 R. P. C. 61, 339 ..... 43, 100
Higgin's Patent (1891), 9 R. P. C..74 .....24: 2, 46
Higginson and Dean, *In re*, [1899] 1 Q. B. 325 ..... ii. 174
Higgs *v.* Goodwin (1858), E. B. & E. 529; 27 L. J. Q. B. 421 ....61, 377, 384
Hill *v.* Adams (1893), 10 R. P. C. 102 466
Hill *v.* Evans (1862), 4 De G. F. & J. 288; 31 L. J. Ch. 457; 8 Jur. N. S. 525; 6 L. T. N. S. 90 .....107, 137, 145, 261, 263, 264, 499, 515
Hill *v.* Thomas (1906), 23 R. P. C. 375; 24 R. P. C. 415.....38, 220, 335
Hill *v.* Thompson (1817-18), 1 W. P. C. 229; 3 Mer. 622; 2 B. Moo. 424; 8 Taunt. 375; 1 Carp. P. C. 377 ....15, 17, 59, 73, 77, 82, 110, 112, 114, 131, 156, 164, 238, 247, 248, 261, 439, 440, 442, 443, 448, 449, 477, 480
Hill *v.* Tombs (1881), 51 Eng. 274 110
Hill *v.* Touts 464
Hilleary *v.* Taylor (1887), L. R. 36 Ch. D. 262 552
Hills *v.* Laming (1853), 9 Exch. 256; 23 L. J. Ex. 60 ..... ii. 201
Hills *v.* London Gas Light Co. (1857-60), 27 L. J. Ex. 60; 29 L. J. Ex. 409; 5 H. & N. 312 .....45, 118, 120, 150, 175, 202, 216, 264, 280
Hill's Application (1888), 5 R. P. C. 599 .....ii. 56, 57, 58
Hill's Patent (1863), 1 Moo. P. C. N. S. 258; 9 L. T. N. S. 101; 9 Jur. N. S. 1209; 18 Newton, L. J. N. S. 109 ..... 74: ii. 218, 230, 231, 235, 239, 241, 242, 474
Hind *v.* Osborne (1884-85), 1 R. P. C. 221; 2 R. P. C. 45, 64 ....426, 496, 497
Hinks *v.* Safety Lighting Co. (1876), L. R. 4 Ch. D. 607; 46 L. J. Ch. 185; 36 L. T. N. S. 391 .....42, 74, 217, 218, 230, 245, 246, 266, 271, 280, 285, 287, 470

PAGE
Hirschfeld's Patent (1894), 11 R. P. C. 514 ..... 302, 305
Hitchcock's Patent (1903), 20 R. P. C. 767 304
Hocking *v.* Fraser (1886), 3 R. P. C. 3 .....473, 512, 527, 555
Hocking *v.* Hocking (1886-89), 3 R. P. C. 291; 4 R. P. C. 255, 434;
6 R. P. C. 69 .....57, 418, 432: ii. 163
Hodgkin's Application (1906), 23 R. P. C. 527 ..... ii. 54
Hoe *v.* Foster (1898), 15 R. P. C. 573; 16 R. P. C. 33 ..... 104, 121
Hoffman Manufacturing Co. *v.* Auto Machinery Co., Ld. (1910), 28
R. P. C. 141..... 341
Hoffman *v.* Postill (1869), L. R. 4 Ch. App. Cas. 673 ..... 550, 552
Hoffman's Patent (1890), 7 R. P. C. 92 .....ii. 57, 58, 59
Hoffnung *v.* Salsbury (1899), 16 R. P. C. 375 .....313, 314, 324, 328
Hogg *v.* Kirby, 8 Ves. 215 ..... ii. 146
Holland *v.* Fox (1853-54), 1 W. R. 448; 23 L. J. Q. B. 211, 357;
3 E. & B. 977 507
Holliday *v.* Heppenstall (1889), 6 R. P. C. 320; L. R. 41 Ch. D. 109;
58 L. J. Ch. 829 .....424, 427, 431, 432, 480
Hollins *v.* Capper (1886), 5 R. P. C. 289 128
Holmes *v.* Associated Newspapers, Ld. (1910), 27 R. P. C. 1, 136 246
Holmes *v.* London & North-Western Ry. Co. (1852), Macr. P. C. 4;
12 C. B. 831; 22 L. J. C. P. 57 .....216, 238: ii. 122
Holophane, Ld. *v.* Berend (1897), 15 R. P. C. 18 441
Holste *v.* Robertson (1876), L. R. 4 Ch. D. 9; 46 L. J. Ch. 1; 33 L. T.
N. S. 457; 25 W. R. 35 .....414, 424, 425
Holstrom, *Re* (1904), 22 R. P. C. 213 ..... ii. 82
Holt, *Re* (1879), L. R. 11 Ch. D. 168 ..... 503, 504
Homan's Case (1889), 6 R. P. C. 104; G. P. C. 33 .....21: ii. 45
Honiball *v.* Bloomer (1854), 2 W. P. C. 109; 10 Exch. 538; 24 L. J.
Ex. 11 .....122, 123, 124, 128
Honiball's Patent (1855), 2 W. P. C. 201; 9 Moo. P. C. 378; 25 L. T.
1; L. R. 3 Eq. 225 .....122, 123: ii. 227, 247
Hookham *v.* Johnson (1897), 14 R. P. C. 525 554
Hookham's Patent (1886), Griff. L. O. C. 32 .....ii. 48, 49, 50, 58, 135
Hopkin's Patent (1909), 27 R. P. C. 72 ..... ii. 60
Hopkinson *v.* St. James's Electric Light Co. (1893), 10 R. P. C. 46 .. 109,
217, 287, 511, 554: ii. 107
Hopkinson's Patent (1896), 13 R. P. C. 114; 14 R. P. C. 5; 66 L. J.
P. C. 38; [1897] A. C. 249; 75 L. T. N. S. 462 .....ii. 215, 216,
217, 225
Horace, The (1884), L. R. 9 P. D. 86..... 554
Hornblower *v.* Boulton (1799), Dav. P. C. 221; 8 T. R. 95; 1 Carp.
P. C. 156 .....29, 47, 214, 470
Hornby's Patent (1853), 7 Moo. P. C. 503..... ii. 247
Horne *v.* Ivy, 1 Sid. 441; 1 Vent. 47..... 526
Horrocks *v.* Stubbs (1886, 1896), 3 R. P. C. 221; 12 R. P. C. 540; 74
L. T. N. S. 58 .....184, 189, 190, 415, 416, 551
Horsey's Patent (1884), 1 R. P. C. 225 .....ii. 218, 219
Horsley and Knighton's Patent (1869), L. R. 8 Eq. 475; L. R. 4 Ch.
784; 39 L. J. Ch. 157 .....ii. 82, 158
Horton *v.* Mabon (1862-64), 12 C. B. N. S. 437; 16 C. B. N. S. 141;
31 L. J. C. P. 255 ..... 33, 81

PAGE
Hoskin's Patent (1884), Griff. P. C. 291 .....ii. 47, 56, 64
Houghton's Patent (1871), L. R. 3 P. C. 461; 7 Moo. P. C. N. S. 309..
ii. 216, 226
Houschill Co. v. Neilson, 1 W. P. C. 676; 9 C. & F. 788 ....15, 29, 49, 50, 55, 67, 104, 116, 117, 119, 121, 136, 138, 173, 228, 411, 428, 514
Household v. Fairburn (1884), 1 R. P. C. 109; 2 R. P. C. 142 320
How v. MacKernan (1862), 30 Beav. 547 457
Howard v. Tweedales (1895-96), 12 R. P. C. 519; 13 R. P. C. 211 ..395, 509: ii. 155
Howes v. Webber (1894-95), 11 R. P. C. 586; 12 R. P. C. 465; 13 R. P. C. 39 .....352, 443, 556
Huddart v. Grimshaw (1803), 1 W. P. C. 85; Dav. P. C. 265; 2 B. & Ald. 377.....31, 73, 136, 156, 199, 214, 264, 483, 484
Hudson v. Bennett (1886), 14 W. R. 911 392
Hudson v. Osgerby (1884), 32 W. R. 566; W. N. (1884) 83..... 554
Hudson, Scott & Sons, Ld. v. Berringer, Wallis and Manners, Ld. (1905), 23 R. P. C. 75, 502..... 46, 105
Hudson's Patent (1904), 22 R. P. C. 218 ..... ii. 70
Hugh v. Magill (1897), W. N. (1897) 62 442
Hughes and Kennaugh's Application (1910), 27 R. P. C. 281 ..... ii. 50
Hughes's Patent (1879), L. R. 4 App. Cas. 174; 48 L. J. C. P. 20..ii. 232, 233
Hughes's Patent (1898), 15 R. P. C. 371 .....ii. 237, 238
Hull v. Bolland (1856), 1 H. & N. 134; 25 L. J. Ex. 304..... 423, 466
Hullett v. Hague (1831), 9 L. J. (O. S.) K. B. 242; 2 B. & Ad. 370; 1 Carp. P. C. 501..... 118
Hulton and Bleakley's Petition (1898), 15 R. P. C. 749 ..... ii. 187
Humpherson v. Syer (1887), 4 R. P. C. 184, 407....21, 105, 119, 123, 125, 143, 537, 544, 555
Humphreys' Patent, 1 W. P. C. 7; Noy, R. 183..... 103
Hunt v. Chambers (1882), L. R. 20 Ch. 365 488
Hunt v. City of London Real Property Co. (1877), L. R. 3 Q. B. D. 19.. 494
Hunt v. Hunt (1884), 54 L. J. Ch. 289 447
Hutchinson v. Patullo (1887-88), 4 R. P. C. 329; 5 R. P. C. 351..179, 189, 219
Hutchinson's Patent (1861), 14 M. P. C. 222, 364 .....ii. 219, 236
Huth's Patent (1884), Griff. P. C. 292 ..... ii. 51
Hyam v. Terry (1880), 29 W. R. 32 556

In the Matter of an Application for a Patent under sect. 103 of the Patents, &c. Act, 1903 (1906), 23 R. P. C. 788..... ii. 33
Incandescent Gas Light Co. v. Brogden (1899), 16 R. P. C. 179.....379, 383: ii. 190
Incandescent Gas Light Co. v. Cantelo (1895), 12 R. P. C. 262 ....382: ii. 190
Incandescent Gas Light Co. v. De Mare Incandescent Gas Light System (1896), 13 R. P. C. 301, 559 ....67, 144, 204, 205, 268, 278, 340, 343, 344, 346, 347, 369, 373, 552
Incandescent Gas Light Co. v. Keegan (1899), 17 R. P. C. 44 503
Incandescent Gas Light Co. v. New Incandescent Mantle Co. (1897), 15 R. P. C. 81; 76 L. T. N. S. 47 .....375, 376, 492

PAGE
Incandescent Gas Light Co. *v.* Riemer (1900), 17 R. P. C. 378..... 503
Incandescent Gas Light Co. *v.* Sluce (1900), 17 R. P. C. 173 ..... 503, 504
Incandescent Gas Light Co. *v.* Sunlight Incandescent Gas Lamp Co. (1896), 13 R. P. C. 333; 14 R. P. C. 160 .....316, 346, 347, 390, 552
Ingersoll Sergeant Drill Co. *v.* Consolidated Pneumatic Tool Co., Ld. (1907), 25 R. P. C. 61 274
Ingram's Patent (1896), 13 R. P. C. 446 305
Innes *v.* Short (1898), 15 R. P. C. 449 376
International Harvester Co. of America *v.* Peacock (1908), 25 R. P. C. 765 44

J. and J.'s Patent (1902), 19 R. P. C. 555 ..... ii. 48
J. Y. J.'s Application (1911), 28 R. P. C. 625 ..... ii. 15
Jablochkoff's Patent (1891), 8 R. P. C. 281; [1891] A. C. 293; 60 L. J. P. C. 61 .....ii. 220, 223
Jackson *v.* Needle (1884), 1 R. P. C. 174; 2 R. P. C. 191....440, 441, 448, 449
Jackson *v.* Wolstenholms (1884), 1 R. P. C. 105 ..... 246, 336
Jackson's Patent (1905), 22 R. P. C. 384 298
Jahncke *v.* Bell (1892), 9 R. P. C. 94 358
Jameson's Patent (1902), 19 R. P. C. 246.....25, 295, 299
Jandus Arc Lamp and Electric Co., Ld. *v.* Arc Lamp Co. (1903), 21 R. P. C. 115; 22 R. P. C. 384 .....33, 34, 45, 95, 502: ii. 118, 127
Jandus Arc Lamp and Electric Co., Ld. *v.* Johnson (1900), 17 R. P. C. 361 .....281, 284: ii. 207
Jardine *v.* King, Mendham & Co. (1896), 13 R. P. C. 411 ..... 358, 543
Jenkins *v.* Hope (1895), 13 R. P. C. 57 .....499, 501, 529
Jensen *v.* Smith (1885), 2 R. P. C. 249 ..... 82, 131
Johnson *v.* Edge (1892), 9 R. P. C. 142; [1892] 2 Ch. 1; 61 L. J. Ch. 262 .....317, 318, 321, 323
Johnson *v.* Wyatt (1863), 2 De G. J. & S. 18, 25..... 500
Johnson and Atkinson's Patent (1873), L. R. 5 P. C. 87 .....ii. 217, 243, 244
Johnson's Patent (1871), L. R. 4 P. C. 75; 8 Moo. P. C. N. S. 282 .. ii. 218, 240, 242
Johnson's Patent (1877), L. R. 5 Ch. D. 503 ..... ii. 119
Johnson's Patent (1878), L. R. 13 Ch. D. 398, n. ..... ii. 72
Johnson's Patent (1896), 13 R. P. C. 659.... .....ii. 109, 114, 116, 118, 121
Johnson's Patent (1901), 19 R. P. C. 56..... 31: ii. 7
Johnson's Patent (1907), 24 R. P. C. 694 ..... ii. 50
Johnson's Patent, [1908] 2 Ch. 487; [1909] 1 Ch. 144; 25 R. P. C. 542, 709 .....ii. 224, 228, 229, 234
Johnson's Patent (1909), 26 R. P. C. 52..... ii. 92
Johnson's Patent (1909), 26 R. P. C. 780 ..... ii. 119
Jones *v.* Berger (1843), 3 M. & G. 208; 1 W. P. C. 544, 178, n...136, 409, 433, 435
Jones *v.* Heaton, 1 W. P. C. 404, n. 234
Jones *v.* Lee (1856), 25 L. J. Ex. 241; 26 L. J. Ex. 9; 1 H. & N. 189. 405
Jones *v.* Monte Video Gas Co. (1880), L. R. 5 Q. B. D. 556 458
Jones *v.* Pearce (1832), 1 W. P. C. 121, 122; 5 M. & G. 208..15, 117, 118, 119, 169, 377, 480
Jones's Patent (1840), 1 W. P. C. 577 .....ii. 227, 232, 233
Jones's Patent (1887), Griff. L. O. C. 33 .....ii. 10, 21, 22, 55, 57

PAGE
Jones's Patent, Griff. P. C. 313 ..... ii. 103
Jonkergouw and Destrez's Patent (1910), 27 R. P. C. 540 .....ii. 94, 101
Jordan *v.* Moore (1866), L. R. 1 C. P. 624; 35 L. J. C. P. 268 ..... 247, 277
Joy's Patent (1893), 10 R. P. C. 89.....ii. 225, 243
Jupe *v.* Pratt (1837), 1 W. P. C. 144, 145 .....55, 56, 57, 67, 264, 342, 411
Justice's Patent (1900), 18 R. P. C. 240.... 306

Kane *v.* Boyle (J.) & Co. (1901), 18 R. P. C. 325 501
Kane *v.* Guest (1899), 16 R. P. C. 433 ..... 536, 538
Kay *v.* Marshall (1836 41), 1 My. & Cr. 373; 1 Keen, 190; 5 Bing. N. C. 492; 7 Scott, 548; 8 L. J. C. P. 261; 2 W. P. C. 71, 79; 8 Cl. & F. 245; 5 Jur. 1028 .....91, 95, 110, 238, 245, 274, 399
Kay's Patent (1839), 1 W. P. C. 568; 3 Moo. P. C. 24....ii. 226, 229, 230, 241
Kay's Patent (1894), 11 R. P. C. 279 32
Kaye *v.* Chubb (1888), 4 R. P. C. 23, 289; 5 R. P. C. 641 ..237, 282, 354, 471, 474, 535, 536, 554
Keely *v.* Heathman (1890), 7 R. P. C. 343..... 242
Kelley's Patent (1900), 17 R. P. C. 476 ..... ii. 229
Kelly *v.* Batchelor (1893), 10 R. P. C. 289..... 375, 482
Kelly *v.* Byles (1879), L. R. 13 Ch. D. 682 552
Kelvin *v.* White, Thomson & Co. (1907), 25 R. P. C. 177; 26 R. P. C. 734 ..... 160, 543
Kempton and Mollan's Patent (1905), 22 R. P. C. 373 ..... ii. 40
Kenny's Patent Button-holing Co. *v.* Somervell (1878), 26 W. R. 787; 38 L. J. N. S. 870 .....ii. 171, 172, 187
Kensington and Knightsbridge Electric Light Co. *v.* Lane-Fox Electrical Co. (1891), 8 R. P. C. 277; [1891] 2 Ch. 573.....312, 313, 318, 323, 447
Kent's Patent (1909), 26 R. P. C. 666 .....ii. 91, 96. 97
Kerr and Hoeggen *v.* Crompton and Horrocks (1901), 19 R. P. C. 9 .. 530
Kerrison *v.* Smith, [1897] 2 Q. B. 445 ..... ii. 189
Kilner's Patent (1889), 8 R. P. C. 35..... ii. 61, 62
King Brown *v.* Anglo-American Brush Corporation (1889-92), 6 R. P. C. 414; 7 R. P. C. 436; 9 R. P. C. 313 .....145, 184, 189, 190, 215, 281
King & Co.'s Trade Mark (1892), 9 R. P. C. 350; [1892] 2 Ch. 462; 62 L. J. Ch. 153 ..... 301, 302
Klaber's Patent (1902), 19 R. P. C. 174 105
Klaber's Patent (1904), 22 R. P. C. 1, 205; 23 R. P. C. 461 .....73, 201, 306
Klaber's Patent, [1908] 1 Ch. 845; 25 R. P. C. 334..... ii. 129
Knight, *Re* (1886), Griff. L. O. C. 35 ..... ii. 8
Knott *v.* Morgan, 2 Keen, 213 334
Kollman's Patent (1839), 1 W. P. C. 564 ..... ii. 234
Kopp *v.* Rosenwald (1902), 19 R. P. C. 205; 20 R. P. C. 164.....70, 222, 324
Krupp (Fried.) Aktiengesellschaft Germaniawerft's Application (1908), 25 R. P. C. 809..... ii. 54
Kurtz *v.* Spence (1886-88), 3 R. P. C. 368; 4 R. P. C. 427; 5 R. P. C. 161; L. R. 33 Ch. D. 579; L. R. 36 Ch. D. 770; 55 L. J. Ch. 919; 57 L. J. Ch. 238 ..18, 21, 123, 161, 197, 202, 311, 314, 315, 317, 323, 329, 409, 478, 488
Kynoch & Co., Ld. *v.* Webb (1899), 15 R. P. C. 269; 17 R. P. C. 100 84, 240, 241, 247, 285

PAGE

La Société Anonyme Trade Mark (1893), 10 R. P. C. 290 302
Lacy's Patent (1890), 7 R. P. C. 469 .....ii. 112, 121
Lainson *v.* Tremere, 1 A. & E. 792 ..... ii. 162
Lake and Elliot *v.* Rotax Motor Accessories Co. (1911), 28 R. P. C. 277 ..... ii. 118
Lake's Patent (1887), Griff. L. O. C. 16 .....ii. 106, 109, 114, 137
Lake's Patent (1887), Griff. L. O. C. 35 ..... ii. 37, 49
Lake's Patent (1888), 5 R. P. C. 415 ..... ii. 43, 46
Lake's Patent (1889), 6 R. P. C. 548 ..... ii. 41
Lake's Patent (1891), 8 R. P. C. 228 ..... ii. 238
Lake's Patent (1909), 26 R. P. C. 443..... ii. 91, 92
Lamb *v.* Evans, [1893] 1 Ch. 218..... 22
Lamb *v.* Nottingham Manufacturing Co., cited L. R. 19 Eq. 230 405
Lambert Co. *v.* International Phonograph Indestructible Record Co., Ld. (1903), 20 R. P. C. 705; 21 R P. C. 247 ..... 340, 369
Lancashire Explosives Co. *v.* Roburite Explosives Co. (1895-97), 12 R. P. C. 393, 470; 13 R. P. C. 429; 14 R. P. C. 303..43, 45, 70, 151, 336, 337, 346, 496, 505, 500, 555
Lancaster's Patent (1864), 2 Moo. P. C. N. S. 189 ..... ii. 245
Lancaster's Patent (1884), Griff. P. C. 293 .....ii. 41, 48, 51, 55
Lancaster's Patent (1902), 20 R. P. C. 366 ..... ii. 67
Land's Patent, [1910] 2 Ch. 236; 27 R. P. C. 481 ..... ii. 75
Lane *v.* Herold (1892), 9 R. P. C. 447 349
Lane-Fox *v.* Kensington and Knightsbridge Electric Lighting Co. (1892), 9 R. P. C. 221, 413; [1892] 3 Ch. 424; 67 L. T. N. S. 440..33,163, 186, 189: ii. 108
Lane-Fox's Patent (1892), 9 R. P. C. 411 .....ii. 226, 230, 239
Lang *v.* Gisborne (1862), 31 Beav. 133; 31 L. J. Ch. 769; 6 L. T. N. S. 771.....15, 137, 138
Lang *v.* Whitecross Co. (1889), 6 R. P. C. 570; 7 R. P. C. 389 ....ii. 126, 142
Lang's Patent (1890), 7 R. P. C. 469 .....ii. 112, 121
Law *v.* Ashworth (1890), 7 R. P. C. 86 ..... 324, 325
Lawes *v.* Purser (1856), 6 E. & B. 930; 26 L. J. Q. B. 25 .....ii. 201, 207
Lawrence *v.* Perry (1885), 2 R. P. C. 179 .....136, 161, 280, 360, 535: ii. 139
Lawrence and Kennedy's Patent (1910), 27 R. P. C. 252.....ii. 214, 236
Lawrence's Patent (1892), 9 R. P. C. 85 .....ii. 231, 237
Lawrie *v.* Baker (1885), 2 R. P. C. 213 535
Lawson *v.* Donald Macpherson & Co. (1897), 14 R. P. C. 696 ..... ii. 193
Leadbeater *v.* Kitchin (1890), 7 R. P. C. 235 247
Leaf *v.* Topham (1845), 14 M. & W. 146; 14 L. J. Ex. 231 434
Leather-Cloth Co. *v.* Hirschfeld (1863-66), 1 H. & M. 295; L. R. 1 Eq. 299 512
Ledgard *v.* Bull (1886), L. R. 11 App. Cas. 648. *See also* 3 R. P. C. 390 403
Ledsam *v.* Russell (1847), 1 H. L. C. 687. *See* Russell *v.* Ledsam ..ii. 220, 227
Leeds Forge Co. *v.* Clayton (1905), 22 R. P. C. 325 298
Leeds Forge Co. *v.* Deighton's Patent Flue and Tube Co. (1901), 18 R. P. C. 233; 19 R. P. C. 285; 20 R. P. C. 185; 21 R. P. C. 487; 25 R. P. C. 209 .....262, 280, 284, 289, 496, 523, 547, 555
Lee's Patent (1856), 10 Moo. P. C. 226 ..... ii. 229
Lee's Patent (1906), 23 R. P. C. 233 305

PAGE
Lees *v.* West London Cycle Works (1892), 9 R. P. C. 300 ..... 335, 541
Legge *v.* Wakeham (1893), 10 R. P. C. 379 490
Leggott *v.* McGeogh (1893), 10 R. P. C. 429 ..... 84, 238
Leonardt *v.* Kallé (1894-95), 11 R. P. C. 534; 12 R. P. C. 103, 306 .. 209, 276, 436, 437, 438, 551, 552, 554
Levenstein's Patent (1894), 11 R. P. C. 349 ..... ii. 64
Levinstein's Petition (1898), 15 R. P. C. 732 ..... ii. 187
Lewis *v.* Davis (1829), 3 Car. & P. 502; 1 W. P. C. 488; 1 Carp. P. C. 471 .....73, 82, 168
Lewis *v.* Marling (1829), 10 B. & C. 22; 4 Car. & P. 52; 1 W. P. C. 290 ..... 121, 128, 167, 196, 197, 222, 230
Lewis and Stinckler's Patent (1897), 14 R. P. C. 24 ..... 151, 198
Liardet *v.* Electric Lighting Co. (1883), W. N. (1883) 96 ..... ii. 201
Liardet *v.* Johnson (1778), 1 W. P. C. 53; 1 Carp. P. C. 35 .....39, 218, 230
Lifeboat Co. *v.* Chambers (1891), 8 R. P. C. 418 ..... 128, 219
Lindon's Patent (1897), 14 R. P. C. 643 .....ii. 219, 223
Lines *v.* Usher (1896), 13 R. P. C. 685; 14 R. P. C. 206 ..... ii. 208
Linoleum Co. *v.* Nairn (1877), L. R. 7 Ch. D. 834 ..... ii. 13
Linotype and Machinery Co., Ld. *v.* Hopkins (1908), 25 R. P. C. 349, 635; 27 R. P. C. 252 .....200: ii. 161
Lister *v.* Dix (1898), 16 R. P. C. 89 280
Lister *v.* Eastwood (1855-64), 3 C. L. R. 1249; 26 L. T 4; 9 L. T. N. S. 766 ..... 384, 445
Lister *v.* Leather (1857-58), 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 .....57, 73, 78, 79, 83, 238, 239, 244, 353, 467
Lister *v.* Norton (1884-86), 1 R. P. C. 114; 2 R. P. C. 68, 135; 3 R. C. P. 199 .....124, 125, 128, 142, 436, 437, 441, 448, 449, 452, 453, 456, 535
Lister *v.* Wood, Seton, 3rd ed. p. 909 397
Lodge's Patent (1911), 28 R. P. C. 365 .....ii. 229, 245, 246
L'Oiseau and Pierrard's Application (1887), Griff. L. O. C. 36 ....ii. 34, 41, 50
London, Chatham and Dover Ry. Co. *v.* South Eastern Ry. Co. (1893), [1893] A. C. 429 ..... ii. 208
London and Leicester Hosiery Co. *v.* Griswold (1886), 3 R. P. C. 250.. 418: ii. 161, 164
London and South-Western Ry. Co. *v.* Groom (1881), L. R. 20 Ch. D. 589 552
Longbottom *v.* Shaw (1888-91), 5 R. P. C. 497; 6 R. P. C. 143, 510; 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 .....37, 41, 42, 86, 94, 105, 331, 427, 539, 541
Longmaid's Patent, 1 Eng. 347 ..... ii. 230
Loog *v.* Bean (1884), L. R. 26 Ch. D. 306 309
Lorrain's Patent (1888), 5 R. P. C. 142 .....ii. 40, 51, 56, 57, 64
Losh *v.* Hague (1837-39), 1 W. P. C. 200; 8 L. J. Ex. 251; 5 M. & W. 387.....15, 37, 59, 92, 392, 439, 442
Lovell *v.* Hicks (1836), 2 Y. & C. 46; 5 L. J. Ex. 101; 6 L. J. Ex. 85. ii. 162
Lowe's Patent (1846), 2 W. P. C. 158 ..... ii. 234
Lowe's Patent (1852), 10 Jur. 363 ..... ii. 236
Lowndes *v.* Davies (1834), 6 Sim. 468..... 452
Lucas *v.* Miller (1885), 2 R. P. C. 155 .....163, 176, 184, 190, 245, 336, 476

PAGE
Lucas (Joseph), Ld. *v.* Miller (H.) & Co. (1899), 17 R. P. C. 165..486, 487, 490
Lucas' Patent (1854), Macr. P. C. 235 .....ii. 109, 123, 124, 130
Ludington Cigarette Machine Co. *v.* Baron Cigarette Machine Co., [1900] 1 Ch. 508; 17 R. P. C. 25, 214, 745 .....ii. 127, 128, 129, 142
Luke's Patent (1886), Griff. P. C. 294.....ii. 39, 46, 47
Lumley *v.* Gye (1853), 2 E. & B. 216..... 376
Lupton and Place's Patent (1897), 14 R. P. C. 261 ..... ii. 67
Lycett Saddle and Motor Accessories Co., Ld. *v.* Brook (T. B.) & Co., Ld. (1904), 21 R. P. C. 656 ..... 319, 320
Lynch and Henry Wilson & Co., Ld. *v.* Phillips (John) & Co. (1908), 25 R. P. C. 694; 26 R. P. C. 389.....241, 255, 280
Lynde's Patent (1888), 5 R. P. C. 663 .....ii. 57, 64, 66
Lyon *v.* Goddard (1893-94), 10 R. P. C. 121, 334, 348; 11 R. P. C. 113, 354 .....38, 45, 63, 75, 110, 118, 222, 228, 237, 343, 379, 476, 499, 502, 503, 511
Lyon *v.* Mayor and Corporation of Newcastle-upon-Tyne (1895), 11 R. P. C. 218 449
Lyons *v.* Martin (1838), 8 A. & E. 512; 3 N. & P. 509 395
Lyon's Patent (1894), 11 R. P. C. 537 .....ii. 230, 246

MACDONALD *v.* Fraser (1893), 10 R. P. C. 386; 11 R. P. C. 169 352
MacDougall *v.* General Sewage and Manure Co. (1875), W. N. (1875) 64 491
Macevoy's Patent (1888), 5 R. P. C. 285 .....ii. 48, 49, 50, 135
Macfarlane *v.* Price (1818), 1 Stark. N. P. 199; 1 W. P. C. 74, n..193, 220, 239
MacIntosh *v.* Everington, 2 Carp. R. 180, 191..... 205
Macintosh's Patent (1837), 1 W. P. C. 739, n.....ii. 222, 427
Mackelcan *v.* Rennie (1862), 13 C. B. N. S. 52 .....180, 231, 239, 281, 287
Mackie *v.* Salvo Laundry Co. (1892), 9 R. P. C. 465 325
Macnamara *v.* Hulse (1842), Car. & M. 471; 2 W. P. C. 128, n. ..208, 232, 409
Magee *v.* Tangyes (1897), 14 R. P. C. 255..... 189
Main's Patent (1890), 7 R. P. C. 13 .....ii. 29, 34
Makepeace *v.* Jackson, 4 Taunt. 770 19
Mallet's Patent (1866), L. R. 1 C. P. 308: 4 Moo. P. C. N. S. 175..ii. 234, 245
Mandelberg *v.* Morley (1893-95), 10 R. P. C. 256; 11 R. P. C. 1; 12 R. P. C. 35; 65 L. J. Ch. 245; 72 L. T. N. S. 106; 43 W. R. 266; 13 R. 322 .....402, 403, 404, 539, 541
Manning's Patent (1902), 20 R. P. C. 74 ..... ii. 82
Mansell's Patent (1624), 1 W. P. C. 19 131
Manton *v.* Manton (1815), Dav. P. C. 333; 1 Carp. P. C. 278; 1 W. P. C. 192, n. 156, 159, 472, 473
Manton *v.* Parker (1815), Dav. P. C. 327; 1 W. P. C. 484, n. 110, 156, 159, 164
Marconi *v.* British Radio Telegraph and Telegram Co., Ld. (1911), 28 R. P. C. 181 .....344, 356, 552, 554
Mark's Patent (1908), 25 R. P. C. 553 .....25, 131, 299
Markwick's Patent (1860), 13 Moo. P. C. 310; 8 W. R. 333 ..ii. 171, 236, 244

PAGE

Marsden *v.* Albrecht (1910), 27 R. P. C. 785 404
Marsden *v.* Saville Street Foundry and Engineering Co. (1878), L. R. 3 Ex. D. 203 ..... 24, 25
Marsden's Patent (1896), 12 R. P. C. 87 ..... ii. 51, 57
Marsden's Patent (1897), 14 R. P. C. 174 ..... ii. 63
Marsh *v.* Wolf (1906), 23 R. P. C. 265 46
Marshall and Naylor's Patent (1900), 17 R. P. C. 553 ..... 22, 298, 299
Marshall's Application (1888), 5 R. P. C. 661 ..... ii. 43, 45
Marshall's, Ld. *v.* Chameleon Patents Manufacturing Co. (1901), 18 R. P. C. 400 280
Martin *v.* Consett Iron Co., Ld. (1906), 24 R. P. C. 7; 25 R. P. C. 27 ..... 236, 258
Martin's, Ld. *v.* Metropolitan Gas Meters, Ld. (1910), 27 R. P. C. 721; 28 R. P. C. 157 518
Martin's Patent, Griff. P. C. 320 ..... 294, 295
Massam *v.* T. W. Thorley's Cattle Food Co. (1877-80), L. R. 6 Ch. D. 574; L. R. 14 Ch. D. 748 335
Massey *v.* Haynes (1888), L. R. 21 Q. B. D. 330 397
Mathers *v.* Green (1865), L. R. 1 Ch. 29; 34 L. J. Ch. 298; 34 Beav. 170; 35 L. J. Ch. 1 ..... ii. 157, 179
Mathews *v.* Parmentier (1896), 13 R. P. C. 514 ..... 114, 119
Mathews and Strange's Application (1910), 27 R. P. C. 288 ..... ii. 73
Mathias *v.* Yates (1882), 46 L. T. N. S. 497 395
Maxim and Silverman's Patent (1894), 11 R. P. C. 314 ..... ii. 51, 65
Maxim-Nordenfelt Guns and Ammunition Co. *v.* Anderson (1897), 14 R. P. C. 371, 671; 14 R. P. C. 421 ..... 206, 266, 374: ii. 195
May *v.* Yuill & Co. (1910), 27 R. P. C. 525 542
Mayer *v.* Spence (1860), 1 J. & H. 87 439
McAlpine *v.* Mangnall (1846), 15 L. J. C. P. 298 ..... ii. 173
McCormick *v.* Gray (1861), 7 H. & N. 25; 31 L. J. Ex. 42 ..... 337, 375
McCulloch's Patent (1908), 25 R. P. C. 207, 684 ..... ii. 214, 228, 229, 245, 246
McDougal's Patent (1884), 2 R. P. C. 11 ..... ii. 231
McDougall *v.* Partington (1890), 7 R. P. C. 216 ..... ii. 148
McDougall's Patent (1867), L. R. 2 P. C. 1; 37 L. J. P. C. 17; 5 Moo. P. C. N. S. 1 ..... ii. 228, 229
McGruther *v.* Pitcher, [1904] 2 Ch. 307 384
McHardy's Patent (1891), 8 R. P. C. 432 ..... ii. 57
McInnes' Patent (1868), L. R. P. C. 54; 37 L. J. P. C. 23; 5 Moo. P. C. N. S. 72 ..... ii. 230, 231, 242
McLay *v.* Lawes & Co., Ld. (1905), 22 R. P. C. 199 44
McNaught *v.* Dawson (1905), 22 R. P. C. 389; 23 R. P. C. 219 42
McNeil's Patent (1907), 2 R. P. C. 680 46
Meadows *v.* Kirkman (1860), 29 L. J. Ex. 205 ..... 460, 461
Mears-Gerkin's Application (1910), 27 R. P. C. 565 ..... ii. 46
Medlock's Patent (1865), Newton, Lond. Jour. (N. S.) vol. xxii. p. 69 ..... ii. 122, 123
Merchant Shipping Co. *v.* Armitage (1873), L. R. 9 Q. B. 99 ..... ii. 208
Merry *v.* Nickalls (1873), L. R. 8 Ch. App. Cas. 205 556
Meters, Ld. *v.* Metropolitan Gas Meters, Ld. (1907), 24 R. P. C. 506; (1910), 27 R. P. C. 21; 28 R. P. C. 157 ..... 505, 522
Meyenburg and The Clayton Anilin Co.'s Application *v.* Meyer's Patent (1899), 16 R. P. C. 526 ..... ii. 62

PAGE
Meyer's Patent (1899), 16 R. P. C. 526 .....ii. 48, 50, 136
Mica Insulator Co. *v.* Bruce Peebles & Co., Ld. (1905), 22 R. P. C. 363, 527 ..... 402, 537
Mica Insulator Co. *v.* Electrical Co. (1898), 15 R. P. C. 489 428
Middleton *v.* Bradley (1895), 12 R. P. C. 390; [1895] 2 Ch. 716; 64 L. J. Ch. 888; 73 L. T. N. S. 81; 43 W. R. 684; 13 R. 737.. 538, 539
Millar *v.* Taylor, 4 Burr. 2303 ..... ii. 144
Miller *v.* Barker (1893), 10 R. P. C. 106..... 163
Miller *v.* Clyde Bridge Street Co. (1891), 8 R. P. C. 198; 9 R. P. C. 470 360
Miller *v.* Searle (1893), 10 R. P. C. 106....162, 184, 190, 217, 285, 287, 411, 490
Miller's Patent (1894), 11 R. P. C. 55 .....302, 303, 306
Miller's Patent (1898), 15 R. P. C. 205, 718 .....129, 131: ii. 70
Milligan *v.* Marsh (1856), 2 Jur. N. S. 1083.....24: ii. 34
Mills *v.* Carson (1892), 9 R. P. C. 338; 10 R. P. C. 9..... ii. 208
Mills's Patent (1901), 18 R. P. C. 322.....ii. 22, 67
Milner's Patent (1854), 9 Moo. P. C. 39 ..... ii. 247
Milner's Patent (1898), 15 R. P. C. 205 117
Minerals Separation, Ld. *v.* Ore Concentration Co. (1903) Ld., [1909] 1 Ch. 744; 26 R. P. C. 413 429
Minter *v.* Mower (1835), 1 W. P. C. 140; 4 L. J. Ex. 72; 6 A. & E. 735.....79, 216, 218
Minter *v.* Wells (1834), 1 W. P. C. 127; 1 C. M. & R. 505; 4 A. & E. 251; 4 L. J. Ex. 2 .....14, 18, 52, 55, 156, 471, 473
Minter *v.* Williams (1835), 4 A. & E. 251; 5 L. K. J. B. 60; 1 W. P. C. 135 38
Mitchell *v.* Reynolds (1713), 1 P. Wms. 181; 10 Moo. 130 2
Mitchell's Patent (1847), 30 Newton, L. J. O. S. 356 ..... ii. 246
Molassine Co., Ld. *v.* Townsend (R.) & Co., Ld. (1905), 23 R. P. C. 27.. 41
Moncrieff's Patent, 22 Iron, 35..... ii. 246
Monforts *v.* Marsden (1895), 12 R. P. C. 266..... ii. 168
Monnet *v.* Beck (1897), 14 R. P. C. 777 .....63, 142, 196, 197, 247
Monopolies, Case of, Noy, 182. *See* Darcy *v.* Allin.
Montain *v.* Parker (1903), 20 R. P. C. 769..... 330
Montgomerie *v.* Paterson (1894), 11 R. P. C. 221, 633.....275, 309, 375
Moore *v.* Bennett (1884), 2 R. P. C. 129 .....237, 238, 240, 241, 476, 489, 534
Moore *v.* Craven (1874), L. R. 7 Ch. App. 94 452
Moore *v.* Thomson (1890), 7 R. P. C. 325. *See* Thomson *v.* Moore 68, 279, 342, 358, 417
Moorewood *v.* Tupper (1885), 3 C. L. R. 718 384
Morey's Patent (1858), 25 Beav. 581; 6 W. R. 612..... ii. 82
Morgan *v.* Fuller (1866), L. R. 2 Eq. 297 ..... 414, 433
Morgan *v.* Seaward (1835-37), 1 W. P. C. 167, 187; 2 Carp. P. C. 37, 96, 104; 2 M. & W. 544; 6 L. J. Ex. 153; 1 Jur. 527; M. & H. 55 .....59, 87, 110, 111, 121, 123, 128, 129, 130, 156, 157, 161, 162, 164, 166, 167, 175, 198, 208, 211, 215, 217, 223, 227, 228, 229, 287, 346, 354, 411, 437, 446, 448, 465, 477, 480, 483
Morgan *v.* Windover (1887-90), 4 R. P. C. 422; 5 R. P. C. 295; 7 R. P. C. 139, 446 .....40, 42, 76, 94, 100, 117, 119, 121, 169, 176, 184, 477
Morgan's Patent (1843), 1 W. P. C. 737 .....ii. 215, 227, 228
Morgan's Patent (1876), 24 W. R. 245 .....ii. 83, 120

PAGE
Morgan's Patent (1886), Griff. L. O. C. 17 .....ii. 114, 119, 137
Morgan's Patent (1887), 5 R. P. C. 186 .....292, 293
Morgan-Brown's Patent (1886), 3 R. P. C. 212 ..... ii. 247
Morrell *v.* Pearson (1849), 12 Beav. 284 499
Morris *v.* Branson (1776), Bull N. P. 76; 1 Carp. P. C. 30; 1 W. P. C. 51 ..... 79, 83
Morris *v.* Young (1895), 12 R. P. C. 455 .....78, 142, 273, 337, 343, 358, 497, 538, 544, 547
Morrison *v.* Asplen (1904), 21 R. P. C. 557 547
Morris Wilson & Co. *v.* Coventry Machinists Co., [1891] 3 Ch. 419; 8 R. P. C. 353 425
Morton *v.* Middleton (1863), 1 Ct. of Sess., 3rd series, 721 73
Moseley *v.* Victoria Rubber Co. (1886-87), 3 R. P. C. 351; 4 R. P. C. 241; 55 L. T. N. S. 482 ....73, 79, 119, 143, 176, 184, 190, 212, 234, 403, 455, 456
Moser *v.* Jones (1893), 10 R. P. C. 368 .....440, 444, 447
Moser *v.* Marsden (1892-96), 10 R. P. C. 205, 350; 13 R. P. C. 24; 73 L. T. N. S. 667.....72, 79, 82, 186, 396 : ii. 5, 34, 107, 108, 118
Moser *v.* Sewell (1893), 10 R. P. C. 365 ..... 444, 447
Moss *v.* Malins (1886), 3 R. P. C. 373; L. R. 33 Ch. D. 603; 56 L. J. Ch. 126 .....74, 128, 424, 466, 475, 553
Mouchel *v.* Coignet (1906), 23 R. P. C. 649; 24 R. P. C. 229; 26 R. P. C. 280 44
Mouchel *v.* Cubitt (1907), 24 R. P. C. 194..... ii. 202
Muirhead *v.* Commercial Cable Co. (1894-95), 11 R. P. C. 317; 12 R. P. C. 39, 258, 370 .....80, 280, 488 : ii. 202, 208, 209
Müller's Patent (1907), 24 R. P. C. 465..... .. 292, 428
Müller's Patent (1909), 26 R. P. C. 209..... ii. 100
Mullins *v.* Hart (1852), 3 Car. & K. 297..... 128
Muntz *v.* Foster (1843-44), 2 W. P. C. 93 .....63, 96, 148, 202, 205, 208, 287, 339, 374, 377, 442
Muntz *v.* Grenfell (1842), 2 W. P. C. 91; 2 Coop. Ch. Cas. 59..... 419, 447
Muntz *v.* Vivian (1840), 2 W. P. C. 87 437
Muntz's Patent (1846), 2 W. P. C. 113 ..... ii. 242
Murchland *v.* Nicholson (1893), 10 R. P. C. 417 259
Murray *v.* Clayton (1872), L. R. 15 Eq. 115; L. R. 7 Ch. 570; L. R. 10 Ch. 675, n.; 42 L. J. Ch. 191; 21 W. R. 498 ....38, 60, 73, 75, 77, 87, 117, 149, 168, 243, 354, 512
Musgrave *v.* Hicks (1886), 3 R. P. C. 49 551
Myddleton *v.* Lord Kenyon, 2 Ves. Jr. 408 103
Myers's Patent (1882), W. N. (1882) 53, 76 ..... ii. 83

Nadel *v.* Martin (1902), 20 R. P. C. 129, 721, 723; 23 R. P. C. 41..496 : ii. 167
Nähmaschinen Fabrik *v.* Singer Manufacturing Co. (1893), 10 R. P. C. 310 316
Nairn's Patent (1891), 8 R. P. C. 444 ..... ii. 119
Nahnsen's Patent (1900), 17 R. P. C. 203 .....ii. 51, 52
Napier's Patent (1861), 13 Moo. P. C. 543; 9 W. R. 390 .....ii. 170, 216, 233

PAGE

Napier's Patent (1881), L. R. 6 App. Cas. 174; 50 L. J. C. P. 40; 29 W. R. 745 ..... ii. 229
National Company for the Distribution of Electricity by Secondary Generators, Ld. *v.* Gibbs, [1899] 2 Ch. 289; [1900] 2 Ch. 280; 16 R. P. C. 339; 17 R. P. C. 302 ..... ii. 156
National Opalite Glazed Brick and Tile Co., Ld. *v.* Grand Hotel (Birmingham), Ld. (1902), 18 R. P. C. 249 481
National Opalite Glazed Brick and Tile Syndicate *v.* Ceralite Syndicate (1896), 13 R. P. C. 658 502
National Phonograph Co. of Australia *v.* Menck, [1911] A. C. 336; 28 R. P. C. 229 ..... 383: ii. 174, 181, 190
Needham *v.* Johnson (1884), 1 R. P. C. 49 ..... 57, 269, 270, 273, 354, 533
Needham *v.* Oxley (1863), 8 L. T. N. S. 604; 11 W. R. 852; Pemberton, 4th ed. 485; Seton, 4th ed. 352, 353; 1 H. & M. 248; 2 N. R. 232, 267, 388 ..... 403, 512, 527, 553
Neil *v.* Macdonald (1902), 20 R. P. C. 213 ..... ii. 161
Neilson *v.* Betts (1868-71), L. R. 3 Ch. D. 429; L. R. 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; 13 W. R. 804; 11 Jur. N. S. 679 ..205, 254, 507, 512, 515
Neilson *v.* Fothergill (1841), 1 W. P. C. 287 ..... ii. 205
Neilson *v.* Harford (1841), 1 W. P. C. 295, 324 n., 331, 373; 10 L. J. Ex. 493; 11 L. J. Ex. 20; 2 Coop. Ch. Ca. 61, n.; 8 M. & W. 806 37, 49, 50, 156, 175, 197, 199, 208, 211, 213, 218, 228, 231, 249, 261, 262, 264, 266, 409, 414, 434, 435, 466, 477
Neilson *v.* Thompson (1841), 1 W. P. C. 278; 2 Coop. Ch. Ca. 61, n. .. 216, 437, 440, 443, 445, 446, 448
Nettlefolds *v.* Reynolds (1891-92), 8 R. P. C. 410; 9 R. P. C. 270 .... 358, 424, 427, 471
New Conveyor Co., Ld. *v.* Edinburgh and Leith Gas Commissioners (1903), 21 R. P. C. 1, 147 ..... ii. 99
New Inverted Incandescent Gas Lamp Co., Ld. *v.* Cope and Timmins, Ld. (1905), 23 R. P. C. 103 545
New Inverted Incandescent Gas Lamp Co., Ld. *v.* General Incandescent Co., Ld. (1905), 22 R. P. C. 614 539
New Inverted Incandescent Gas Lamp Co., Ld. *v.* Globe Light, Ld., (1905), 22 R. P. C. 431; 23 R. P. C. 157 ..... 532, 543
New Ixion Tyre and Cycle Co. *v.* Spilsbury (1898), 15 R. P. C. 389; [1898] 2 Ch. 484 ..... ii. 168, 206
Newall *v.* Elliott (1858), 4 C. B. N. S. 269; 27 L. J. C. P. 337; 4 Jur. N. S. 562 ..... 66, 121, 176, 184, 189, 190
Newall *v.* Elliott (1863), 9 Jur. N. S. 359; 10 Jur. N. S. 954; 7 L. T. N. S. 753; 10 L. T. N. S. 792; 32 L. J. Ex. 120; 11 W. R. 438; 13 W. R. 11 ..... 177, 182, 338, 377, 387, 420
Newall *v.* Wilson (1852), 2 De G. M. & G. 282; 19 L. T. 161 ..... 437, 444, 447
Newburry *v.* James, 2 Mer. 446; 1 Carp. P. C. 367 ..... 216: ii. 147
Newby *v.* Harrison (1861), 3 De G. F. & J. 287; 2 H. & M. 628; 1 J. & H. 393 ..... 447: ii. 209
Newcomen *v.* Coulson (1877), L. R. 7 Ch. D. 764 447
Newelite Glass Tile Co., Ld. *v.* Lawson's Non-Conducting Composition, Ld. (1907), 24 R. P. C. 101, 305 470

PAGE
Newman's Patent (1888), 5 R. P. C. 271, 279; Griff. L. O. C. 40....ii. 47, 51, 53, 56, 57, 59, 62, 64
Newsum *v.* Mann (1890), 7 R. P. C. 307 ..... 40, 42
Newton *v.* Grand Junction Ry. Co. (1846), 5 Exch. 331; 20 L. J. Ex. 427, n. 107, 149, 349, 353
Newton *v.* Vaucher (1851), 6 Exch. 859; 21 L. J. Ex. 305 .....63, 97, 275
Newton's Patent (1861), 14 Moo. P. C. 156 .....ii. 214, 234, 247
Newton's Patent (1862), 15 Moo. P. C. 176; 9 Jur. N. S. 109..... ii. 234
Newton's Patent (1881), 51 Eng. 208; 17 Iron, 155, 171 ..... ii. 242
Newton's Patent (1884), L. R. 9 App. Cas. 592; 1 R. P. C. 177; 52 L. T. 329 .....ii. 236, 240, 243
Newton's Patent (1899), 17 R. P. C. 123 ..... 63, 65
Nickels *v.* Haslam (1844), 7 M. & G. 378; 8 Scott, N. R. 97; 13 L. J. C. P. 146 175
Nickels *v.* Ross (1849), 8 C. B. 679.....23, 24, 471: ii. 46
Nickels's Patent (1841), 1 W. P. C. 650; 4 Beav. 563 ..... ii. 120
Nicoll *v.* Swears (1893), 10 R. P. C. 240..... 81, 94
Nicholls *v.* Kershaw (1910), 27 R. P. C. 237..... 336
Nicols *v.* Pitman (1884), L. R. 26 Ch. D. 374 392
Nobel's Explosives Co. *v.* Anderson (1894-95), 11 R. P. C. 128; 12 R. P. C. 164.....57, 67, 70, 141, 281, 337, 340, 356, 373, 481, 534, 543, 552: ii. 195
Nobel's Explosives Co. *v.* Jones (1880), L. R. 17 Ch. D. 721; L. R. 8 App. Cas. 5; 50 L. J. Ch. 339; 48 L. T. 490; 30 W. R. 294; 31 W. R. 388 ..... 338, 395
Noble's Patent (1850), 7 Moo. P. C. 191..... ii. 222
Nordenfelt *v.* Gardner (1884), 1 R. P. C. 10, 61 ..57, 78, 339, 351, 496, 497, 533
Nordenfelt *v.* Maxim-Nordenfelt Guns and Ammunition Co., [1894] A. C. 535 ..... ii. 155
Nordenfelt's Patent (1887), Griff. L. O. C. 18 .....ii. 113, 114, 119
Normand's Patent (1870), L. R. 3 P. C. 193; 6 Moo. P. C. N. S. 477.. ii. 215, 216
North British Rubber Co. *v.* Gormully and Jeffery Manufacturing Co. (1894-98), 12 R. P. C. 17; 13 R. P. C. 691; 14 R. P. C. 283; 15 R. P. C. 245.....348, 391, 438, 446, 450, 555
North British Rubber Co. *v.* Macintosh (1894), 11 R. P. C. 477 ..347, 489, 502
North Eastern Marine Engineering Co., Ld. *v.* Leeds Forge Co., Ld. (1905), 23 R. P. C. 96, 529; [1906] 1 Ch. 324; 2 Ch. 498..... 289
North Metropolitan Tramways Co., Ld. *v.* London County Council, [1898] 2 Ch. 145 550
Northern Press Engineering Co., Ld. *v.* Hoe (R.) & Co. (1906), 23 R. P. C. 417, 613..... 40, 42
Norton *v.* Brooks (1861), 7 H. & N. 499..... ii. 201
Norton's Patent (1863), 1 Moo. P. C. N. S. 339; 9 Jur. N. S. 419; 11 W. R. 720; G. P. C. 553 .....ii. 171, 215, 216, 217, 228, 232
Norwood's Patent (1895), 12 R. P. C. 214..... 298, 304
Norwood's Patent (1898), 15 R. P. C. 99 299
Nunn *v.* D'Albuquerque (1865), 34 Beav. 595 .....392, 529, 530
Nussey and Leachman's Patent (1890), 7 R. P. C. 22 ..... ii. 234
Nuttall *v.* Hargreaves (1891), 8 R. P. C. 273, 450 .....82, 177, 186, 189

PAGE

Oddy *v.* Smith (1888), 5 R. P. C. 503 540
Oldham *v.* Longmead (1789), 1 W. P. C. 291, 294, 439, n., 441 ....418: ii. 163
Ormson *v.* Clarke (1862), 13 C. B. N. S. 337; 14 C. B. N. S. 475, 490; 32 L. J. C. P. 8, 291 ..... 40, 42
Orr *v.* Diaper (1876), L. R. 4 Ch. D. 92 452
Orr-Ewing *v.* Johnson (1879-82), L. R. 13 Ch. D. 434; L. R. 7 App. Cas. 219 334
Osborne *v.* Board (1896), 13 R. P. C. 740 417
Osborn's Patent (1909), 26 R. P. C. 820 .....ii. 96, 97
Osmond *v.* Hirst (1885), 2 R. P. C. 265 ..... 437, 443
Osmond *v.* Mutual Cycle and Manufacturing Co., Ld., [1899] 2 Q. B. 488. *See* Addenda.
Osmonds, Ld. *v.* Balmoral Cycle Co., Ld. (1898), 15 R. P. C. 505 .... 189, 543
Otto *v.* Linford (1881), 46 L. T. N. S. 35 ..48, 55, 118, 137, 147, 152, 153, 159, 160, 161, 207, 208, 213, 217, 232, 269, 271, 273, 286, 287, 477, 544, 555
Otto *v.* Singer (1889), 7 R. P. C. 7 ..... ii. 181
Otto *v.* Steel (1885-86), 2 R. P. C. 139; 3 R. P. C. 109; L. R. 31 Ch. D. 241; 55 L. J. Ch. 196 .....137, 139, 424, 524, 527, 549, 554, 555
Overton *v.* Burns (1896), 13 R. P. C. 455 326
Owen's Patent (1898), 15 R. P. C. 755; 43 S. J. 43 .....ii. 104, 112, 139
Owen's Patent, [1899] 1 Ch. 157; 17 R. P. C. 68, 637.....166, 196, 198, 305, 306, 495
Oxley *v.* Holden (1860), 8 C. B. N. S. 666; 30 L. J. C. P. 68; 2 L. T. N. S. 464; 8 W. R. 626 .....126, 128, 142, 175, 267, 380

P.'s Application (1906), 23 R. P. C. 644 ..... ii. 64
Palmer *v.* Cooper (1853), 9 Exch. 532; 23 L. J. Ex. 82..... 427
Palmer *v.* Edwards, 1 Doug. 187, n. ..... ii. 191
Palmer *v.* Wagstaffe (1853-54), 8 Exch. 840; 9 Exch. 449; 22 L. T. N. S. Ex. 295; 23 L. J. Ex. 217; Newton, L. J. vol. xliii. p. 131.. 155, 157, 196, 269, 433, 484
Palmer Tyre Co., Ld. *v.* Pneumatic Tyre Co., Ld. (1899), 16 R. P. C. 451 552
Parker *v.* Maignen's Filtre Rapide Co. (1888), 5 R. P. C. 207 426
Parker *v.* Satchwell (1901), 18 R. P. C. 299.....41, 254, 335
Parker *v.* Wells (1880), L. R. 18 Ch. D. 477..... 452, 453
Parkes *v.* Stevens (1869), L. R. 8 Eq. 358; L. R. 5 Ch. App. Cas. 36; 38 L. J. Ch. 627 .....81, 237, 241, 243, 261, 353
Parkinson *v.* Simon (1895), 11 R. P. C. 238, 493; 12 R. P. C. 403 .... 246, 270, 274, 277, 280, 281, 358, 498
Parkinson's Patent (1896), 13 R. P. C. 509 .....ii. 109, 110
Parmenter *v.* Webber, 8 Taunt. 593; 2 B. Mo. 656; Shep. Touch. 266 ii. 191
Parnell's Patent (1888), 5 R. P. C. 126.....ii. 81, 176
Parrott *v.* Palmer (1834), 3 M. & K. 632 ..... 509, 510
Parson's Patent (1898), 15 R. P. C. 349; [1898] A. C. 673 .....ii. 235, 239
Parsons and Stoney's Application (1910), 27 R. P. C. 491 .....140: ii. 17
Partington *v.* Hartlepools Pulp and Paper Co. (1895), 12 R. P. C. 295.. 61
Partridge's Patent (1903), 20 R. P. C. 459 305

PAGE

Pascall *v.* Toope (1890), 7 R. P. C. 125 434
Pashley *v.* Linotype Co., Ld. (1903), 20 R. P. C. 633..... 20
Patent Exploitation, Ld. *v.* American Novelty and Manufacturing Co., Ld. (1903), 20 R. P. C. 689 ; 22 R. P. C. 16 ....77, 80, 280, 445, 481, 552
Patent Exploitation, Ld. *v.* Siemens Brothers & Co., Ld. (1902), 19 R. P. C. 113 ; 20 R. P. C. 225 ; 21 R. P. C. 541 ....4, 37, 74, 77, 80, 237, 242, 270, 280, 472
Patent Marine Inventions Co. *v.* Chadburn (1873), L. R. 16 Eq. 447 .. 486
Patent Type Foundry Co. *v.* Richards (1860), 6 Jur. N. S. 39 ; 1 Johns. 381 ; 2 L. T. N. S. 359 .....205, 206, 404
Patent Type Foundry Co. *v.* Walter (1860), 1 Johns. 727 .....460, 463, 464
Paterson's Patents (1884), Griff. P. C. 295 .....ii. 44, 55, 64
Patterson *v.* Gas Light and Coke Co. (1875), L. R. 2 Ch. D. 812 ; L. R. 3 App. Cas. 239 ; 45 L. J. Ch. 843 ; 47 L. J. Ch. 402....27, 49, 51, 62, 63, 85, 105, 141, 143, 247, 248, 249
Patterson *v.* Holland, Hindmarch, p. 293 ; Higgins's Digest, 354 304
Patterson's Patent (1845), 6 Moo. P. C. 469 ; 13 Jur. 593 .....ii. 234, 235
Peach's Patent (1901), 19 R. P. C. 65 ; [1902] A. C. 414 ..ii. 217, 218, 236, 240
Peck *v.* Hindes (1898), 14 Times R. 164 ; 15 R. P. C. 113..... 526
Peckover *v.* Rowland (1893), 10 R. P. C. 118, 234 .....242, 358, 431, 466
Pegamoid, Ld. *v.* British Leather Cloth Manufacturing Co., Ld. (1901), 18 R. P. C. 317 ..... 540, 541
Penn *v.* Bibby, *v.* Jack, *v.* Fernie (1866), L. R. 1 Eq. 548 ; L. R. 2 Eq. 314 ; L. R. 3 Eq. 308 ; L. R. 5 Eq. 81 ; L. R. 2 Ch. App. 127 ; 36 L. J. Ch. 277, 455 ; 37 L. J. Ch. 136 ; 14 L. T. N. S. 495 ; 15 L. T. N. S. 385, 399 ; 17 L. T. N. S. 407 ; 14 W. R. 760 ; 16 W. R. 243.. 36, 96, 176, 177, 178, 179, 184, 190, 396, 414, 423, 426, 433, 473, 474, 475, 507, 508, 518, 522, 523, 524, 548
Perkin's Patent (1845), 2 W. P. C. 6 ; 47 Eng. 105 .....ii. 222, 227, 239, 243
Perks *v.* Deeley (1896), 14 R. P. C. 3 ..... ii. 138
Peroni *v.* Hudson (1884), 1 R. P. C. 261 .....465, 473, 546, 554
Perry *v.* Mitchell (1840), 1 W. P. C. 269 ..... 403, 404
Perry *v.* Skinner, 2 M. & W. 471 ..... ii. 130
Perry *v.* Société de Lunetiers (1896), 13 R. P. C. 664 ..... ii. 108
Peters *v.* Owen (1899), 16 R. P. C. 83..... 336
Pether *v.* Shaw (1893), 10 R. P. C. 293 197
Petitt-Smith's Patent (1850), 7 Moo. P. C. 133 .....ii. 214, 216, 235, 245
Petman *v.* Bull (1886), 3 R. P. C. 390. *See also* L. R. 11 App. Cas. 648 403
Phillips *v.* Ivel Cycle Co. (1890), 7 R. P. C. 77 ; 62 L. T. N. S. 392 .. 432
Philpot *v.* Hanbury (1885), 2 R. P. C. 33, 153 .....161, 207, 223, 237
Pickard *v.* Prescott (1892), 9 R. P. C. 195 ; [1892] A. C. 263 ..... 135, 139
Pickard *v.* Sears (1837), 6 A. & E. 469 ..... ii. 162
Pidding *v.* Franks (1849), 1 Mac. & G. 56 ; 18 L. J. Ch. 295 ..... ii. 204
Pieper's Patent (1895), 12 R. P. C. 293 : 72 L. T. N. S. 782 ; 11 R. 581 ii. 240
Pietschmann's Patent (1884), Griff. P. C. 314 ..... ii. 121
Piggott *v.* Anglo-American Telegraph Co. (1868), 19 L. T. N. S. 46 .. 460, 461, 463
Piggott & Co., Ld. *v.* Corporation of Hanley (1906), 23 R. P. C. 639 .. 537
Pilkington *v.* Massey (1904), 21 R. P. C. 421, 696 ..... 337, 385
Pilkington *v.* Yeatley Vacuum Hammer Co. (1901), 18 R. P. C. 459 .. 25, 135
Pinkus's Patent (1848), 12 Jur. N. S. 433 ..... ii. 230

PAGE

Pirrie *v.* York Street Flax Spinning Co. (1892-94), 10 R. P. C. 34; 11 R. P. C. 429 ..... 98, 161, 174

Pitman's Patent (1871), L. R. 4 P. C. 84; 8 Moo. P. C. N. S. 293 .... ii. 171, 218, 231

Pitt's Patent (1888), 5 R. P. C. 343 ..... ii. 41, 51

Pitt's Patent (1899). *See* Ludington Cigarette Machine Co., Ld. *v.* Baron Cigarette Machine Co.

Pitt's Patent (1901), 18 R. P. C. 478 ..... ii. 122

Plating Co. *v.* Farquharson (1879-83), Griff. P. C. 187; L. R. 17 Ch. D. 49 ..... 280, 464, 506

Plimpton *v.* Malcolmson (1875-76), L. R. 20 Eq. 37; L. R. 3 Ch. D. 531; 44 L. J. Ch. 257; 45 L. J. Ch. 505; 34 L. T. N. S. 430; Seton, 4th ed. 354 ..... 15, 23, 26, 106, 136, 138, 139, 161, 198, 212, 219, 227, 229, 234, 411, 436, 441, 442, 443, 445, 449, 470, 473, 474, 476, 526; ii. 210

Plimpton *v.* Spiller (1877), L. R. 4 Ch. D. 286; L. R. 6 Ch. D. 412, 425; L. R. 5 H. L. 433; 35 L. T. N. S. 656; 37 L. T. N. S. 56; 47 L. J. Ch. 211; 25 W. R. 152; 26 W. R. 285; 20 S. J. 859; Higgins's Digest, p. 288 .... 15, 113, 136, 138, 139, 140, 244, 245, 254, 258, 266, 269, 271, 273, 338, 430, 436, 446, 447, 449, 473, 503, 505, 506

Pneumatic Tyre Co. *v.* Cash Cycle Co. (1897), 14 R. P. C. 177, 326 492

Pneumatic Tyre Co. *v.* Casswell (1896), 13 R. P. C. 164, 375 .... 153, 255, 268, 348, 498

Pneumatic Tyre Co. *v.* Chisholm & Co. (1896), 13 R. P. C. 488 .. 492, 542, 548

Pneumatic Tyre Co. *v.* Dunlop (1896), 13 R. P. C. 553 ..... ii. 162

Pneumatic Tyre Co. *v.* East London Rubber Co. (1896), 14 R. P. C. 77, 573 ..... 149, 150, 176, 179, 184, 190, 191, 348, 555

Pneumatic Tyre Co. *v.* English Cycle and Tyre Co. (1897), 14 R. P. C. 851 142

Pneumatic Tyre Co. *v.* Ferguson (1894), 11 R. P. C. 459 ..... ii. 208

Pneumatic Tyre Co. *v.* Friswell (1895), 13 R. P. C. 15 449

Pneumatic Tyre Co. *v.* Goodman (1896), 13 R. P. C. 723 439

Pneumatic Tyre Co. *v.* Ixion Patent Pneumatic Tyre Co. (1897), 14 R. P. C. 853 ..... 184, 190, 191, 348, 552

Pneumatic Tyre Co. *v.* Leicester Pneumatic Tyre and Automatic Valve Co. (1898), 15 R. P. C. 159; 16 R. P. C. 50, 531 ..... 176, 186, 190, 191, 281, 481, 482

Pneumatic Tyre Co. *v.* Marwood (1896), 13 R. P. C. 347; 14 R. P. C. 240 ..... 444, 473

Pneumatic Tyre Co. *v.* New Ixion Tyre and Cycle Co. (1898), 15 R. P. C. 389; 16 R. P. C. 16 ..... 176, 191

Pneumatic Tyre Co. *v.* Parr (J.) & Co., W. N. (1896) 88 542

Pneumatic Tyre Co. *v.* Puncture Proof Pneumatic Tyre Co. (1898), 15 R. P. C. 405; 16 R. P. C. 209 ..... 518, 519, 520, 523

Pneumatic Tyre Co. *v.* Tubeless Tyre and Capon Heaton, Ld. (1897-98), 15 R. P. C. 74, 237; 16 R. P. C. 77 ..... 79, 346, 348, 352, 370

Pneumatic Tyre Co. *v.* Warrillow (1896), 13 R. P. C. 284 ..... 439, 445

Pneumatic Tyre Co. *v.* West London Rubber Co. (1898), 15 R. P. C. 129 550

Poole's Patent (1867), L. R. 1 P. C. 514; 4 Moo. P. C. N. S. 452; 36 L. J. P. C. 76 ..... ii. 241

PAGE

Pooley *v.* Pointon (1885), 2 R. P. C. 167 ..... 219, 535
Porter's Patent, 1 Newton, L. J. N. S. 179 ..... ii. 227
Postcard Automatic Supply Co. *v.* Samuel (1889), 6 R. P. C. 560 .... ii. 180, 202, 205
Potter *v.* Parr, 2 B. & S. 216, n. 78, 237, 238
Poulton *v.* Adjustable Cover and Boiler Block Co. (1908), 25 R. P. C. 529, 661; [1908] 2 Ch. 430 416
Poulton *v.* Kelley (1904), 21 R. P. C. 392 335
Poulton's Patent (1906), 23 R. P. C. 183, 506 ..... 122, 307
Powell *v.* Birmingham Vinegar Brewery Co. (1896), 14 R. P. C. 1.... 512
Powell *v.* Head (1879), L. R. 12 Ch. D. 686..... ii. 179
Power *v.* Walker (1814), 3 M. & S. 7 ..... ii. 149
Poyser's Patent (1907), 24 R. P. C. 157..... 223
Presto Coat Collar Co. *v.* Levy Bros. (1911), 28 R. P. C. 362 ..... ii. 223
Presto Gear Case and Components, Ld. *v.* Orme, Evans & Co., Ld. (1900), 17 R. P. C. 218; 18 R. P. C. 17 358
Presto Gear Case and Components Co., Ld. *v.* Simplex Gear Case Co., Ld. (1898), 15 R. P. C. 638 358
Preston *v.* Black (1894), 11 R. P. C. 299, 574 385
Price's Patent Candle Co. *v.* Bauwen's Patent Candle Co. (1858), 4 K. & J. 727 ..... 501, 510
Printing and Numerical Registering Co. *v.* Sampson (1875), L. R. 19 Eq. 462 ..... ii. 160
Procter *v.* Bayley (1889), 6 R. P. C. 106, 538; 59 L. J. Ch. 12; 38 W. R. 100 .....377, 378, 385, 392, 393, 499, 510, 530
Procter *v.* Bennis (1887), 4 R. P. C. 333; L. R. 36 Ch. D. 740; 57 L. J. Ch. 11; 57 L. T. N. S. 622; 36 W. R. 456 .....57, 67, 73, 237, 238, 241, 242, 278, 339, 345, 353, 354, 357, 358, 360, 361, 367, 369, 370, 396, 500, 509, 555
Proctor *v.* Sutton Lodge Chemical Co. (1888), 5 R. P. C. 184 ....291, 544, 549
Prynne's Patent (1885), 54 L. J. Ch. 289 447
Punchard *v.* Dale (1894), 11 R. P. C. 257 ..... ii. 148

Quinn *v.* Leathem, [1901] A. C. 495 376

R. *v.* Arkwright (1785), Dav. P. C. 61; 1 W. P. C. 64 ....20, 21, 82, 114, 136, 155, 196, 207, 208, 214, 218, 220, 227, 232, 396, 413
R. *v.* Betts (1850), 15 Q. B. 540; 19 L. J. Q. B. 531..... 300
R. *v.* Comptroller-General of Patents, *Ex parte* Tomlinson, [1899] 1 Q. B. 909; 16 R. P. C. 233 .....ii. 48, 135, 136
R. *v.* Crampton (1886), 3 R. P. C. 367 .....125: ii. 13
R. *v.* Cutler (1816, 1847), 4 Q. B. 372, n.; 3 Car. & K. 215; Macr. P. C. 124; 1 W. P. C. 76 .....37, 197, 296, 303
R. *v.* Eastern Archipelago Co. (1853), 4 De G. M. & G. 199; 21 L. T. 35 360

PAGE

R. *v.* Else (1785), 1 W. P. C. 76 237
R. *v.* Judge of County Court of Halifax (1891), 8 R. P. C. 338; [1891] 1 Q. B. 793; 2 Q. B. 263; 60 L. J. Q. B. 550 485
R. *v.* Metcalf (1817), 1 W. P. C. 141, n.; 3 Car. & P. 611; 2 Stark. R. 249 .....175, 199, 216
R. *v.* Mill (1850-51), 10 C. B. 379; 14 Beav. 312; 20 L. J. C. P. 16; 1 L. M. & P. 695 .....175: ii. 117, 130
R. *v.* Mussary (1738), 1 W. P. C. 41 14
R. *v.* Neilson (1842), 1 W. P. C. 673 300
R. *v.* Newton, Hindmarch on Patents, p. 427 306
R. *v.* Prosser (1848), 11 Beav. 306; 18 L. J. N. S. Ch. 35; 13 Jur. 71.. 294
R. *v.* Seine, 40 Newton, Lond. Jour. 71..... 137
R. *v.* Townsend (1896), 13 R. P. C. 265 .....125: ii. 13
R. *v.* Wallis (1886), 3 R. P. C. 1 ..... ii. 13
R. *v.* Wheeler (1819, 1850), 2 B. & Ald. 345; 10 C. B. 395 ....29, 31, 203, 261
Railway and Electrical Appliances, *In re* (1888), L. R. 38 Ch. D. 597.. ii. 150
Ralston *v.* Smith (1860-65), 9 C. B. N. S. 471; 11 C. B. N. S. 117; 35 L. J. C. P. 49; 4 L. T. N. S. 549; 11 H. L. C. 223.....66, 70, 82, 86, 105, 159, 202, 247: ii. 104, 108, 109, 113, 115, 116
Ralston's Patent (1909), 26 R. P. C. 313 .....297, 298, 299, 306
Ransone *v.* Bentall, 3 L. J. N. S. 161..... 334
Rawes *v.* Chance (1890), 7 R. P. C. 275 .....454, 457, 459
Read *v.* Andrew (1885), 2 R. P. C. 119 ..... 442, 443
Reason Manufacturing Co., Ld. *v.* Moy (Ernest F.), Ld. (1902), 19 R. P. C. 409; 20 R. P. C. 205 .....80: ii. 118
Reddaway *v.* Banham, [1896] A. C. 199 334
Redges *v.* Mullinar (1892), 10 R. P. C. 21.....ii. 188, 203, 208
Redmond's Patent (1828), 1 W. P. C. 642, n.; 5 Russ. 44..... ii. 119
Reece's Patent (1881), 17 Iron, 155; 51 Eng. 207 .....ii. 216, 219
Renard *v.* Levinstein (1864-65), 3 N. R. 665; 5 N. R. 301; 10 L. T. N. S. 94, 117; 11 L. T. N. S. 505, 766; 13 W. R. 229, 382; 2 H. & N. 62 .....24, 424, 441, 443, 455, 456, 463, 466: ii. 5, 34, 209, 210
Rendell's Patent (1894), 11 R. P. C. 277; 70 L. T. N. S. 756 ..... 304, 307
Republic of Bolivia *v.* The National Bolivian Navigation Co. (1876), 24 W. R. 361..... 488
Reynolds *v.* Amos (1886), 3 R. P. C. 215 ..... 97, 477
Reynolds *v.* Smith (Herbert) & Co, Ld. (1902), 20 R. P. C. 123, 410.. 33
Rhodes and Edmonson *v.* British Cotton and Wool Dyers' Association, Ld. (1910), 28 R. P. C. 67..... 486
Ricci's Patent (1906), 23 R. P. C. 269..... ii. 231
Richardson *v.* Castry (1887), 4 R. P. C. 265 ..... 339, 388
Richmond & Co., Ld. *v.* Wrightson (1904), 22 R. P. C. 25 22
Rickerby *v.* Duncan (1908), 25 R. P. C. 248 280
Rickman *v.* Thierry (1896), 14 R. P. C. 105. *See* Thierry *v.* Rickman 37, 41, 42, 70, 94, 105, 159, 309, 497
Riding *v.* Smith (1877), L. R. 1 Ex. D. 91 309
Robb *v.* Green, [1895] 2 Q. B. 315 22
Roberts *v.* Graydon (1903), 20 R. P. C. 578; 21 R. P. C. 194 436
Roberts *v.* Heywood (1879), 27 W. R. 454..... 110
Robertson *v.* French (1803), 4 East, 135..... 264
Robertson *v.* Purdy (1906), 23 R. P. C. 779; 24 R. P. C. 273 ..... 130, 530

PAGE

Robertson *v.* Standard Piston Ring and Engineering Co., Ld. (1910), 27 R. P. C. 267 547
Robinson's Patent, Griff. 267 ..... ii. 10
Rockliffe *v.* Priestman (1898), 15 R. P. C. 155 ..... 74, 105
Rogers *v.* Cochrane (J. P.) & Co., [1909] A. C. 284; 25 R. P. C. 757; 26 R. P. C. 591 262
Rollins *v.* Hinks (1872), L. R. 13 Eq. 355; 41 L. J. Ch. 358 308
Rolls *v.* Isaacs (1878), L. R. 19 Ch. D. 268; 51 L. J. Ch. 170; W. N. (1878) 37 ..... 128, 452, 453, 507
Roper's Patent (1887), 4 R. P. C. 201 ..... ii. 232, 234
Ross's Patent (1891), 8 R. P. C. 477 ..... ii. 51
Rothwell *v.* King (1886-87), 3 R. P. C. 379; 4 R. P. C. 76, 397 ..... 443, 447
Rothwell *v.* Mackintosh (1894), 11 R. P. C. 274 428
Rothwell's Patent, Griff. P. C. 320 294
Rowcliffe *v.* Longford Wire, Iron and Steel Co. (1887), 4 R. P. C. 281 . 541
Rowcliffe *v.* Morris (1886), 3 R. P. C. 17, 145 ..... 223, 243, 537, 545
Rubery's Patent (1837), 1 W. P. C. 649, n. ..... ii. 119
Rushton *v.* Crawley (1870), L. R. 10 Eq. 522 ..... 60, 81
Russel *v.* Crichton (1837), 15 Decisions of Ct. of Sess. 1st series, 1270.. 460, 463, 464
Russell *v.* Barnsley (1834), 1 W. P. C. 472; 2 Coop. Ch. Cas. 58 445
Russell *v.* Cowley (1832-35), 1 W. P. C. 457; 1 C. P. C. 532; 2 Coop. Ch. Cas. 59, n.; 1 C. M. & R. 864 ....79, 82, 156, 224, 245, 266, 269, 449, 460, 463, 464
Russell *v.* Hatfield (1885), 2 R. P. C. 144 402
Russell *v.* Ledsam (1843-47), 11 M. & W. 647; 14 M. & W. 574; 16 M. & W. 633; 7 Jur. 585; 9 Jur. 557; 12 L. J. Ex. 439; 14 L. J. Ex. 353; 16 L. J. Ex. 145; 1 H. L. C. 687 .....428: ii. 14, 170, 171, 244
Russell's Patent (1857), 2 De G. & J. 130; 30 L. T. 178; 6 W. R. 95; 2 Moo. P. C. 496 .....ii. 46, 244
Ruston *v.* Tobin (1878), 49 L. J. Ch. 262; L. R. 10 Ch. D. 558 ..... 395, 488
Rylands *v.* Ashley's Patent (Machine made) Bottle Co. (1890), 7 R. P. C. 175 ..... 463, 464
Ryland's Patent (1888), 5 R. P. C. 665 .....ii. 113, 114, 116, 134

Saccharin Corporation, Ld. *v.* Alliance Chemical Co., Ld. (1905), 22 R. P. C. 175 400
Saccharin Corporation, Ld. *v.* Anglo-Continental Chemical Works, Ld., [1901] 1 Ch. 414; 17 R. P. C. 307 ..... 379, 548
Saccharin Corporation, Ld. *v.* Chemical and Drugs Co., Ld. (1899), 17 R. P. C. 28, 612, 743; [1900] 2 Ch. 556.....63, 162, 196, 446, 512
Saccharin Corporation, Ld. *v.* Dawson (1902), 19 R. P. C. 169 ..... 500, 550
Saccharin Corporation, Ld. *v.* Hay (1905), 22 R. P. C. 212 542
Saccharin Corporation, Ld. *v.* Hopkinson (1904), 21 R. P. C. 272 401
Saccharin Corporation, Ld. *v.* Jackson (1903), 20 R. P. C. 611..... 401
Saccharin Corporation, Ld. *v.* Jones (1906), 23 R. P. C. 275..... 500
Saccharin Corporation, Ld. *v.* Lockwood (1906), 23 R. P. C. 271..... 500
Saccharin Corporation, Ld. *v.* Lyle (D. T. J.) & Son, Ld. (1904), 21 R. C. P. 604..... 335

PAGE

Saccharin Corporation, Ld. *v.* Mack (1905), 23 R. P. C. 25 500

Saccharin Corporation, Ld. *v.* National Saccharin Co., Ld. (1909), 26 R. P. C. 654, 737; 27 R. P. C. 354; 28 R. P. C. 287....414, 435, 436, 479

Saccharin Corporation, Ld. *v.* Quincey, [1900] 2 Ch. 246; 17 R. P. C. 337 .....481, 500, 510

Saccharin Corporation, Ld. *v.* Reitmeyer, [1900] 2 Ch. 659; 17 R. P. C. 606.....338, 379, 380

Saccharin Corporation, Ld. *v.* Ross (1905), 22 R. P. C. 246 500

Saccharin Corporation, Ld. *v.* Scott (1906), 23 R. P. C. 276..... 500

Saccharin Corporation, Ld. *v.* Skidmore (1903), 21 R. P. C. 31 542

Saccharin Corporation, Ld. *v.* White (R.) & Sons, Ld. (1903), 20 R. P. C. 454; (1903) W. N. 120 400

Saccharin Corporation, Ld. *v.* Wild (1902), 20 R. P. C. 243; (1903) 1 Ch. 410 400

Sachse's Patent (1900), 18 R. P. C. 221 ..... ii. 62

Sandow *v.* Szalay (1903), 21 R. P. C. 33, 333; 23 R. P. C. 6..55, 57, 179, 340

Sanitas Co. *v.* Condy (1887), 4 R. P. C. 530..... 514, 518

Saull *v.* Browne (1874), L. R. 9 Ch. App. 364 453

Saunders *v.* Aston (1832), 3 B. & Ald. 881; 1 L. J. K. B. 265; 1 Carp. P. C. 510; 1 W. P. C. 75, n.....73, 202, 239, 247

Saunders *v.* Jones (1877), L. R. 7 Ch. D. 449 450

Savage & Co., Ld. *v.* Brindle (1896), 13 R. P. C. 267..... 375

Savage Bros., Ld. *v.* Brindle (1900), 17 R. P. C. 228 189

Savage *v.* Harris (1896), 13 R. P. C. 90, 364 .....46, 80, 145, 393

Savory *v.* Price (1823), 1 W. P. C. 83; 1 Ry. & M. 1 .....197, 227, 228, 230

Saxby *v.* Clums (1877), 43 L. J. Ex. 228 57

Saxby *v.* Easterbrook (1872), L. R. 7 Ex. 207; L. R. 3 C. P. D. 339; 41 L. T. Ex. 113 ..... 309, 514

Saxby *v.* Gloucester Waggon Co. (1880-83), L. R. 7 Q. B. D. 305; 50 L. J. Q. B. 577; Griff. L. O. C. 54; W. N. (1880) 28; W. N. (1882) 102; G. P. C. 417 .....20, 21, 22, 23, 42, 79, 488: ii. 45

Saxby *v.* Hennett (1873), L. R. 8 Ex. 210 .....338: ii. 73

Saxby's Patent (1870), L. R. 3 P. C. 292; 7 Moo. P. C. N. S. 82; 19 W. R. 513 .....ii. 230, 236, 239, 242

Saxby's Patent (1886), 3 R. P. C. 294..... ii. 231

Sayers *v.* Collyer (1885), L. R. 28 Ch. D. 103 .....437, 500, 509, 510

Schelfer *v.* City of London Electric Lighting Co., Ld., [1895] 1 Ch. 287 499

Schermuly *v.* Pain (1901), 18 R. P. C. 529 506

Schlumberger's Patent (1853), 9 Moo. P. C. 1 ..... ii. 245

Scott *v.* Hamling (1897), 14 R. P. C. 123 .....161, 340, 358

Scott *v.* Hull Steam Fishing and Ice Co. (1896-97), 13 R. P. C. 286; 14 R. P. C. 143 .....340, 358, 499, 501

Scott *v.* Young (1871), L. R. 6 Ch. 274 ..... ii. 73

Scott's Application (1910), 27 R. P. C. 298 ..... ii. 29

Scott's Patent (1902), 19 R. P. C. 273; 20 R. P. C. 257.....215, 303, 306

Scott's Patent (1906), 23 R. P. C. 478 ..... ii. 232

Seed *v.* Higgins (1858-62), 8 E. & B. 755, 771; 8 H. L. C. 550; 27 L. J. Q. B. 148, 411; 30 L. J. Q. B. 314; 3 L. T. N. S. 101; 4 Jur. N. S. 258; 5 Jur. N. S. 540; 6 Jur. N. S. 1264 .....238, 261, 337, 340, 357, 358, 476, 480: ii. 116

Seixo *v.* Provezende (1865), L. R. 1 Ch. 192..... 334

PAGE
Sellers *v.* Dickinson (1850), 5 Exch. 312; 20 L. J. N. S. Ex. 417 .... 342, 353, 354
Semet and Solway's Patent (1894), 12 R. P. C. 10; [1894] A. C. 78; 64 L. J. Ch. 41; 71 L. T. N. S. 674; 11 R. 362 .....ii. 232, 233, 240
Serrell's Patent (1889), 6 R. P. C. 101 ..... ii. 110
Shallenberger's Application (1889), 6 R. P. C. 550 ..... ii. 30
Sharp *v.* Bauer (1886), 3 R. P. C. 193 309
Sharp's Patent (1840), 1 W. P. C. 641; 10 L. J. Ch. 86; 3 Beav. 245 .....ii. 119, 120
Sharrod *v.* London and North-Western Ry. Co. (1849), 4 Exch. 580 .. 395
Shaw *v.* Bank of England (1852), 22 L. J. N. S. Ex. 26 ..... 460, 461
Shaw *v.* Barton (1895), 12 R. P. C. 282 81
Shaw *v.* Day (1894), 11 R. P. C. 185 415
Shaw *v.* Jones (1889), 6 R. P. C. 328.....117, 143, 169, 339, 479
Shedden *v.* A.-G. (1860), 30 L. J. N. S. Pr. & Mat. 217 415
Sheehan *v.* Great Eastern Ry. Co. (1880), L. R. 16 Ch. D. 59; 50 L. J. Ch. 68 .....393: ii. 158, 159
Shillito *v.* Larmuth (1884), 2 R. P. C. 1.....436, 442, 443, 446
Shoe-Machinery Co. *v.* Cutlan (1895-96), 12 R. P. C. 342, 530; 13 R. P. C. 141, 395; [1896] 1 Ch. 108, 667; 65 L. J. Ch. 44, 314; 73 L. T. N. S. 419; 74 L. T. N. S. 166; 44 W. R. 92 ..... 294, 305, 358, 390, 402, 406, 415, 416, 423, 426, 493, 499, 503
Shone's Patent (1892), 9 R. P. C. 438.....ii. 217, 228
Shrewsbury and Talbot Cab Co. *v.* Morgan (1896), 13 R. P. C. 75 415
Shrewsbury and Talbot Cab Co. *v.* Sterckx (1895-96), 12 R. P. C. 336; 13 R. P. C. 44 ..... 147, 149
Siddell and Hilton, Ld. *v.* Wood (1904), 21 R. P. C. 230 540
Siddell *v.* Vickers (1887-89), 5 R. P. C. 81, 416; 6 R. P. C. 464; 7 R. P. C. 292; 9 R. P. C. 152; L. R. 36 Ch. D. 92; 61 L. T. N. S. 233. *See* Vickers *v.* Siddell.....21, 57, 177, 182, 183, 234, 244, 507, 508, 513, 515: ii. 77
Siddell's Patent, Griff. P. C. 320..... 294
Sidebottom *v.* Fielden (1891), 8 R. P. C. 266 .....430, 460, 462
Siegert *v.* Findlater (1878), L. R. 7 Ch. D. 801 334
Sielaff's Application (1888), 5 R. P. C. 484.....ii. 51, 57, 62
Siemens *v.* Karo (1891), 8 R. P. C. 376 430
Siemens *v.* Taylor (1892), 9 R. P. C. 393 .....ii. 203, 207
Sillar's Patent (1882), G. P. C. 581.....ii. 216, 228, 231
Simister's Patent (1842), 1 W. P. C. 721; 7 Jur. 451; 4 Moo. P. C. 161; 21 Newton, Lond. Jour. 465 .....477: ii. 230, 232, 233, 235
Simon, *Ex parte*, 4 Times Reports, 54 ..... ii. 105
Simmond's Patent (1895), 12 R. P. C. 446..... 305
Simmonds *v.* Hitchman (1885), L. R. 29 Ch. D. 417 532
Simpson *v.* Charlesworth (1886), W. N. (1886) 255 452
Simpson *v.* Holliday (1864-66), 20 Newton, Lond. Journ. N. S. 105; 13 W. R. 577; 12 L. T. N. S. 99; 5 N. R. 340; L. R. 1 H. L. 315; 35 L. J. Ch. 811 .....164, 205, 217, 219, 263, 270, 280, 287, 474
Simpson and Isaac's Patent, 21 L. T. N. S. 81 ..... ii. 47
Singer *v.* Rudge Cycle Co. (1894), 11 R. P. C. 463, 585 ..... 433, 541
Singer *v.* Stassen (1884), 1 R. P. C. 121; 50 L. T. N. S. 326; W. N. (1884) 83 ..... ii. 124

PAGE
Singer Manufacturing Co. *v.* Loog (1886), L. R. 18 Ch. D. 395 334
Singer Manufacturing Co. *v.* Wilson (1865), 13 W. R. 560; 5 N. R. 505; 12 L. T. N. S. 140 ..... 460, 461
Sinnett's Patent (1898), 15 R. P. C. 761..... 123
Sirdar Rubber Co., Ld. *v.* Wallington, Weston & Co., [1905] 1 Ch. 451; [1906] 1 Ch. 252; 22 R. P. C. 257; 23 R. P. C. 132; 24 R. P. C. 539 222
Skinner *v.* Perry (Shew) (1892-94), 10 R. P. C. 1; 11 R. P. C. 406; [1893] 1 Ch. 413; [1894] 2 Ch. 581; 62 L. J. Ch. 196; 64 L. J. Ch. 826; 67 L. T. N. S. 696 .....309, 310, 311, 313, 314, 315, 320, 328
Slazenger *v.* Feltham (1889), 6 R. P. C. 130.....415, 445, 472, 540
Sleight's Patent (1893), 10 R. P. C. 447 304
Small Patents (1606), 1 W. P. C. 9..... 131
Smelting Company of Australia, Ld. *v.* Commissioners of Inland Revenue, [1896] 2 Q. B. 179; [1897] 1 Q. B. 175 .....ii. 149, 181
Smith *v.* Buchanan (1822), 26 S. J. 347 ..... 379, 381
Smith *v.* Buckingham (1870), 21 L. T. N. S. 819..... ii. 166
Smith *v.* Buller (1874), L. R. 19 Eq. 473 551
Smith *v.* Davidson (1857), 19 Ct. of Sess. 2nd series, 696 123
Smith *v.* Dickinson (1804), 3 Bos. & Pul. 630 ..... ii. 147
Smith *v.* Great Western Ry. Co. (1854), 3 W. R. 69; Macr. P. C. 221; 6 E. & B. 405 .....456, 465, 570
Smith *v.* Laing (1890), 7 R. P. C. 148 325
Smith *v.* London and North Western Ry. Co. (1853), 2 E. & B. 69; Macr. P. C. 188 .....353: ii. 157, 158
Smith *v.* London and South Western Ry. Co. (1854), Macr. P. C. 209; 23 L. J. Ch. 562; Kay, 408 501
Smith *v.* Neal (1857), 2 C. B. N. S. 67 ..... ii. 166
Smith *v.* Roberts (1888), 5 R. P. C. 61 392
Smith *v.* Scott (1859), 28 L. J. C. P. 325; 6 C. B. N. S. 771; 5 Jur. N. S. 1358 .....417: ii. 201, 207
Smith and Robertson's Patent (1847), 30 Newton, Lond. Jour. O. S. 451 ..... ii. 227
Smith's Patent (1855), Macr. P. C. 232 .....ii. 122, 123
Smith's Patent (1884), Griff. P. C. 268 ..... ii. 66
Smith's Patent (1885), 2 R. P. C. 14 ..... ii. 244
Smith's Patent (1896), 13 R. P. C. 200 .....ii. 51, 54
Smith's Patent (1904), 22 R. P. C. 57..... 20, 21
Soame's Patent (1843), 1 W. P. C. 729; 23 Newton, Lond. Jour. O. S. 462 .....ii. 217, 227, 228, 229, 230
Société Anonyme du Générateur du Temple's Patent (1896), 13 R. P. C. 54 .....23, 26: ii. 5, 28
Société Anonyme pour le Fabrication d'Appareils d'Eclairage *v.* Midland Lighting Co. (1897), 14 R. P. C. 419. ..... ii. 190
Société Anonyme de Manufactures de Glaces *v.* Tilghman's Patent Sand Blast Co. (1883), L. R. 25 Ch. D. 1; 53 L. J. Ch. 1 ..326, 379, 381, 484: ii. 181, 190, 196
Solvo Laundry Supply Co. *v.* Mackie (1893), 10 R. P. C. 68 .....425, 431, 466
Somerset and Walker's Patent (1879), L. R. 13 Ch. D. 397 ..... ii. 72
Southby's Patent (1891), 8 R. P. C. 433; [1891] A. C. 432 ..... ii. 232

PAGE

Southwark and Vauxhall Water Co. v. Quick (1878), L. R. 3 Q. B. D. 315 458
Southwell's Patent (1899), 16 R. P. C. 361 .....ii. 51, 61, 62
Southworth's Patent (1837), 1 W. P. C. 486 .....ii. 214, 232, 233, 234, 244
Spaul v. Monopole Cycle and Carriage Co., Ld. (1906), 23 R. P. C. 647 ..... 392, 499
Speckhart v. Campbell (1884), Times, Mar. 13, 1884; W. N. (1884) 24 ..... ii. 160
Spencer v. Holt (1902), 20 R. P. C. 142 441
Spencer v. Ancoats Vale Rubber Co. (1889), 6 R. P. C. 46 ..396, 505, 507, 548
Spencer v. Jack (1862-64), 3 De G. J. & S. 346; 11 L. T. N. S. 242 .. 73, ii. 411, 412
Spennymoor Foundry, Ld. v. Catherall and Gildard (1909), 26 R. P. C. 822.....394: ii. 169
Spottigue's Trusts (1884), 32 W. R. 385 554
Spiel's Patent (1887), 5 R. P. C. 281 .....ii. 43, 46
Spilsbury v. Clough (1842), 1 W. P. C. 255; 2 G. & D. 17; 11 L. J. Q. B. 109; L. R. 2 Q. B. 466.....412: ii. 131
Standfield's Patent (1897), 15 R. P. C. 17 ..... ii. 218
Stark v. Midland Ry. Co. (1881), L. R. 16 Ch. D. 81 553
Stavert v. Passberg Grain Syndicate (1891), 8 R. P. C. 400 ..... ii. 168
Stead v. Anderson (1846), 2 W. P. C. 147, 151; 16 L. J. C. P. 250; 4 C. B. 834 .....124, 138, 337, 338
Stead v. Williams (1843-44), 2 W. P. C. 126, 137; 7 M. & G. 818; 8 Scott, N. R. 449; 13 L. J. C. P. 218; 8 Jur. 930 ..117, 118, 120, 122, 123, 124, 125, 138, 143
Steadman v. Marsh (1856), 2 Jur. N. S. 391..... 24
Stearn's Patent (1911), 28 R. P. C. 663 ..... ii. 225
Steel Railway Journal Box Co., Ld. v. Hurst, Nelson & Co., Ld. (1909), 26 R. P. C. 493 75
Steers v. Rogers (1892), 9 R. P. C. 77; 10 R. P. C. 245; [1893] A. C. 232; 62 L. J. Ch. 671; 63 L. T. N. S. 726.....ii. 157, 158, 175, 179
Steiner v. Heald (1851), 6 Exch. 607; 20 L. J. Ex. 410; 17 Jur. N. S. 875 .....61, 97, 264
Stell's Patent (1891), 8 R. P. C. 235 .....ii. 57, 58, 61, 63
Stepney Spare Motor Wheel Co., Ld. v. Hall, [1911] 1 Ch. 514; 28 R. P. C. 381 ..... ii. 130
Stevens v. Keating (1847), 2 W. P. C. 175; 2 Exch. 772; 19 L. J. Ex. 57; 1 M. & G. 659 ....29, 65, 202, 205, 265, 373, 374, 440, 441, 443, 445, 446, 449
Stewart v. Casey (1892), 9 R. P. C. 9; [1892] 1 Ch. 104; 61 L. J. Ch. 61 .....393: ii. 80, 149, 150, 175
Stewart's Patent (1886), 3 R. P. C. 7.....ii. 230, 231, 234
Stewart's Patent (1892), 9 R. P. C. 452 ..... ii. 29
Stewart's Patent (1896), 13 R. P. C. 627.....ii. 48, 50, 51, 135
Stocker v. Rodgers (1843), 1 Car. & K. 99 ..... 545, 546
Stocker v. Warmer (1845), 1 C. B. 148; 9 Jur. 136 ..... ii. 106
Stone & Co., Ld. v. Broadfoot & Sons, Ld. (1907), 25 R. P. C. 313; 26 R. P. C. 361; 27 R. P. C. 701 ..... 160, 353
Stoner v. Todd (1876), L. R. 4 Ch. D. 58; 46 L. J. Ch. 32; 35 L. T. N. S. 661; 25 W. R. 38.....126, 143, 147, 177, 179

PAGE
Stoney's Patent (1888), 5 R. P. C. 513 ..... ii. 226, 231, 234
Storey *v.* Graham (1899), 16 R. P. C. 106 ..... ii. 2
Stroud *v.* Humber, Ld. (1907), 24 R. P. C. 141 428
Stuart's Patent (1892), 9 R. P. C. 452 ..... ii. 41, 42, 44
Stubb's Patent (1884), Griff. P. C. 298 ..... ii. 40, 51
Sturtz *v.* De la Rue (1828), 5 Russ. 322; 1 W. P. C. 83 ....175, 195, 205, 211, 228, 439
Sugg *v.* Bray (1884-85), 1 R. P. C. 45; 2 R. P. C. 223; 54 L. J. Ch. 132 310, 339, 360, 475
Sugg *v.* Silber (1874-77), L. R. 1 Q. B. D. 362; L. R. 2 Q. B. D. 493, 495; 45 L. J. Q. B. 460 ..... 423, 424, 467, 486
Sunlight Incandescent Gas Lamp Co. *v.* Incandescent Gas Light Co. (1897), 14 R. P. C. 757 ..... 133, 337, 517, 532, 534, 541, 543
Sutcliffe *v.* Abott (1902), 20 R. P. C. 50 432
Swabey *v.* Sutton (1863), 1 H. & N. 514 452
Swain *v.* Edlin-Sinclair Tyre Co. (1903), 20 R. P. C. 435 ..... 460, 464
Swinborne *v.* Nelson (1852-53), 16 Beav. 416; 22 L. J. Ch. 331 ..... 453, 457
Sykes *v.* Howarth (1879), L. R. 12 Ch. D. 826; 48 L. J. Ch. 769; 41 L. T. N. S. 79; 28 W. R. 215 ..... 87, 375, 395, 405, 467
Sykes *v.* Sykes (1824), 3 B. & C. 541 335

Taddy *v.* Sterious, [1904] 1 Ch. 358 383
Tadman *v.* Owens (1894), 11 R. P. C. 349 436
Talbot *v.* La Roche (1854), 15 C. B. 310 ..... 403, 404, 405
Tangye *v.* Stott (1865), 14 W. R. 128, 386; W. N. (1866) 68 ..... 117, 118, 486, 491, 525
Tatham *v.* Danin (1869), Griff. P. C. 213 91
Tattersall's Patent (1892), 9 R. P. C. 150 ..... ii. 64
Taylor *v.* Annand (1899), 16 R. P. C. 126; 18 R. P. C. 53 40
Taylor *v.* Haro (1805), 1 B. & P. N. R. 260; 1 W. P. C. 292 ..... ii. 207
Taylor *v.* Roe, 68 T. R. 213 503
Taylor's Agreement Trusts, *In re*, [1904] 2 Ch. 737; 21 R. P. C. 713.. ii. 174
Taylor's Patent (1896), 13 R. P. C. 482 ..... 119, 125
Taylor's Patent (1910), 26 R. P. C. 384 ..... ii. 100
Teague's Patent (1884), Griff. P. C. 298 ..... ii. 56, 58, 63
Temler *v.* Stevenson (1897), 15 R. P. C. 24 ..... 309, 313, 319, 322
Templeton *v.* Macfarlane (1848), 1 H. L. C. 595 164
Tennant's Case (1795), 1 W. P. C. 125, n. 15, 17, 114, 130
Tetley *v.* Easton (1852-57), Macr. P. C. 48, 82; 2 E. & B. 956; 18 C. B. 643; 2 C. B. N. S. 706; 23 L. J. Q. B. 77; 25 L. J. C. P. 293; 26 L. J. C. P. 269; 18 Jur. 350..161, 168, 204, 218, 227, 228, 238, 247, 250, 287, 457, 474; ii. 118
Thermit, Ld. *v.* Weldite, Ld. (1907), 24 R. P. C. 441 ..... 373, 390, 424
Thermit, Ld. *v.* British Caloris Co. (1909), 26 R. P. C. 827 414
Thermit, Ld. *v.* Isola, Ld. (1910), 27 R. P. C. 195, 388 ..... 94, 414
Thierry *v.* Rickman (1895), 12 R. P. C. 412, 543; 14 R. P. C. 105. *See* Rickman *v.* Thierry 71, 84
Thomas *v.* Foxwell (1858-59), 5 Jur. N. S. 37; 6 Jur. N. S. 271..247, 264, 270

PAGE
Thomas *v.* Hunt (1864), 17 C. B. N. S. 183 .....381; ii. 183
Thomas *v.* Welch (1866), L. R. 1 C. P. 192; 35 L. J. C. P. 200 ....179, 245: ii. 104
Thomas *v.* Williams (1880), L. R. 14 Ch. D. 864..... 309
Thomas *v.* Winter (1867), 17 L. T. N. S. 148 493
Thomas and Prevost's Patent (1898), 15 R. P. C. 257 ..... ii. 42
Thomas and Prevost's Patent (1898), 16 R. P. C. 69 ..... ii. 22
Thomas's Patent (1892), 9 R. P. C. 367.....ii. 226, 235, 239
Thompson's Patent (1902), 19 R. P. C. 565 .....ii. 228, 232
Thompson's Patent, [1909] 2 Ch. 447; 26 R. P. C. 673 ..... ii. 246
Thomson *v.* American Braided Wire Co. (1889), 6 R. P. C. 518. *See* American Braided Wire Co. *v.* Thomson 36, 143, 255, 532
Thomson *v.* Batty (1889), 6 R. P. C. 84 ..109, 148, 232, 235, 338,.427, 435, 477
Thomson *v.* Hughes (1889-90), 7 R. P. C. 71, 187 ..... 446, 459
Thomson *v.* Janies (1863), 32 Beav. 570 81
Thomson *v.* Macdonald & Co. (1890), 8 R. P. C. 1 428
Thomson *v.* Moore (1889-90), 6 R. P. C. 426; 7 R. P. C. 325. *See* Moore *v.* Thomson 340, 341, 355, 360, 361, 370, 503
Thorley's Cattle Food Co. *v.* Massam (1877), L. R. 6 Ch. D. 582 309
Thorn *v.* Worthing Skating Rink Co. (1876), L. R. 6 Ch. D. 415, n. ..354, 444, 445, 469
Thornborough and Wilk's Patent (1896), 13 R. P. C. 115..... ii. 53, 65
Thornton *v.* Baker (1886), 3 Times R. 715 392
Thornycroft's Patent, [1899] A. C. 415; 16 R. P. C. 202 .....ii. 231, 234, 239
Three Towns Banking Co. *v.* Maddever (1884), L. R. 27 Ch. D. 523 .. 500
Thwaite's Patent (1892), 9 R. P. C. 515 .....ii. 40, 44, 53
Tickelpenny *v.* Army and Navy Co-operative Society (1888), 5 R. P. C. 405 .....82, 106, 143
Ticket Punch Register *v.* Colley's Patents (1894), 12 R. P. C. 1, 171 .. 336, 337, 338, 358, 470, 555
Tilghman's Patent Sand Blast Co. *v.* Wright and Butler, Ld. (1884), 1 R. P. C. 103 405
Todd's Patent, 9 R. P. C. 487 .....ii. 51, 53, 57
Tolson *v.* Speight (1896), 13 R. P. C. 718 ....162, 247
Tomlinson, *Ex parte* (1899), 16 R. P. C. 233 ..... ii. 48
Toni Tyres, Ld. *v.* Palmer Tyre, Ld. (1904), 22 R. P. C. 81, 369 ..... 396, 399
Tottrank's Patent (1909), 26 R. P. C. 850 ..... ii. 97
Townsend *v.* Haworth (1875), L. R. 12 Ch. D. 831, n.; 48 L. J. N. S. 770; Higgins's Digest, 168 .....375, 379, 397
Toy's Patent (1893), 10 R. P. C. 89 .....ii. 225, 243, 246
Traction Corporation, Ld. *v.* Bennett (1908), 25 R. P. C. 819 269
Travell *v.* Carteret, 3 Lev. 135 198
Trotman *v.* Wood (1864), 16 C. B. N. S. 479 .....339: ii. 201
Trotman's Patent (1866), L. R. 1 P. C. 118; 3 Moo. P. C. N. S. 488.. ii. 226, 239, 242
True and Variable Electric Lamp Syndicate *v.* Bryant Trading Syndicate (1908), 25 R. P. C. 461 ..... 254, 287
Tubeless Pneumatic Tyre and Capon Heaton, Ld. *v.* Trench Tubeless Tyre Co. (1899), 16 R. P. C. 291 .....151, 162, 189
Tubes, Ld. *v.* Perfecta Seamless Steel Tube Co., Ld. (1900), 17 R. P. C. 569; 18 R. P. C. 339; 20 R. P. C. 77.....103, 200, 201, 225, 243, 244, 261, 274, 332

PAGE
Tuck *v.* Silver, John. 218 447
Turner *v.* Winter (1787), Dav. P. C. 145; 1 W. P. C. 77; 1 T. R. 602.. 110, 156, 165, 196, 200, 216, 220, 227, 228, 472, 478
Turton *v.* Turton (1889), L. R. 42 Ch. D. 128; 58 L. J. Ch. 677; 61 L. T. N. S. 571, 575; 38 W. R. 22..... 335
Tweedale *v.* Ashworth (1890), 7 R. P. C. 426; 8 R. P. C. 49; 9 R. P. C. 121 .....278, 340, 342, 357, 363, 364, 365, 482, 547, 554
Tweedale *v.* Ashworth (1899), 16 R. P. C. 142, 520; 17 R. P. C. 620.. 365
Tweedale *v.* Howard and Bullough (1896), 13 R. P. C. 522.....340, 366, 384: ii. 180

Ungar *v.* Sugg (1889-94), 6 R. P. C. 337; 8 R. P. C. 385; 9 R. P. C. 113.....324, 328, 329, 518, 553
Union Electrical Power and Light Co. *v.* Electrical Power Storage Co. (1888), 5 R. P. C. 329..... 324, 325
United Horseshoe and Nail Co. *v.* Stewart (1885-88), 2 R. P. C. 122; 3 R. P. C. 139; 4 R. P. C. 140; 5 R. P. C. 260; L. R. 13 App. Cas. 401.....136, 164, 167, 477, 511, 513, 514, 519, 520, 522, 524
United Horseshoe and Nail Co. *v.* Swedish Horse Nail Co. (1888), 6 R. P. C. 1.....80, 82, 164, 167
United Telephone Co. *v.* Bassano (1885-86), 2 R. P. C. 70; 3 R. P. C. 295; L. R. 31 Ch. D. 630 .....159, 160, 280, 354, 478, 495
United Telephone Co. *v.* Dale (1883), L. R. 25 Ch. D. 778; 53 L. J. Ch. 295 377
United Telephone Co. *v.* Donohoe (1886), L. R. 31 Ch. D. 399; 55 L. J. Ch. 480; 3 R. P. C. 45 491
United Telephone Co. *v.* Equitable Telephone Co. (1888), 5 R. P. C. 233 .....436, 437, 439
United Telephone Co. *v.* Faulkner (1886), 3 R. P. C. 282, n..... 553
United Telephone Co. *v.* Fleming (1886), 3 R. P. C. 268, 282 ..... 512, 553
United Telephone Co. *v.* Harrison (1882-83), L. R. 21 Ch. D. 720; 51 L. J. Ch. 705; 46 L. T. N. S. 620 ..137, 138, 139, 151, 176, 177, 188, 217, 245, 251, 254, 259, 287, 336, 354, 536
United Telephone Co. *v.* Henry (1884), 2 R. P. C. 11..... 381
United Telephone Co. *v.* London and Globe Telephone and Maintenance Co. (1884), 1 R. P. C. 117; L. R. 26 Ch. D. 766; 32 W. R. 870 .....338, 385, 386, 527, 529: ii. 123
United Telephone Co. *v.* Mottershead (1886), 3 R. P. C. 213..... 488
United Telephone Co. *v.* Neilson (1887), W. N. (1887) 193 .....377: ii. 182
United Telephone Co. *v.* Patterson (1889), 6 R. P. C. 140 .....512, 549, 550
United Telephone Co. *v.* Sharples (1885), 2 R. P. C. 28; L. R. 29 Ch. D. 164; 52 L. T. N. S. 384; 1 T. R. 259; 54 L. J. Ch. 633.. 377, 378, 379, 397, 446, 518
United Telephone Co. *v.* St. George (1886), 3 R. P. C. 33, 321 ....339, 354, 549
United Telephone Co. *v.* Tasker (1888-89), 5 R. P. C. 628; 6 R. P. C. 38; W. N. (1888) 22 .....386, 400, 408, 447, 525
United Telephone Co. *v.* Walker (1887), 4 R. P. C. 63; 5 R. P. C. 628; 56 L. T. N. S. 508 .....396, 507, 512, 514, 518, 523, 524, 528

PAGE

Universities of Oxford and Cambridge *v.* Richardson (1806), 6 Ves. 689 .....299, 440, 442
Unwin *v.* Heath (1855), H. L. C. 505. *See* Heath *v.* Unwin 81
Upman *v.* Elkan (1871), L. R. 12 Eq. 145; L. R. 7 Ch. 130; 41 L. J. Ch. 246 .....334, 391, 392
Upman *v.* Forrester (1883), L. R. 24 Ch. D. 231; 52 L. J. Ch. 946..338, 391, 392
Useful Patents Co. *v.* Rylands (1885), 2 R. P. C. 255 .....121: ii. 203

Vaisey's Patent (1894), 11 R. P. C. 593 ..... 32, 305
Valveless Gas Engine Syndicate, Ld. *v.* Day (1898), 15 R. P. C. 233; 16 R. P. C. 97 ..... ii. 161
Van Berkel *v.* Booth (1906), 23 R. P. C. 573 ..... 255, 369
Van Berkel *v.* Simpson (1906), 23 R. P. C. 237 ..... 255, 369
Van de Poele's Patent (1890), 7 R. P. C. 69 ..... ii. 30
Van Gelder Apsimon & Co. *v.* Sowerby Bridge Flour Society (1890), 7 R. P. C. 41, 208; L. R. 44 Ch. D. 374; 59 L. J. Ch. 583 ....394: ii. 132, 159, 170
Van Gelder's Patent (1888), 6 R. P. C. 22; 4 Times R. 754.....ii. 105, 108
Van Gelder's Patent (1892), 9 R. P. C. 325 ..... ii. 64, 65
Van Gelder's Patent, [1907] A. C. 174; 24 R. P. C. 169 .....ii. 216, 231
Van Wye's Application (1909), 26 R. P. C. 490 .....ii. 51, 54
Vasey (John), Ld. *v.* Walker, Mitchell & Co. (1899), 16 R. P. C. 596.. 490, 556
Vautin's Patent (1907), 25 R. P. C. 176..... 304
Vavasseur *v.* Krupp (1870), L. R. 9 Ch. D. 351..31, 388, 396, 397, 526: ii. 175
Vickers *v.* Siddell (1890), L. R. 15 App. Cas. 496; 7 R. P. C. 292; 60 L. J. Ch. 105; 63 L. T. N. S. 590; 39 W. R. 385. *See* Siddell *v.* Vickers.....37, 39, 79, 186
Vickers, Sons and Maxim, Ld. *v.* Coventry Ordnance Works, Ld. (1907), 25 R. P. C. 207 531
Vidal Dyes Syndicate, Ld. *v.* Levinstein, Ld. (1911), 28 R. P. C. 559.. 215, 280
Vidal Dyes Syndicate, Ld. *v.* Read, Holliday & Sons, Ld. (1911), 28 R. P. C. 323..... 414, 479
Vidal's Patent (1898), 15 R. P. C. 721.....66: ii. 109
Vidi *v.* Smith (1854), 23 L. J. Q. B. 342; 3 E. & B. 969 .....449, 465, 507
Vincent's Patent (1867), L. R. 2 Ch. D. 341..... ii. 73
Viola *v.* Sharpe (1904), 22 R. P. C. 23 ..... ii. 79
Voelker Incandescent Mantle, Ld. *v.* Welsbach Incandescent Gas Light Co., Ld. (1901), 18 R. P. C. 494 323
Von Buch, *Re* (1887), Griff. L. O. C. 40.....ii. 51, 52
Von der Linde *v.* Brummerstaedt & Co. (1909), 26 R. P. C. 289 162
Von Heyden and Neustadt (1880), L. R. 14 Ch. D. 230; 50 L. J. Ch. 126 .....96, 134, 138, 143, 152, 379
Vorwerk *v.* Evans (1890), 7 R. P. C. 167, 265.....70, 150, 269

Wadham's Application (1910), 27 R. P. C. 172 .....40: ii. 52, 56, 58, 69
Waite and Saville, Ld. *v.* Johnson Die Press Co. (1900), 18 R. P. C. 1.. 319
Wakefield *v.* Duke of Buccleugh (1865), 11 Jur. N. S. 523 447

PAGE
Walcott *v.* Lyons (1884), L. R. 29 Ch. D. 584 394
Walker *v.* Clarke (1887), 4 R. P. C. 111; 56 L. J. Ch. 239 ..... 314, 326
Walker *v.* Hydrocarbon Syndicate (1884), 2 R. P. C. 3; 3 R. P. C. 253.....297, 339, 495, 496, 497
Walker's Application, Griff. L. O. C. 22 ..... ii. 109
Walker's Application (1888), 5 R. P. C. 345 .....ii. 51, 53, 54
Wallace *v.* Jack (Alexander) & Sons, Ld. (1904), 22 R. P. C. 581..... 369
Wallace's Patent (1889), 6 R. P. C. 134 .....ii. 57, 62, 64
Wallace's Patent (1895), 12 R. P. C. 444 305
Wallington *v.* Dale (1852), 7 Exch. 888; 23 L. J. Ex. 49..67, 74, 82, 205, 213, 261: ii. 131
Wallis and Ratcliff's Application (1888), 5 R. P. C. 347.....ii. 51, 53, 54
Waltham *v.* Austin, 80 Co. Rep. 125 a, 127 b; 2 Int. 47 526
Walton *v.* Bateman (1842), 1 W. P. C. 613 .....120, 227, 228, 261, 409, 411
Walton *v.* Lavater (1860), 8 C. B. N. S. 162; 29 L. J. C. P. 275; 3 L. T. N. S. 272; 6 Jur. N. S. 1251; 1 W. P. C. 48, n. ....338, 379, 380, 393, 418: ii. 154, 157, 162, 169, 179
Walton *v.* Potter (1841), 1 W. P. C. 585, 597; 11 L. J. C. P. 138 .... 262, 264, 339, 411, 483
Wapshare Tube Co., Ld. *v.* Hyde Imperial Rubber Co., Ld. (1901), 18 R. P. C. 374 441
Ward *v.* Livesey (1888), 5 R. P. C. 102 .....ii. 188, 189
Ward Bros. *v.* Hill (1901), 18 R. P. C. 481; 20 R. P. C. 189 .....161, 177, 184, 234, 471
Wardroper *v.* Gibbs (George), Ld. (1902), 19 R. P. C. 553; 20 R. P. C. 355 40
Warman, *Re*, Griff. L. O. C. 43 ..... ii. 40
Warner *v.* Murdock (1877), L. R. 4 Ch. D. 750 487
Washburn and Moen Manufacturing Co. *v.* Cunard Steamship Co. (1889), 6 R. P. C. 398 397
Washburn and Moen Manufacturing Co. *v.* Patterson (1884), L. R. 29 Ch. D. 48; 1 R. P. C. 157, 191; 2 R. P. C. 27 .....495, 525, 527
Wastney Smith's Patent (1885), 2 R. P. C. 14 ..... ii. 244
Waterhouse's Patent (1905), 23 R. P. C. 55, 470..... 44, 61
Watling *v.* Stevens (1886), 3 R. P. C. 37, 147 .....73, 182, 184, 190, 237, 242, 244, 554
Watling's Patent, Griff. P. C. 320 294
Watson *v.* Holliday (1882), 30 W. R. 747; 31 W. R. 536; 52 L. J. Ch. 543; L. R. 20 Ch. D. 780 ..... 507, 514
Watson, Laidlaw & Co., Ld. *v.* Pott, Cassels and Williamson (1908), 25 R. P. C. 337; 26 R. P. C. 349; 27 R. P. C. 541; 28 R. P. C. 565 ..... 218, 285
Watts *v.* Everitt Press Manufacturing Co. (1910), 27 R. P. C. 400, 718 202
Webb *v.* Fox (1797), 7 T. R. 391..... ii. 173
Webb *v.* Kynoch & Co. *See* Kynoch & Co. *v.* Webb.
Webb *v.* Levinstein (1898), 15 R. P. C. 78 313
Webb Lamp Co., Ld. *v.* Atkinson (1902), 19 R. P. C. 599 ..... 518, 546
Weber's Patent (1910), 27 R. P. C. 30 ..... ii. 99
Webster's Patent (1888), 6 R. P. C. 163 .....ii. 51, 53, 66
Wegman *v.* Corcoran (1878-79), L. R. 13 Ch. D. 65; 27 W. R. 357 .. 26, 203, 229, 237, 535

PAGE

Weir *v.* Denny (1894), 11 R. P. C. 657 246
Welch's Patent (1884), Griff. P. C. 300 ..... ii. 64
Welch's Patent (1891), 8 R. P. C. 442 ..... ii. 61
Wellman, Leaver and Head, Ld. *v.* Bustinghaus & Co., Ld. (1911), 28 R. P. C. 326 522
Welsbach Incandescent Gas Light Co., Ld. *v.* Daylight Incandescent Mantle Co., Ld. (1899), 16 R. P. C. 344; 17 R. P. C. 141....34, 205, 206, 336, 373, 396, 482, 550
Welsbach Incandescent Gas Light Co., Ld. *v.* Dowle (1899), 16 R. P. C. 391 ..... 406, 407
Welsbach Incandescent Gas Light Co., Ld. *v.* General Incandescent Co., Ld. (1901), 18 R. P. C. 533 438
Welsbach Incandescent Gas Light Co., Ld. *v.* Keegan (1899), 17 R. P. C. 44 503
Welsbach Incandescent Gas Light Co., Ld. *v.* Krumm (1901), 18 R. P. C. 211..... 546
Welsbach Incandescent Gas Light Co., Ld. *v.* McGrady (John) & Co. (1901), 18 R. P. C. 51 546
Welsbach Incandescent Gas Light Co., Ld. *v.* New Incandescent (Sunlight Patent) Gas Lighting Co., Ld., [1900] 1 Ch. 843; 17 R. P. C. 237 .....160, 281, 396
Welsbach Incandescent Gas Lighting Co., Ld. *v.* Vulcan Incandescent Light Syndicate, Ld. (1901), 18 R. P. C. 279 448
Wenham *v.* Carpenter (1887), 5 R. P. C. 68 ..... ii. 107
Wenham *v.* May (1887), 4 R. P. C. 303 ..... 339, 554
Wenham Gas Co. *v.* Champion Gas Lamp Co. (1890), 8 R. P. C. 22, 313; 9 R. P. C. 49.....278, 343, 403, 456, 511, 554
Werdermann *v.* Société Générale d'Electricité (1881), L. R. 19 Ch. D. 246 ..... ii. 168
West *v.* Keene's (James) & Sons, Ld. (1911), 28 R. P. C. 474 38
Westhead *v.* Keen (1838), 1 Beav. 287; 8 L. J. 89; 2 W. P. C. 36, n. .....393, 399: ii. 159
Westinghouse *v.* Lancashire and Yorkshire Railway Co. (1884), 1 R. P. C. 98, 229 .....79, 243, 273, 280, 283, 476, 480, 487, 512, 532, 554
Westinghouse *v.* Midland Ry. Co. (1883), 48 L. T. N. S. 98, 462 458
Westinghouse's Patent (1885), Griff. P. C. 315 .....ii. 123, 124
Westley *v.* Tolley (1894), 11 R. P. C. 602 .....114, 487, 490
Westley, Richards & Co. *v.* Perks (1893), 10 R. P. C. 181, 382....474, 497, 536
Westrupp and Gibbin's Patent (1836), 1 W. P. C. 554 ..... ii. 247
Wharton *v.* Boffin (1883), W. N. 96 488
Whateman *v.* Pearson (1868), L. R. 3 C. P. 422 395
Wheatstone *v.* Wild (1861), Griff. P. C. 247 443
White *v.* Bertrams (1897), 14 R. P. C. 501, 735 348
White *v.* Hartley (1902), 20 R. P. C. 265 534
White *v.* Toms (1867), 37 L. J. Ch. 204; 17 L. T. N. S. 348 84
Whitehouse's Patent (1838), 1 W. P. C. 473; Carp. P. C. 565; reported as Russell's Patent, 2 Moo. P. C. 496 .....ii. 171, 216, 228, 244, 246
Whittaker's Patent (1896), 13 R. P. C. 580.....ii. 51, 54, 66
Whitton *v.* Jennings (1860), 1 Dr. & Sm. 110 439
Wield's Patent (1871), L. R. 4 P. C. 89; 8 Moo. P. C. N. S. 300 ..ii. 226, 234, 236, 242, 247.

PAGE

Wilcox and Gibbs' Sewing Machine Co. *v.* James (1897), 14 R. P. C. 523; 66 L. J. Ch. 525; [1897] 2 Ch. 71; 45 W. R. 474 ..... 530, 539
Wilfley Ore Concentrator Syndicate, Ld. *v.* Guthridge (N.), Ld. (1906), 23 R. P. C. 535 145
Wilkinson's Patent (1894), 11 R. P. C. 298 304
Williams *v.* Govan (1895), 12 R. P. C. 387 119
Williams *v.* Guest (1875), L. R. 10 Ch. App. Cas. 467 488
Williams *v.* Nash (1859), 28 Beav. 93; 28 L. J. Ch. 886 ..... ii. 14
Williams *v.* Nye (1890), 7 R. P. C. 62 ..... 40, 42
Williams *v.* Williams, 3 Mer. 157 ..... ii. 147
Williams and Robinson's Patent (1896), 13 R. P. C. 550 ..... ii. 239
Willoughby *v.* Taylor (1894), 11 R. P. C. 45 ..... 312, 317, 324, 329
Wilson *v.* Barbour (1888), 5 R. P. C. 245, 675 ..... ii. 161
Wilson *v.* Gann (1875), W. N. 78 426
Wilson *v.* Tindal (1841), 1 W. P. C. 730, n. 441, 443, 447
Wilson *v.* Union Oil Mills (1892), 9 R. P. C. 57 ..... 160, 162, 333: ii. 181, 201, 208
Wilson *v.* Wilson & Co. (Barnsley), Ld. (1899), 16 R. P. C. 215 ..... 425, 465
Wilson & Co. *v.* Church (Walter E.) Engineering Co. (1885), 2 R. P. C. 175 326
Wilson Brothers Bobbin Co., Ld. *v.* Wilson & Co. (Barnsley), Ld. (1900), 17 R. P. C. 177; 18 R. P. C. 139; 20 R. P. C. 1 ..... 160, 162
Wilson, Laidlaw & Co., Ld. *v.* Cassels and Williamson (1909), 26 R. P. C. 360 467
Wilson's Patent (1892), 9 R. P. C. 512 ..... ii. 70
Winby *v.* Manchester Steam Tramways Co. (1889-90), 6 R. P. C. 359; 7 R. P. C. 30; 8 R. P. C. 61 ..... 82, 119, 125, 143, 339, 476
Winter *v.* Baybut (1884), 1 R. P. C. 76 ..... ii. 124, 141
Winter *v.* Turner (1787), 1 T. R. 602; 1 W. P. C. 77 209
Wirth's Patent (1879), L. R. 12 Ch. D. 303 25
Wittman *v.* Oppenheim (1884), L. R. 27 Ch. D. 260 ..... 338, 392
Wollaston and Knowles *v.* Chapman (1908), 25 R. P. C. 733 22
Wood *v.* Cockerill (1819), 2 Coop. Ch. Ca. 58 445
Wood *v.* Lambert (1886), 3 R. P. C. 84 500
Wood *v.* Leadbitter, 9 Jur. 187 ..... ii. 188
Wood *v.* Raphael (1896-97), 13 R. P. C. 730; 14 R. P. C. 496 ..... 77, 79
Wood *v.* Zimmer (1815), Holt, N. P. 58; 1 W. P. C. 44, 82, n.; 1 Carp. P. C. 290 ..... 128, 129, 193, 227, 228, 230
Woodcroft's Patent (1841), 1 W. P. C. 740; 2 W. P. C. 18; 10 Jur. 363; 28 Newton, L. J. C. S. 196; 3 Moo. P. C. 171 ..... 143, 148: ii. 216, 225, 226, 228, 229, 230, 233
Woodhead, *Re* (1886), Griff. L. C. C. 44 ..... ii. 42
Woodward *v.* Sansum (1886-87), 3 R. P. C. 357; 4 R. P. C. 166 ..... 177, 178, 183, 184, 234, 552, 555
Wool, Hide and Skin Syndicate *v.* Riches (1902), 19 R. P. C. 127 ..... ii. 12
Woolfe *v.* Automatic Picture Gallery, Ld. (1902), 19 R. P. C. 161; [1903] 1 Ch. 18 ..... 457: ii. 141
Woolley *v.* Broad (1892), 19 R. P. C. 429 ..... 425, 465
Worthington & Co.'s Trade Mark, *In re* (1897), L. R. 14 Ch. D. 8 334
Worthington Pumping Engine Co. *v.* Moore (1902), 20 R. P. C. 41 22
Wotherspoon *v.* Currie (1872), L. R. 5 H. L. 508 334

PAGE

Wren *v.* Weild (1869), L. R. 4 Q. B. 213, 730; 38 L. J. Q. B. 327 .. 309, 324, 405

Wright *v.* Hitchcock (1870), L. R. 5 Ex. 37; 39 L. J. Ex. 97 ....73, 184, 190, 338, 353, 379

Wright's Patent (1839), 1 W. P. C. 575.....ii. 232, 233

Wrightson *v.* Taylor, Maddox & Co. (1907), 24 R. P. C. 347 325

Wüterich's Patent, [1903] A. C. 206; 20 R. P. C. 285 .....ii. 236, 237

Wyeth *v.* Stone, 1 Story, 273 ..... 49, 249

Wylie and Morton's Patent (1897). 13 R. P. C. 97.....45, 150: ii. 51, 53

YATES and Kellett's Patent (1887), 4 R. P. C. 150; L. R. 12 App. Cas. 147.....ii. 219, 336, 237, 243

York *v.* Stowers (1883), W. N. (1883) 174..... 510

Youatt *v.* Winyard (1820), 1 J. & W. 394..... ii. 145

Young *v.* Fernie (1864), 1 De G. J. & S. 353; 4 Giff. 577; L. R. 1 H. L. 63; 33 L. J. Ch. 192; 35 L. J. Ch. 523; 9 L. T. N. S. 861; 14 L. T. N. S. 637; Griff. P. C. 577; Pemberton, 4th ed. 484; Seton, 4th ed. 355 .....109, 122, 470, 486, 488, 512

Young *v.* Hermand Oil Co. (1891), 8 R. P. C. 285; 9 R. P. C. 373.... ii. 203

Young *v.* Morris (1894), 11 R. P. C. 617; 12 R. P. C. 455 ..... 338, 502

Young *v.* Rosenthal (1883), 1 R. P. C. 29 .....105, 124, 159, 193, 280, 337, 338, 353

Young *v.* White (1853), 17 Beav. 582; 23 L. J. Ch. 190 ..... 451, 471

Young Manufacturing Co., *Re*, [1900] 2 Ch. 753..... 447

Young's Patent, P. M. J., 2nd series, vol. 7, p. 44..... 294

"Z" Electric Lamp Manufacturing Co., Ld. *v.* Marples, Leach & Co., Ld. (1909), 26 R. P. C. 677, 762; 27 R. P. C. 305, 737..... 214, 434

"Z" Electric Lamp Manufacturing Co., Ld. *v.* Osram Lamp Works, Ld. (1911), 28 R. P. C. 179 321

Z.'s Application (1910), 27 R. P. C. 285..... ii. 12

NOTES OF RULINGS

BY THE

COMPTROLLER-GENERAL.

	PAGE
1910 (A.), 27 R. P. C., App. i.	ii. 69
1910 (B.), 27 R. P. C., App. ii.	ii. 34, 49
1910 (C.), 27 R. P. C., App. iii.	ii. 37
1910 (D.), 27 R. P. C., App. iv.	ii. 55
1910 (E.), 27 R. P. C., App. v.	ii. 80
1910 (F.), 27 R. P. C., App. vii.	ii. 86
1910 (G.), 27 R. P. C., App. viii.	ii. 60
1910 (H.), 27 R. P. C., App. x.	ii. 37
1910 (I.), 27 R. P. C., App. xi.	75
1910 (J.), 27 R. P. C., App. xii.	ii. 24
1911 (A.), 28 R. P. C., App. i.	ii. 105, 122
1911 (B.), 28 R. P. C., App. iii.	ii. 49
1911 (C.), 28 R. P. C., App. viii.	ii. 62

LIST OF DEFENDANTS IN ACTIONS.

Abott, Sutcliffe *v.*
Action Gesellschaft für Motor, &c., Dunlop Pneumatic Tyre Co., Ld. *v.*
Adams, Hill *v.*
Adie, Clark *v.*
Adjustable Cover and Boiler Block Co., Poulton *v.*
Aerators, Ld., Crocker *v.*
Airey, Bailey *v.*
Albion Clay Co., Ld., Doulton & Co., Ld. *v.*
Albrecht, Marsden *v.*
Allcock & Co., Ld., Clay *v.*
Alliance Chemical Co., Ld., Saccharin Corporation, Ld. *v.*
Allin, Darcy *v.*
Allison, Collard *v.*
Amatt, Cartwright *v.*
American Braided Wire Co., Thomson *v.*
American Steel and Wire Co., Glover (W. T.) & Co., Ld. *v.*
Amos, Reynolds *v.*
Ancoats Vale Rubber Co., Spencer *v.*
Anderson, Maxim-Nordenfelt Guns and Ammunition Co. *v.*
Anderson, Nobel's Explosives Co. *v.*
Anderson, Stead *v.*
Anderston Foundry Co., Harrison *v.*
André's Patent, Curtis *v.*
Andrew, Read *v.*
Andrews & Co. (T. E. H.), Ld., British Motor Syndicate, Ld. *v.*
Anglo-American Brush Corporation, Crompton *v.*
Anglo-American Brush Corporation, King Brown *v.*
Anglo-American Telegraph Co., Piggott *v.*
Anglo-Continental Chemical Works, Ld., Saccharin Corporation, Ld. *v.*
Annand, Taylor *v.*
Arc Lamp Co., Jandus Arc Lamp and Electric Co., Ld. *v.*
Arden, Fletcher *v.*
Arkwright, R. *v.*
Armitage, Merchant Shipping Co. *v.*
Armstrong, Whitworth & Co., Ld., Corrigal *v.*
Army and Navy Co-operative Society, Ticklepenny *v.*
Ashburn, Calvert *v.*
Ashley's Patent (Machine-made) Bottle Co., Rylands *v.*
Ashworth, Law *v.*
Ashworth, Tweedale *v.*
Asplen, Morrison *v.*
Associated Newspapers, Ld., Holmes *v.*
Aston, Brook *v.*
Aston, Saunders *v.*
Astrachans, Ld., Fox *v.*
Attorney-General, Sheddan *v.*
Austin, Waltham *v.*
Auto-Machinery Co., Ld., Hoffmann Manufacturing Co. *v.*
Automatic Weighing Machine Co., Combined Weighing Machine Co. *v.*

Badische Anilin und Soda Fabrik, Chemische Fabrik vorm. Sandoz *v.*
Baedeker, Cooper & Co. (Birmingham), Ld. *v.*
Baker, Hardmuth *v.*

Baker, Lawrie *v.*
Baker, Thornton *v.*
Balmoral Cycle Co., Ld., Osmonds, Ld. *v.*
Banham, Reddaway *v.*
Bank of British Columbia, Anderson *v.*
Bank of England, Shaw *v.*
Barbour, Wilson *v.*
Barker, Miller *v.*
Barnett's Screw Stopper Bottling Co., Ld., Barnett *v.*
Barnsley, Russell *v.*
Baron Cigarette Machine Co., Ludington Cigarette Machine Co. *v.*
Barton, Shaw *v.*
Barwick, Cardiff Steamship Co. *v.*
Basle Chemical Works, Badische Anilin und Soda Fabrik *v.*
Bassano, United Telephone Co. *v.*
Batchelor, Kelly *v.*
Bateman, Walton *v.*
Battersby, Gammons *v.*
Batty, Batty *v.*
Bauer, Sharp *v.*
Bauwen's Patent Candle Co., Price's Patent Candle Co. *v.*
Baybut, Winter *v.*
Bayley, Procter *v.*
Baylis, Coles *v.*
Bayliss, Barlow *v.*
Beal, Innes *v.*
Bean, Loog *v.*
Bechmann, Kratz-Boussac *v.*
Beck, Monnet *v.*
Beddon, Beddon *v.*
Bell, Jahncke *v.*
Bell Bros., Ld., Carnegie Steel Co. *v.*
Benecke, Bridson *v.*
Bennett, Hudson *v.*
Bennett, Moore *v.*
Bennett, Traction Corporation, Ld. *v.*
Bennis, Procter *v.*
Bentall, Ransome *v.*
Benyon, Campion *v.*
Berend, Holophane, Ld. *v.*
Berger, Jones *v.*
Bernstein, Edison-Bell Phonograph Corporation *v.*
Berringer, Wallis & Manners, Ld., Hudson *v.*
Bertrams, White *v.*
Betts, De Vitre *v.*
Betts, Neilson *v.*
Betts, R. *v.*
Beverley, Crossley *v.*
Bewley, Hancock *v.*
Bibby, Penn *v.*
Billington, Dowling *v.*
Bird, Badham *v.*
Birmingham Stopper and Cycle Components Co., Griffiths *v.*
Birmingham Vinegar Brewery Co., Powell *v.*
Bishop, Gosnell *v.*
Black, Preston *v.*
Blake, Griffith *v.*
Blaud Light Syndicate, Ld., Cass *v.*
Bleaden, Galloway *v.*
Bloomer, Honiball *v.*
Booth, Van Berkel *v.*
Blore, Denley *v.*
Board, Osborne *v.*
Boffin, Wharton *v.*
Bolland, Hull *v.*
Bostock, Foxwell *v.*
Boulton, Hornblower *v.*
Boursier, Elmslie *v.*
Bower, Cutler *v.*
Bowker, Farbenfabriken vorm. F. Bayer *v.*
Bowman, Collinge *v.*
Boyle, Kane *v.*
Braby, Heathfield *v.*
Braby, Rose's Patents Co. *v.*
Bradbury, Arnold *v.*
Bradbury, Haydock *v.*
Bradley, Garnett *v.*
Bradley, Middleton *v.*
Braithwaite, Cochrane *v.*
Brand, Gibson *v.*
Branson, Morris *v.*
Bratby, Codd *v.*
Branlick, British Westinghouse Electric and Manufacturing Co., Ld. *v.*
Bray, Sugg *v.*
Brett, Electric Telegraph Co. *v.*
Bridges, Bidder *v.*
Brierly, Dutton *v.*
Brimmerstaedt & Co., Von der Linde *v.*
Brindle, Savage *v.*
Brindle, Savage Bros., Ld. *v.*

Bristol Electric Equipments Co., Ld., Cooper Patent Anchor Rail Co., Ld. *v.*
Bristol Tanning Co., Greer *v.*
British and Colonial Motor-Car Co., Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
British Caloris Co., Thermos, Ld. *v.*
British Cotton and Wool Dyers Association, Ld., Rhodes and Edmondson *v.*
British Leather Cloth Manufacturing Co., Ld., Pegamoid, Ld. *v.*
British Oxygen Co., Ld., British Liquid Air Co., Ld. *v.*
British Radio Telegraph and Telegram Co., Ld., Marconi *v.*
British Thomson-Houston Co., Ld., Ferranti *v.*
Britton, Atkinson *v.*
Broadbent, Gardner *v.*
Broadfoot & Sons, Ld., Stone & Co., Ld. *v.*
Brodie, Williams *v.*
Brodribb, Brodribb *v.*
Brogden, Incandescent Gas Light Co. *v.*
Brookes, Fellows *v.*
Brooks, Dicks *v.*
Brooks, Lycett Saddle and Motor Accessories Co., Ld. *v.*
Brooks, Norton *v.*
Brotherhood, Halsey *v.*
Brown, Amory *v.*
Brown, Hastings *v.*
Browne, Saull *v.*
Brunnerstaedt & Co., Von der Linde *v.*
Bryant and May, Fusee Vesta Co. *v.*
Bryant Trading Syndicate, True and Variable Electric Lamp Syndicate *v.*
Buccleugh (Duke), Wakefield *v.*
Buchanan, Smith *v.*
Buckingham and Adams Cycle and Motor Co., Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
Buckingham, Smith *v.*
Bull, Boulton *v.*
Bull, Ledgard *v.*
Bull, Petman *v.*
Buller, Elsey *v.*
Buller, Smith *v.*
Burns, Overton *v.*
Bury, Bradford Dyers Association *v.*
Bury (Lord), Bennett *v.*
Bustinghaus & Co., Ld., Wellman, Leaver and Head, Ld. *v.*
Butler, Butler *v.*
Byles, Kelly *v.*

Campbell, Graham *v.*
Came, Consolidated Car Heating *Co. v.*
Campbell, Speckhart *v.*
Cantelo, Incandescent Gas Light Co. *v.*
Capper, Hollins *v.*
Carpenter, Wenham *v.*
Carr & Co., Ld., Flour Oxidizing Co., Ld. *v.*
Carson, Mills *v.*
Carteret, Travell *v.*
Cash Cycle Co., Pneumatic Tyre Co. *v.*
Caspers, Fabriques de Produits Chimiques de Thann *v.*
Cassels and Williamson, Wilson, Laidlaw & Co. *v.*
Cassey, Stewart *v.*
Casswell, Pneumatic Tyre Co. *v.*
Castner-Kellner Alkali Co., Atkins and Applegarth *v.*
Castner-Kellner Alkali Co., Commercial Development Corporation *v.*
Castry, Richardson *v.*
Catherall and Gildard, Spennymoor Foundry, Ld. *v.*
Centaur Cycle Co., Bown *v.*
Ceralite Syndicate, National Opalite Glazed Brick and Tile Syndicate *v.*
Chadburn, Patent Marine Inventions Co. *v.*
Chadburn's (Ship) Telegraph Co., Robinson *v.*
Chadwick, Amos *v.*
Chamberlain, Heugh *v.*
Chambers, Hunt *v.*
Chambers, Lifeboat Co. *v.*

Chameleon Patents Manufacturing Co., Marshalls, Ld. *v.*
Champion Gas Lamp Co., Wenham Gas Co. *v.*
Chance, Rawes *v.*
Chapman, Wollerton and Knowles *v.*
Charlesworth, Simpson *v.*
Chemical and Drugs Co., Ld., Saccharin Corporation, Ld. *v.*
Chemische Fabrik von Heyden, Farbenfabriken vormals Friedrich Bayer & Co. *v.*
Chemische Fabrik vormals Sandoz in Basel, Badische Anilin und Soda Fabrik *v.*
Chisholm, Pneumatic Tyre Co. *v.*
Christy, Ellwood *v.*
Chubb, Kaye *v.*
Church (Walter E.) Engineering Co., Wilson & Co. *v.*
Churchill & Co., Consolidated Pneumatic Tool Co., Ld. *v.*
Churchwardens of All Saints, Wigan, R. *v.*
City of London Electric Lighting Co., Ld., Shelfer *v.*
City of London Real Property Co., Hunt *v.*
Clark, Consolidated Pneumatic Tool Co., Ld. *v.*
Clark, Ellington *v.*
Clarke, Adie *v.*
Clarke, Fennessey *v.*
Clarke, Ormson *v.*
Clarke, Walker *v.*
Claughton (Hugh), British United Shoe Machinery Co., Ld. *v.*
Clayton, Goucher *v.*
Clayton, Leeds Forge Co. *v.*
Clayton, Murray *v.*
Clifton Rubber Co., Ltd., Dunlop Pneumatic Tyre Co., Ld. *v.*
Clipper Pneumatic Tyre Co., Bagot Pneumatic Tyre Co. *v.*
Clough, Spilsbury *v.*
Clums, Saxby *v.*
Clyde Bridge Street Co., Miller *v.*
Cochran, Boxwell *v.*
Cockarine, Roger *v.*
Cockerill, Wood *v.*
Coignet, Mouchel *v.*
Colley's Patents, Ticket Punch Register *v.*
Collings, Cunningham *v.*
Collyer, Sayers *v.*
Columbia Co., Edison-Bell Consolidated Phonograph Co., Ld. *v.*
Combe, Baxter *v.*
Combined Weighing Machine Co., Automatic Weighing Machine Co. *v.*
Commercial Cable Co., Muirhead *v.*
Commercial Development Corporation, Castner-Kellner Alkali Co. *v.*
Commissioners of Inland Revenue, Smelting Company of Australia, Ld. *v.*
Comptroller-General of Patents, *Ex parte* Tomlinson, Queen *v.*
Conder, Hall *v.*
Condy, Sanitas Co. *v.*
Congreve, Walker *v.*
Conico Incandescent Light Co., Heine *v.*
Consett Iron Co., Ld., Martin *v.*
Consolidated Pneumatic Tool Co., Ld., Ingersoll Sergeant Drill Co. *v.*
Cooke, Alcock *v.*
Cooper, Cooper *v.*
Cooper, Palmer *v.*
Cope and Timmins, Ld., New Inverted Incandescent Gas Lamp Co., Ld. *v.*
Corcoran, Wegman *v.*
Corporation of Hanley, Piggott Co., Ld. *v.*
Corporation of Liverpool, Adamant Stone Paving Co. *v.*
Coulson, Newcomen *v.*
Coventry Machinists Co., Morris Wilson & Co. *v.*
Coventry Ordnance Works, Ld., Vickers, Sons and Maxim, Ld. *v.*
Cowan, Bovill *v.*
Cowley, Russell *v.*
Cowlin, Hennebique *v.*
Crabb, Blackwell *v.*
Crampton, R. *v.*
Crate, Bovill *v.*
Craven, Moore *v.*
Crawley, Rushton *v.*
Creasy, Elmer *v.*
Cressey, Case *v.*
Cresswell, Dunlop Pneumatic Tyre Co., Ld. *v.*

Crichley, Chambers *v.*
Crichton, Russell *v.*
Croll, Edge *v.*
Crompton, Anglo-American Brush Electric Light Corporation *v.*
Crompton and Horrocks, Kerr and Hoeggen *v.*
Crossley, Andrew *v.*
Crossley, Anti-Vibration Incandescent Lighting Co. *v.*
Crossley, Coates *v.*
Cruikshank, Alexander Turnbull & Co., Ld. *v.*
Cubitt & Co., Mouchel *v.*
Cunard Steamship Co., Washburn and Moen Manufacturing Co. *v.*
Currie, Wotherspoon *v.*
Curtis and Harvey, Ld., Davies *v.*
Cutlan, Shoe Machinery Co. *v.*
Cutler, R. *v.*
Cutts, Curtis *v.*
Cyanide Gold Recovery Syndicate, Cassel Gold Extracting Co. *v.*

Dairy Outfit Co., Aktiebolaget Separator *v.*
D'Albuquerque, Nunn *v.*
Dale, Punchard *v.*
Dale, United Telephone Co. *v.*
Dale, Wallington *v.*
Dania, Tatham *v.*
David Moseley & Sons, Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
Davidson, Chappell *v.*
Davidson, Smith *v.*
Davies, Day *v.*
Davies, Lowndes *v.*
Davies Patent Boiler, Ld., Davies *v.*
Dawding, Craig *v.*
Dawson, Badische Anilin und Soda Fabrik *v.*
Dawson, Cutlán *v.*
Dawson, McNaught *v.*
Dawson, Saccharin Corporation, Ld. *v.*
Day, Emperor of Austria *v.*
Day, Shaw *v.*
Deeley, Perks *v.*
Deighton's Patent Flue and Tube Co., Leeds Forge Co. *v.*
De la Rue, Sturtz *v.*
Dellestable, Fox *v.*
De Mare Incandescent Gas Light System, Incandescent Gas Light Co. *v.*
Denny, Weir *v.*
Dent, Turpin *v.*
Derby Gas Co., Crossley *v.*
de Vitre, Betts *v.*
Dewhurst, Charter *v.*
Dewick, Fisher *v.*
Diaper, Orr *v.*
Dickinson, De la Rue *v.*
Dickinson, Sellers *v.*
Dickinson, Smith *v.*
Dix, Lister *v.*
Dixon and Mann, Ld., Blackett *v.*
Dixon, Crossley *v.*
Dobbie, Cera Light Co. *v.*
Doig, Dilly *v.*
Domeiere, Aluminium Co. *v.*
Donald Macpherson & Co., Lawson *v.*
Donohoe, United Telephone Co. *v.*
Dougill, Frentzell *v.*
Doulton, Allen *v.*
Down, Fowler *v.*
Drosophore Co., Dowson Taylor *v.*
Drysdale, Gwynne *v.*
Dublin Tramway Co., Ld., British Insulated Wire Co., Ld. *v.*
Duckett, Allen *v.*
Duerden, Bibby and Baron, Ld. *v.*
Duncan, Rickerby *v.*
Dunlop, Pneumatic Tyre Co. *v.*

Eadie (Albert) Chain, Ld., Appleby's (Alfred) Twin Roller Chain, Ld. *v.*
Eames, Cartwright *v.*
East London Rubber Co., Pneumatic Tyre Co. *v.*
Easterbrook, Saxby *v.*
Eastern Archipelago Co., R. *v.*
Eastern Counties Ry. Co., Greaves *v.*
Easton, Tetley *v.*
Eastwood, Lister *v.*
Edelston, Edelston *v.*

Edge, Garrard *v.*
Edge, Johnson *v.*
Edinburgh and Leith Gas Commissioners, New Conveyor Co., Ld. *v.*
Edison-Bell Consolidated Phonograph Co., Ld., Berliner *v.*
Edison Phonograph Co., Edison-Bell Phonograph Corporation *v.*
Edlin-Sinclair Tyre Co., Swain *v.*
Edwards, Palmer *v.*
Egerton, Beard *v.*
Electrical Company, Ld., British Westinghouse Electric and Manufacturing Co., Ld. *v.*
Electric Construction Co., Ld., Donnersmarckhütte Oberschlesiche Eisen und Kohlenwerke Actien Gesellschaft *v.*
Electric Lighting Co., Liardet *v.*
Electrical Co., Mica Insulator Co. *v.*
Electrical Power Storage Co., Union Electrical Power and Light Co. *v.*
Eley, Daw *v.*
Eli, Graham *v.*
Elkan, Upman *v.*
Ellams Duplicator Co., Dick *v.*
Elliott, Newall *v.*
Else, R. *v.*
Elsee, Bloxam *v.*
Emerson, Attorney-General *v.*
English Card Clothing Co., Ld., Ashworth *v.*
English Cycle and Tyre Co., Pneumatic Tyre Co. *v.*
Equitable Telephone Co., United Telephone Co. *v.*
Evans, Hill *v.*
Evans, Lamb *v.*
Evans, Vorwerk *v.*
Evered, Brown *v.*
Everington, MacIntosh *v.*
Everitt Press Manufacturing Co., Watts *v.*
Excelsior Tyre and Cement Co., Dunlop Pneumatic Tyre Co., Ld. *v.*
Exton Hotels Co., Ld., British Vacuum Co., Ld. *v.*

Fairburn, Household *v.*
Fairie, Derosne *v.*
Falcon Works, Downes *v.*
Fanta, Graham *v.*
Farquharson, Plating Co. *v.*
Farrar, Boyd *v.*
Faulkner, United Telephone Co. *v.*
Fearby, Automatic Weighing Machine Co. *v.*
Feaver, Griffin *v.*
Feil, Master Wardens and Society of Gunmakers *v.*
Fellows, Duvergier *v.*
Feltham, Slazenger *v.*
Ferguson, Pneumatic Tyre Co. *v.*
Fernie, Young *v.*
Fielden, Sidebottom *v.*
Finch, Bovill *v.*
Findlater, Siegert *v.*
Fisher, Alma Veneer Felt Co. *v.*
Fisher, Crossdale *v.*
Fleming, United Telephone Co. *v.*
Flemming, Bentley *v.*
Fletcher, Dewrance *v.*
Flour Oxidizing Co., Ld., In the Matter of Andrew's Patent, Alsop Flour Process, Ld. *v.*
Footman, Blank *v.*
Forrester, Upman *v.*
Forsa, Edisonia, Ld. *v.*
Foster, Claughton *v.*
Foster, Day *v.*
Foster, Ford *v.*
Foster, Hoe *v.*
Foster, Muntz *v.*
Fothergill, Neilson *v.*
Fox, Bush *v.*
Fox, Holland *v.*
Foxwell, Thomas *v.*
Franklin, Hall *v.*
Franklin Hocking, Franklin Hocking & Co. *v.*
Franks, Pidding *v.*
Fraser, Franklin Hocking & Co. *v.*
Fraser, Hocking *v.*
Fraser, Macdonald *v.*
French, Robertson *v.*
Friswell, British Motor Syndicate, Ld. *v.*
Friswell, Pneumatic Tyre Co. *v.*
Fuller, Morgan *v.*
Fullwood, Fullwood *v.*
Fussell (A.) & Sons, Ld., British United Shoe Machinery Co., Ld. *v.*

GAGE, Bethell *v.*
Gallairs, Betts *v.*
Gamage (A. W.), Ld., Gillette Safety Razor Co., Ld. *v.*
Gann, Wilson *v.*
Gardner, Bray *v.*
Gardner, Nordenfelt *v.*
Gare Machine Co., English and American Machinery Co. *v.*
Garland, R. *v.*
Gas Light and Coke Co., Patterson *v.*
Gaul, Fowler *v.*
General Incandescent Co., Ld., New Inverted Incandescent Gas Lamp Co., Ld. *v.*
General Sewage and Manure Co., MacDougall *v.*
Gibbs, National Company for the Distribution of Electricity by Secondary Generators, Ld. *v.*
Gisborne, Lang *v.*
Glace, Commissioners of Sewers *v.*
Glasgow Gas Commissioners, Fletcher *v.*
Globe Light, Ld., New Inverted Incandescent Gas Lamp Co., Ld. *v.*
Gloucester Waggon Co., Saxby *v.*
Glover (T. W.) & Co., American Steel and Wire Co. *v.*
Goddard, Lyon *v.*
Goldberg, Davenport *v.*
Goldstein, Dubowski *v.*
Goodfellow, Haslam Foundry and Engineering Co. *v.*
Goodier, Bovill *v.*
Goodman, Pneumatic Tyre Co. *v.*
Goodwin, Higgs *v.*
Gormully and Jeffery Manufacturing Co., North British Rubber Co. *v.*
Govan, Williams *v.*
Grace, Barber *v.*
Graham, Starey *v.*
Grand Hotel (Birmingham), Ld., National Opalite Glazed Brick and Tile Co., Ld. *v.*
Grand Junction Ry. Co., Newton *v.*
Gray, Bateman *v.*
Gray, McCormick *v.*
Graydon, Bassett *v.*
Graydon, Roberts *v.*
Great Eastern Ry. Co., Sheehan *v.*
Great Northern Ry. Co., Harwood *v.*
Great Western Ry. Co., Easterbrook *v.*
Great Western Ry. Co., Smith *v.*
Greaves, Felton *v.*
Green, Dunlop Pneumatic Tyre Co., Ld. *v.*
Green, Mathers *v.*
Green, Robb *v.*
Greener, Couchman *v.*
Greenway, Heathfield *v.*
Grenfell, Muntz *v.*
Grimshaw, Huddart *v.*
Griswold, London and Leicester Hosiery Co. *v.*
Groom, London and South Western Ry. Co. *v.*
Groth, British Tanning Co. *v.*
Grovesend Tinplate Co., Elias *v.*
Guest, Kane *v.*
Guest, Williams *v.*
Gunn, Dunlop Pneumatic Tyre Co. *v.*
Guthridge (N.), Ld., Wilfley Ore Concentrator Syndicate, Ld. *v.*

HADLEY, Bovill *v.*
Hague, Hullett *v.*
Hague, Losh *v.*
Hall, Brooks *v.*
Hall, Halden *v.*
Hall, Haslam *v.*
Hall, Stepney Spare Motor Wheel, Ld. *v.*
Hallmark, Heys *v.*
Hamilton, Hayward *v.*
Hamling, Scott *v.*
Hanbury, Philpot *v.*
Handy, Fuller *v.*
Hanley, Burgess *v.*
Hardcastle, Bramah *v.*
Hardcastle, Haworth *v.*
Hardie, Hensee *v.*
Harding, Haws *v.*
Hare, Taylor *v.*
Harford, Neilson *v.*
Hargreaves, Nuttall *v.*
Harley, Harley *v.*
Harrap, Birch *v.*
Harris, Savage *v.*
Harrison, Edge *v.*

Harrison, Newby *v.*
Harrison, United Telephone Co. *v.*
Harrison Bros., Diamond Steel Manufacturing Co. *v.*
Hart, Colley *v.*
Hart, Mullins *v.*
Hartlepools Pulp and Paper Co., Partington *v.*
Hartley, Heap *v.*
Haslam, Dick *v.*
Haslam, Nickels *v.*
Hastie, Brown *v.*
Hatfield, Russell *v.*
Hawkes, Brunton *v.*
Haworth, Townsend *v.*
Hay, Burdett *v.*
Hay, Gonville *v.*
Hay, Saccharin Corporation, Ld. *v.*
Haynes, Massey *v.*
Head, Powell *v.*
Heald, Steiner *v.*
Heath, Unwin *v.*
Heathman, Keeley *v.*
Heaton, Jones *v.*
Henery, Alexander *v.*
Hennett, Saxby *v.*
Henry, United Telephone Co. *v.*
Heppenstall, Holliday *v.*
Hermand Oil Co., Young *v.*
Herold, Lane *v.*
Heywood, Roberts *v.*
Hicks, Lovell *v.*
Hicks, Musgrave *v.*
Hickson, Badische Anilin und Soda Fabrik *v.*
Higginbottom, Bunge *v.*
Higgins, Seed *v.*
Higham, London and Leicester Hosiery Co. *v.*
Hill, Bennington *v.*
Hills, Burgess *v.*
Hindes, Peck *v.*
Hinks, Rollins *v.*
Hirsch, Britain *v.*
Hirschfeld, Leather Cloth Co. *v.*
Hirst, Osmond *v.*
Hitchcock, Bovill *v.*
Hitchcock, Wright *v.*
Hitchman, Simmonds *v.*
Hobson, Fritz *v.*
Hocking, Hocking *v.*
Hodgson, Hattersley *v.*
Hoe, Northern Press and Engineering Co., Ld. *v.*
Hoffman, Chollet *v.*
Holborn Tyre Co., Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
Holden, Oxley *v.*
Holland, Edison and Swan Co. *v.*
Holland, Electrolytic Plating Apparatus Co. *v.*
Holland, Patterson *v.*
Holliday, Simpson *v.*
Holliday, Watson *v.*
Holt, Spence *v.*
Homan, Fawcett *v.*
Homer, British Mutoscope and Biograph Co., Ld. *v.*
Hope, Jenkins *v.*
Hopkins, Linotype and Machinery Co., Ld. *v.*
Hopkinson, Saccharin Corporation, Ld. *v.*
Horrocks, Boyd *v.*
Horsfall, Ashworth *v.*
Horsfall, Bates *v.*
Horton, Allen *v.*
Hoskins and Sewell, Ld., Evans and Taunton, Ld. *v.*
Hough, Edison-Bell Phonograph Corporation *v.*
Household, Fairburn *v.*
Howard and Bullough, Tweedale *v.*
Howarth, Sykes *v.*
Howell, Grenwell *v.*
Hubbard Patents and Tyre Syndicate, Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
Hubert Unchangeable Eylet Syndicate, Engels *v.*
Hudson, Perrin *v.*
Hughes & Co., Downes *v.*
Hughes, Rann *v.*
Hughes, Thomson *v.*
Hull Steam Fishing and Ice Co., Scott *v.*
Hulse, Macnamara *v.*
Humber, Bown *v.*
Humber, Ld., Stroud *v.*
Hunt, Hunt *v.*
Hunt, Thomas *v.*
Hunters, Ld., Graphic Arts Co. *v.*
Hurst, Nelson & Co., Ld., Steel Railway Journal Box Co., Ld. *v.*

Hutchinson, Flour Oxidizing Co., Ld. *v.*
Hutchinson, Haskell Golf Ball Co., Ld. *v.*
Hutchinson, Haslett *v.*
Hyde Rubber Co., Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
Hydrocarbon Syndicate, Walker *v.*

Ibbotson, Crompton *v.*
Ihlee, Ehrlich *v.*
Imperial Tramways Co., Ld., Electric Construction Co., Ld. *v.*
Incandescent Gas Light Co., Heald *v.*
Incandescent Gas Light Co., Sunlight Incandescent Gas Lamp Co. *v.*
Indiarubber Co., Edison Telephone Co. *v.*
Ingersoll Sergeant Drill Co., Consolidated Pneumatic Tool Co. *v.*
Inman, Bishop *v.*
International Hygienic Society, Automatic Weighing Machine Co. *v.*
International Phonograph Indestructible Record Co., Ld., Lambert Co. *v.*
Isaacs, Collyer *v.*
Isaacs, Rolls *v.*
Isler, Badische Anilin und Soda Fabrik *v.*
Isola, Ld., Thermos, Ld. *v.*
Ivel Cycle Co., Phillips *v.*
Ivy, Horne *v.*
Ixion Patent Pneumatic Tyre Co., Pneumatic Tyre Co. *v.*

Jack, Spencer *v.*
Jackson, Brown *v.*
Jackson, Makepeace *v.*
Jackson, Saccharin Corporation, Ld. *v.*
James, Finnegan *v.*
James, Newburry *v.*
James, Thomson *v.*
James, Wilcox and Gibbs' Sewing Machine Co. *v.*
Jarve, Dalglish *v.*
Jarvis, Hall *v.*
Jebson, Davenport *v.*
Jennings, Whitton *v.*
Johnson, Badische Anilin und Soda Fabrik *v.*
Johnson, Charter *v.*
Johnson, Edge *v.*
Johnson, Hookham *v.*
Johnson, Jandus Arc Lamp and Electric Co., Ld. *v.*
Johnson, Liardet *v.*
Johnson, Needham *v.*
Johnson, Orr-Ewing *v.*
Jones, Bacon *v.*
Jones, Canham *v.*
Jones, Dangerfield *v.*
Jones, Moser *v.*
Jones, Nobel's Explosives Co. *v.*
Jones, Saccharin Corporation, Ld. *v.*
Jones, Saunders *v.*
Jones, Shaw *v.*
Judge of County Court of Halifax, R. *v.*

Kalle, Leonardt *v.*
Karo, Siemens *v.*
Kaye, Tucker *v.*
Keating, Stevens *v.*
Keegan, Incandescent Gas Light Co. *v.*
Keeling, Dowler *v.*
Keen, Cornish *v.*
Keen, Westhead *v.*
Keenes (James) & Sons, Ld., West *v.*
Keighley, Bentley *v.*
Kelley, Poulton *v.*
Kennard, Booth *v.*
Kensington and Knightsbridge Electric Lighting Co., Lane-Fox *v.*
Kenyon (Lord), Myddelton *v.*
Kerr, Guilbert-Martin *v.*
Kershaw, Nicholls *v.*
Keyworth, Bovill *v.*
Kidd, Albo-Carbon Light Co. *v.*
King, Brown & Co., Anglo-American Brush Electric Light Corporation *v.*
King Mendham & Co., Jardine *v.*
King, Rothwell *v.*
Kinnell, Baker *v.*

Kirby, Hogg *v.*
Kirkman, Meadows *v.*
Kitchin, Leadbeater *v.*
Knight, Automatic Weighing Machine Co. *v.*
Krebs, British Dynamite Co. *v.*
Krupp, Vavasseur *v.*
Kurtz, Gamble *v.*
Kynock, Batley *v.*

Lafitte, Fabriques de Produits Chimiques de Thann et Mulhouse *v.*
Lambert, Wood *v.*
Laming, Hills *v.*
Lamplough, Brooks *v.*
Lancashire and Yorkshire Ry. Co., Westinghouse *v.*
Lane-Fox Electrical Co., Kensington and Knightsbridge Electric Light Co. *v.*
Laporte, Farbenfabriken vorm. F. Bayer *v.*
Lardeur, Briggs *v.*
Larmuth, Shillito *v.*
La Roche, Talbot *v.*
La Société des Usines du Rhône, Badische Anilin und Soda Fabrik *v.*
Latham, Blakeys *v.*
Lavater, Walton *v.*
Law, Ashworth *v.*
Lawes & Co., Ld., McLay *v.*
Lawson's Non-Conducting Composition, Ld., Newlite Glass Tile Co., Ld. *v.*
Leadbitter, Wood *v.*
Leathem, Quinn *v.*
Leather, Lister *v.*
Ledsam, Russell *v.*
Lee, Jones *v.*
Lee, Sudbury *v.*
Leeds Forge Co., Ld., North Eastern Marine Engineering Co., Ld. *v.*
Leese, Charter *v.*
Leicester Pneumatic Tyre and Automatic Valve Co., Pneumatic Tyre Co. *v.*
Levinstein, Badische Anilin und Soda Fabrik *v.*
Levinstein, Cassella *v.*
Levinstein, Renard *v.*
Levinstein, Ld., Vidal Dyes Syndicate, Ld. *v.*
Levy Bros., Presto Coat Collar Co. *v.*
Lewis, Davis *v.*
Leyson, Carter *v.*
Liebig's Extract of Meat Co., Anderson *v.*
Lindsay, Gaulard *v.*
Linford, Otto *v.*
Linotype Co., Ld., Pashley *v.*
Lister, R. *v.*
Livesey, Ward *v.*
Lloyd, Coppin *v.*
Lloyd (Edward), Ld., European Eibel Co., Ld. *v.*
Lloyd, Flower *v.*
Lockwood, Chartered Institute of Patent Agents *v.*
Lockwood, Saccharin Corporation, Ld. *v.*
Loe, Frearson *v.*
London and Globe Telephone and Maintenance Co., United Telephone Co. *v.*
London and North-Western Ry. Co., Holmes *v.*
London and North-Western Ry. Co., Sharrod *v.*
London and South Western Railway Co., British Vacuum Cleaners Co., Ld. *v.*
London County Council, Cooper Patent Anchor Rail Joint Co., Ld. *v.*
London County Council, North Metropolitan Tramways Co., Ld. *v.*
London Gas Light Co., Hills *v.*
London Phonograph Corporation, Edison-Bell Phonograph Corporation *v.*
London Small Arms Co., Dixon *v.*
Longford Wire, Iron, and Steel Co., Rowcliffe *v.*
Longmead, Oldham *v.*
Loog, Singer Manufacturing Co. *v.*
Lord Mayor, &c. of Manchester, Geipel *v.*
Luna Safety Razor Co., Ld., Gillette Safety Razor Co. *v.*

Lund, Axman *v.*
Lycett (E.), Ld., Brooks *v.*
Lycett's Saddle and Motor Accessories Co., Ld., Brooks *v.*
Lyle (D. T. J.) & Son, Ld., Saccharin Corporation, Ld. *v.*
Lyons, Fairfax *v.*
Lyons, Walcott *v.*

Mabon, Horton *v.*
Macdonald, Neil *v.*
Macdonald, Thomson *v.*
Macfarlane, Templeton *v.*
Macintosh, North British Rubber Co. *v.*
MacIvor's Patents, Alliance Pure White Lead Syndicate *v.*
Mack, Saccharin Corporation, Ld. *v.*
Mackenzie, Bulnois *v.*
MacKernan, How *v.*
Mackie, Solvo Laundry Supply Co. *v.*
Mackintosh, Rothwell *v.*
Maclaren, Aveling *v.*
Maddever, Three Towns Banking Co. *v.*
Magill, Hugh *v.*
Maignen's Filtre Rapide Co., Parker *v.*
Malcolmson, Plimpton *v.*
Malins, Moss *v.*
Mallett, Dunnicliff *v.*
Maltz, Hague *v.*
Managers of the Metropolitan Asylums District, Fleet *v.*
Manchester Steam Tramways Co., Winby *v.*
Mangnall, McAlpine *v.*
Mann, Newsum *v.*
Manton, Manton *v.*
Marling, Lewis *v.*
Marples, Leach & Co., Ld., "Z" Electric Lamp Manufacturing Co., Ld. *v.*
Marsden, Monforts *v.*
Marsden, Moser *v.*
Marsh, Miligan *v.*
Marsh, Steadman *v.*
Marshall, Kay *v.*
Marshalls, Ld., Chameleon Patents Manufacturing Co., Ld. *v.*

Martin, Lyons *v.*
Martins, Cochrane (T. P.) & Co. *v.*
Martyn, Ellam *v.*
Marwood, Pneumatic Tyre Co. *v.*
Mason, Gawthorp *v.*
Massam, Thorley's Cattle Food Co. *v.*
Massey, Pilkington *v.*
Mather, Birch *v.*
Matin, Nadel *v.*
Maxim-Nordenfelt Guns and Ammunition Co., Delta Metal Co. *v.*
Maxim-Nordenfelt Guns and Ammunition Co., Nordenfelt *v.*
May, Wenham *v.*
Mayor and Corporation of Newcastle-upon-Tyne, Lyon *v.*
Mayor, &c. of Bradford, Chamberlain and Hookham, Ld. *v.*
Mayor, &c. of Huddersfield, Chamberlain and Hookham, Ld. *v.*
Mayor of Manchester, British Thomson-Houston Co., Ld. *v.*
Mayor of Manchester, Gadd *v.*
Mayor of Salford, Automatic Coal-gas Retort Co. *v.*
McAlpine, Bridson *v.*
McGeoch, Leggott *v.*
McGrady (John & Co., Welsbach Incandescent Gas Light Co., Ld. *v.*
McMillan, Bergman *v.*
Mechan, Chadburn *v.*
Menck, National Phonograph Co. of Australia *v.*
Menzies, Betts *v.*
Mercantile Bank of Lancashire, Ld., Chatwoods Patent Safe and Lock Co., Ld. *v.*
Metcalf, R. *v.*
Metropolitan Gas Meters, Ld., Martins, Ld. *v.*
Metropolitan Gas Meters, Ld., Meters, Ld. *v.*
Meyer's Patent, Meyenburg and The Clayton Anilin Co.'s Application *v.*
M'Grundy & Co., Incandescent Gas Light Co. *v.*
Middleton, Morton *v.*
Midland Acetylene (Parent) Syndicate, Acetylene Illuminating Co., Ld. *v.*

Midland Lighting Co., Société Anonyme pour le Fabrication d'Appareils d'Eclairage *v.*
Midland Ry. Co., Stark *v.*
Miles, Earl de la Warr *v.*
Mill, R. *v.*
Millard, Grover and Baker Sewing Machine Co. *v.*
Miller, Lucas *v.*
Minerals Separation, Ld., British Ore Concentration Syndicate, Ld. *v.*
Mitchell, Perry *v.*
Monopole Cycle and Carriage Co., Ld., Spaul *v.*
Monte Video Gas Co., Jones *v.*
Moore, Bovill *v.*
Moore, Jordan *v.*
Moore, Thomson *v.*
Moorwood, Crossthwaite *v.*
Morgan, Burt *v.*
Morgan, Knott *v.*
Morgan, Shrewsbury and Talbot Cab Co. *v.*
Morley, Mandelberg *v.*
Morris, Rowcliffe *v.*
Morris, Young *v.*
Mort, Parnell *v.*
Mottershead, United Telephone Co. *v.*
Moule's Earth Closet, Baird *v.*
Moulton, Hancock *v.*
Mower, Minter *v.*
Moy (Ernest F.), Ld., Reason Manufacturing Co., Ld. *v.*
Mullinar, Redges *v.*
Muntz Metal Co., Drake *v.*
Murdock, Warner *v.*
Mussary, R. *v.*
Mutual Cycle and Manufacturing Co., Ld., Osmond *v.*

Nairn, Linoleum Co. *v.*
Nash, Williams *v.*
National Bolivian Navigation Co., Republic of Bolivia *v.*
National Exhibitions Association, Automatic Weighing Machine Co. *v.*
National Saccharin Co., Ld., Saccharin Corporation, Ld. *v.*
Neal, Dunlop Pneumatic Tyre Co., Ld. *v.*
Neal, Smith *v.*
Needle, Jackson *v.*
Neilson, Baird *v.*
Neilson, Betts *v.*
Neilson, Househill Co. *v.*
Neilson, R. *v.*
Neilson, United Telephone Co. *v.*
Nelson, Swinborne *v.*
New Incandescent Mantle Co., Incandescent Gas Light Co. *v.*
New Ixion Tyre and Cycle Co., Pneumatic Tyre Co. *v.*
New Lamb Tyre Co., Dunlop Pneumatic Tyre Co., Ld. *v.*
New Seddon Pneumatic Tyre and Self-closing Tube Co., Dunlop Pneumatic Tyre Co. *v.*
New Townsend Cycle Co., Ld., Dover (H. W.) and Dover, Ld. *v.*
Newton Hindmarch on Patents, R. *v.*
Nicholls, Clark *v.*
Nicholson, Harrison Patents Co., Ld. *v.*
Nicholson, Murchland *v.*
Nickalls, Merry *v.*
Nightingale, Arkwright *v.*
Nobel's Explosive Co., Ld., Badische Anilin und Soda Fabrik *v.*
Noel, Betts *v.*
Norden, Heine *v.*
North British Ry. Co., Adams *v.*
North British Rubber Co., Dunlop Pneumatic Tyre Co., Ld. *v.*
North British Rubber Co., Ld., Gormully and Jeffery Manufacturing Co., Ld. *v.*
North Somerset Ry. Co., Bristol *v.*
Norton, Geary *v.*
Norton, Lister *v.*
Nott, Electric Telegraph Co. *v.*
Nottingham Manufacturing Co., Lamb *v.*
Nurse, Hewett *v.*
Nuttall, Cannington *v.*
Nuttall, Cheetham *v.*
Nye, Williams *v.*

OATES, Allen *v.*
Oldham, Cheetham *v.*
O'Neill and Brown, Gall *v.*
Oppenheim, Wittman *v.*
Ore Concentration Co., Ld., Minerals Separation, Ld. *v.*
Orme Evans & Co., Ld., Presto Gear Case and Components Co., Ld. *v.*
Osborne, Hind *v.*
Osgerby, Hudson *v.*
Osram Lamp Works, Ld., "Z" Electric Lamp Manufacturing Co., Ld. *v.*
Owen, Peters *v.*
Owens, Tadman *v.*
Oxley, Needham *v.*

PAIN, Schermuly *v.*
Palmer, Parrott *v.*
Parker, Manton *v.*
Parker, Mountain *v.*
Parmentier, Mathews *v.*
Parnell, Dredge *v.*
Parr, Potter *v.*
Parr (J.) & Co., Pneumatic Tyre Co. *v.*
Partington, McDougall *v.*
Passberg Grain Syndicate, Stavert *v.*
Patent Oxonite Co., Anderson *v.*
Patents and Machine Improvements Co., Ld., Hickton's Patent Syndicate *v.*
Patents Investments Co., Crampton *v.*
Paterson, Montgomerie *v.*
Patterson, United Telephone Co. *v.*
Patterson, Washburn and Moen Manufacturing Co. *v.*
Pattullo, Hutchinson *v.*
Pavement Light Co., Hayward *v.*
Payne, Blofield *v.*
Payne, Elwes *v.*
Peach, Crofts *v.*
Peacock, International Harvester Company of America *v.*
Pearce, Cook *v.*
Pearce, Jones *v.*
Pearson, Morrell *v.*
Pearson, Whateman *v.*
Penn, Dobbs *v.*
Perks, Deeley *v.*
Perks, Westley, Richards & Co. *v.*
Perry, Lawrence *v.*
Perry, Skinner *v.*
Phillips, Davenport *v.*
Phillips (John) & Co., Lynch and Henry Wilson & Co., Ld. *v.*
Picard, Edwards & Co. *v.*
Picksley, Bamlett *v.*
Pimm, Bovill *v.*
Pinto Leite, Craven *v.*
Pintsch's Patent Lighting Co., Douglass *v.*
Piper, Gregory *v.*
Pirrie, Elmore *v.*
Pitcher, McGrunther *v.*
Pitman, Nicols *v.*
Plaff, Deutsche Nähmaschinen Fabrik vorm. Wertheim *v.*
Plane, Harmer *v.*
Platt, Curtis *v.*
Pneumatic Tyre and Brook's Cycling Agency, Edlin *v.*
Pneumatic Tyre Co., Ld., Palmer Tyre Co., Ld. *v.*
Pointon, Pooley *v.*
Postill, Hoffman *v.*
Pott, Cassels and Williamson, Watson, Laidlaw & Co., Ld. *v.*
Potter, Crossley *v.*
Potter, Walton *v.*
Pratt, Jupe *v.*
Prescott, Pickard *v.*
Price, Crane *v.*
Price, Macfarlane *v.*
Price, Savory *v.*
Priestman, Rockliffe *v.*
Prosser, R. *v.*
Provezende, Seixo *v.*
Province of Brescia Steam Tramways Co., Fraser *v.*
Puncture Proof Pneumatic Tyre Co., Pneumatic Tyre Co. *v.*
Purday, Chappell *v.*
Purser, Lawes *v.*
Pyatt, Allen *v.*

QUEEN, Feather *v.*
Quick, Southwark and Vauxhall Water Co. *v.*
Quincey, Saccharin Corporation, Ld. *v.*

RAMSEY Urban District Council, Bostock *v.*
Raphael, Wood *v.*
Ratner Safe Co., Ld., Chatwood's Patent Safe and Lock Co., Ld. *v.*
Rawlinson, Coleman *v.*
Rawson, Allen *v.*
Read, Holliday & Sons, Ld., Vidal Dyers Syndicate, Ld. *v.*
Reddaway, Gandy *v.*
Redgate, Bates *v.*
Reitmeyer, Saccharin Corporation, Ld. *v.*
Reliance Tyre Co., Birmingham Pneumatic Tyre Syndicate *v.*
Remus, Actien Gesellschaft für Cartonagen Industrie *v.*
Rendell, Underwood & Co., Ltd., Brooks (A. B.) & Co., Ld. *v.*
Rennie, Mackelcan *v.*
Reynolds, Mitchell *v.*
Reynolds, Nettlefolds *v.*
Richards, Davenport *v.*
Richards, Patent Type Foundry Co. *v.*
Richardson, Benno Jaffé und Darmstaedter Lanolin Fabrik *v.*
Richardson, Bereton *v.*
Richardson, Universities of Oxford and Cambridge *v.*
Riches, Wool, Hide and Skin Syndicate *v.*
Riekman, Thierry *v.*
Riemer, Incandescent Gas Light Co. *v.*
Rimington, Dunlop Pneumatic Tyre Co., Ld. *v.*
Riviere, Forsyth *v.*
Roberts, Ashworth *v.*
Roberts, Smith *v.*
Robertson, Bailey *v.*
Robertson, Holste *v.*
Robinson, Germ Milling Co. *v.*
Roburite Explosives Co., Lancashire Explosives Co. *v.*
Rodgers, Stocker *v.*
Roe, Taylor *v.*
Rogers, Steers *v.*
Rolte, Gordon *v.*
Rosenberg, Edison-Bell Consolidated Phonograph Co., Ld. *v.*
Rosenthal, Young *v.*
Rosenwald, Kopp *v.*
Ross, Nickels *v.*
Ross, Saccharin Corporation, Ld. *v.*
Rotax Motor Accessories Co., Lake and Elliot *v.*
Rothwell, Harris *v.*
Rowland, Peckover *v.*
Royle, Challender *v.*
Rudge's Cycle Co., Singer *v.*
Ruhl, Gramaphone Co., Ld. *v.*
Runcorn Soap and Alkali Co., Henderson *v.*
Russell, Ledsam *v.*
Rylands, Davenport *v.*
Rylands, Hazelhurst *v.*
Rylands, Useful Patents Co. *v.*
Rylands' Glass and Engineering Co., Ld., Beavis *v.*

SAFETY Lift and Elevator Co., Ld., General Electric Co. *v.*
Safety Lighting Co., Hinks *v.*
Salsbury, Hoffnung *v.*
Salvo Laundry Co., Mackie *v.*
Sampson, Printing and Numerical Registering Co. *v.*
Samuel, Postcard Automatic Supply Co. *v.*
Sansom, Brown *v.*
Sansum, Woodward *v.*
Saqui, Cole *v.*
Saupe, Embossed Metal Plate Co. *v.*
Saville Street Foundry and Engineering Co., Marsden *v.*
Sayer, Herbert *v.*
Schrœder, Actien Gesellschaft für Cartonagen Industrie *v.*
Schwan, Beardsell *v.*
Scott, Saccharin Corporation, Ld. *v.*
Scott, Smith *v.*
Seabrook, Combination Hubs, Ld. *v.*

Searle, Miller *v.*
Sears, Pickard *v.*
Seaward, Morgan *v.*
Seine, R. *v.*
Senior, Crossthwaite Fire Bar Syndicate *v.*
Sewell, Moser *v.*
Seymer, Patent Bottle Envelope Co. *v.*
Shankey, Duckett *v.*
Sharp, Cartsburn Sugar Refining Co. *v.*
Sharples, United Telephone Co. *v.*
Shaw, Barker *v.*
Shaw, Longbottom *v.*
Shaw, Pether *v.*
Sheba Gold Mining Co., African Gold Recovery Co. *v.*
Shephard, Gavioli *v.*
Sherrin, British Motor Syndicate, Ld. *v.*
Sherwood, Defries *v.*
Shewes, Bickford *v.*
Shiels, Henderson *v.*
Shippey, Edison Electric Co. *v.*
Shoppee, Bimm *v.*
Siddell, Vickers *v.*
Siemens Brothers & Co., Ld., Patent Exploitation, Ld. *v.*
Silber, Sugg *v.*
Silver, Tuck *v.*
Simmons, Hicks *v.*
Simms, Colburn *v.*
Simon, Parkinson *v.*
Simon Collier, Ld., British United Shoe Machinery Co., Ld. *v.*
Simplex Gear Case Co., Ld., Presto Gear Case and Components Co., Ld. *v.*
Singer, Otto *v.*
Singer Manufacturing Co., Ld., Gammons *v.*
Singer Manufacturing Co., Nähmaschinen Fabrik *v.*
Skidmore, Saccharin Corporation, Ld. *v.*
Skinner, Perry *v.*
Sluces, Incandescent Gas Light Co. *v.*
Smethurst, Cochrane *v.*
Smith, Bancroft *v.*
Smith, Bovill *v.*
Smith, Bowden's Patent Syndicate (E. M.), Ld. *v.*
Smith, Carpenter *v.*
Smith, Cropper *v.*
Smith, Edison-Bell Phonograph Corporation *v.*
Smith, Heath *v.*
Smith, Jensen *v.*
Smith, Kerrison *v.*
Smith, Oddy *v.*
Smith, Ralston *v.*
Smith (Herbert) & Co., Ld., Reynolds *v.*
Smith, Riding *v.*
Smith, Vidi *v.*
Snell, Dansk Rekylriffel Syndikat Aktieselskab *v.*
Société de Lunetiers, Perry *v.*
Société General d'Electricité, Werderman *v.*
Somervell, Hancock *v.*
Somervell, Kenny's Patent Buttonholing Co. *v.*
South Eastern Ry. Co., London Chatham and Dover Ry. Co. *v.*
Sowerby Bridge Flour Society, Van Gelder Apsimon & Co. *v.*
Speight, Tolson *v.*
Spence, Kurtz *v.*
Spence, Mayer *v.*
Spiller, Plimpton *v.*
Spilsbury, New Ixion Tyre and Cycle Co. *v.*
Spirey, Badische Anilin und Soda Fabrik *v.*
Sponge, Heine *v.*
Spottiswood, Bacon *v.*
Squire, Herrberger *v.*
Standard Piston Ring and Engineering Company, Ld., Robertson *v.*
Starbuck Waggon Co., Eades *v.*
Stassen, Singer *v.*
Steel, Brooks *v.*
Steel, Crossthwaite *v.*
Steel, Otto *v.*
Stephens, Edgebury *v.*
Stepney Spare Motor Wheel, Ld., Hall *v.*
Sterckx, Shrewsbury and Talbot Cab Co. *v.*
Sterious, Taddy *v.*
Stevens, Parkes *v.*

Stevens, Watling *v.*
Stevenson, Boake Roberts & Co. *v.*
Stevenson, Hess *v.*
Stevenson, Temler *v.*
Stewart, Crossley *v.*
Stewart, United Horseshoe and Nail Co. *v.*
St. George, United Telephone Co. *v.*
St. James Electric Light Co., Hopkinson *v.*
Stone, Wyeth *v.*
Stone and Corser, Dunlop Pneumatic Tyre Co. *v.*
Stott, Tangye *v.*
Stowers, York *v.*
Stubbs, Horrocks *v.*
Suction Cleaners, Ld., British Vacuum Cleaners Co., Ld. *v.*
Sugg, Ungar *v.*
Sun Fan Co., Ld., Davidson *v.*
Sunlight Incandescent Gas Lamp Co., Incandescent Gas Light Co. *v.*
Sutton Lodge Chemical Co., Proctor *v.*
Sutton, Swabey *v.*
Swears, Nicoll *v.*
Swedish Horse Nail Co., United Horseshoe and Nail Co. *v.*
Syer, Humpherson *v.*
Szalay, Sandow *v.*

Tangyes, Magee *v.*
Tasker, United Telephone Co. *v.*
Tate, Burnett *v.*
Taunton, Pow *v.*
Taylor, Annand *v.*
Taylor, Bailey *v.*
Taylor, Bowman *v.*
Taylor & Sons (John), Ld., British Motor Syndicate, Ld. *v.*
Taylor, Harrison *v.*
Taylor, Hilleary *v.*
Taylor, Millar *v.*
Taylor, Siemens *v.*
Taylor, Willoughby *v.*
Taylor, Maddox & Co., Wrightson *v.*
Temler, Actien Gesellschaft für Cartonagen Industrie *v.*
Terry, Hyam *v.*
Thierry, Rickman *v.*
Thomas, Hill *v.*
Thompson, Guyot *v.*
Thompson, Neilson *v.*
Thomson, American Braided Wire Co. *v.*
Thomson, Badische Anilin und Soda Fabrik *v.*
Thomson, British United Shoe Machinery Co., Ld. *v.*
Thomson, Dudgeon *v.*
Thomson, Hill *v.*
Thomson, Moore *v.*
Thorley's (T. W.) Cattle Food Co., Massam *v.*
Tilghman's Patent Sand Blast Co., Société Anonyme de Manufactures de Glaces *v.*
Timmis' Patent, Currie *v.*
Tindal, Wilson *v.*
Tobin, Ruston *v.*
Todd, Stoner *v.*
Tolley, Westley *v.*
Tombs, Hill *v.*
Tomey, Crossley *v.*
Toms, White *v.*
Toope, Pascall *v.*
Tootal Broadhurst Lee Co., Boyd *v.*
Topham, Leaf *v.*
Touts, Hill *v.*
Townsend, Davies *v.*
Townsend, R. *v.*
Townsend (R.) & Co., Ld., Molassine Co., Ld. *v.*
Trapp & Co., Adhesive Dry Mounting Co., Ld. *v.*
Tremere, Lainson *v.*
Trigg, Hall *v.*
Truman, Hall *v.*
Tubeless Tyre and Capon Heaton, Ld., Pneumatic Tyre Co. *v.*
Tullis, Dick *v.*
Tupper, Morewood *v.*
Turner, Beard *v.*
Turner, Elliot *v.*
Turner, Winter *v.*
Turton, Turton *v.*
Tweedale, Howard *v.*

ULLMANN, Gramaphone and Typewriter, Ld. *v.*
Union Boot and Shoe Machine Co., English and American Machinery Co. *v.*
Union Oil Mills, Wilson *v.*
United Alkali Co., Ld., Acetylene Illuminating Co., Ld. *v.*
United Flexible Metallic Tubing Co., Ld., Crowther *v.*
United Motor Co., De Young *v.*
United Rubber Works, Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
United Telephone Co., Barney *v.*
Unwin, Heath *v.*
Upton, Smith *v.*
Urry, Automatic Diversions Syndicate *v.*
Usher, Lines *v.*

VAN Vlissingen, Caldwell *v.*
Vaucher, Newton *v.*
Vestry of Bermondsey, Attorney-General *v.*
Vickers, Siddell *v.*
Victoria Press Manufacturing Co., Elder *v.*
Victoria Rubber Co., Moseley *v.*
Vivian, Muntz *v.*

WAGSTAFFE, Palmer *v.*
Wakeham, Legge *v.*
Walker, Betts *v.*
Walker, Cheaving *v.*
Walker, Collins *v.*
Walker Mitchell, John Varey, Ld. *v.*
Walker, Power *v.*
Walker, United Telephone Co. *v.*
Wallington, Weston & Co., Sirdar Rubber Co., Ld. *v.*
Wallis, Crow *v.*
Wallis, R. *v.*
Wallis and Stevens, Ld., Foden *v.*
Wallwork, Cleaver *v.*
Walter, Patent Type Founding Co. *v.*
Wapshaw Tube Co., Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
Warmer, Stocker *v.*
Warrillow, Pneumatic Tyre Co. *v.*
Water Tube Boiler and Engineering Co., Babcock and Wilcox, Ld. *v.*
Waterloo & Co., Driffield *v.*
Watson, Grafton *v.*
Watson, Haggenmacher *v.*
Watts, Beston *v.*
Webb, Copeland *v.*
Webb, Kynoch & Co., Ld. *v.*
Webber, Howes *v.*
Webber, Parmenter *v.*
Webster, Foxwell *v.*
Welch, Thomas *v.*
Weldite, Ld., Thermit, Ld. *v.*
Weller, Fradella *v.*
Wells, Minter *v.*
Wells, Parker *v.*
Welsbach Incandescent Gas Light Co., Ld., Bevan *v.*
West London Cycle Works, Lees *v.*
West London Rubber Co., Pneumatic Tyre Co. *v.*
Wheeler, R. *v.*
White, Baker *v.*
White (R.) & Sons, Ld., Saccharin Corporation, Ld. *v.*
White, Thomson & Co., Kelvin *v.*
White, Young *v.*
Whitecross Co., Lang *v.*
Whitehead, Duckett *v.*
Whitlingham, Cooper *v.*
Whitworth, Roskell *v.*
Wholesale Incandescent Fittings Co., Anti-Vibration Incandescent Lighting Co., Ld. *v.*
Wigan & Co., Lee *v.*
Wigg, Brooke *v.*
Wilby, Gillett *v.*
Wild, Saccharin Corporation, Ld. *v.*
Wild, Wheatstone *v.*
Wild, Wren *v.*
Wilk's Patent, Thornborough *v.*
Williams, Elsas *v.*
Williams, Minter *v.*
Williams, Stead *v.*
Williams, Thomas *v.*
Williams, Williams *v.*
Wills, Dawson *v.*
Wilmott, Betts *v.*
Wilson, Clement Talbot, Ld. *v.*
Wilson, Bowden's Patent Syndicate, Ld. *v.*

Wilson, Church (Walter C.) Engineering Co. *v.*
Wilson, Dunlop Pneumatic Tyre Co., Ld. *v.*
Wilson, Fenner *v.*
Wilson, Grover and Baker Sewing Machine Co. *v.*
Wilson, Newall *v.*
Wilson, Singer Manufacturing Co. *v.*
Wilson & Co. (Barnsley), Ld., Wilson *v.*
Wilson & Co. (Barnsley), Ld., Wilson Brothers Bobbin Co., Ld. *v.*
Windover, Morgan *v.*
Winter, Thomas *v.*
Winter, Turner *v.*
Winyard, Youatt *v.*
Wolff, Marsh *v.*
Wolstenholms, Jackson *v.*
Wood, Lister *v.*
Wood, Siddell and Hilton, Ld. *v.*
Wood, Trotman *v.*
Woodhouse, Edison and Swan Co. *v.*
Woodley, David *v.*
Worthing Skating Rink Co., Thorn *v.*
Wren, Bercham *v.*
Wright, Bessmans *v.*
Wright, Hassall *v.*
Wright and Butler, Ld., Tilghman's Patent Sand Blast Co. *v.*
Wrightson, Richmond & Co., Ld. *v.*
Wrigley, Bainbridge *v.*
Wyatt, Johnson *v.*

YATES, Mathias *v.*
Yeatley Vacuum Hammer Co., Pilkington *v.*
York Street Flax Spinning Co., Pirrie *v.*
Young, Adair *v.*
Young, Edison United Phonograph *v.*
Young, Fernie *v.*
Young, Morris *v.*
Young, Scott *v.*
Yuill, May *v.*

ZIMMER, Wood *v.*

LETTERS PATENT FOR INVENTIONS.

CHAPTER I.

OBTAINING LETTERS PATENT FOR INVENTIONS.

Prerogative of the Crown.

Crown exercises its prerogative

No person can demand protection for an invention by letters patent as of right. The power of the Crown to grant letters patent is purely discretionary. It was exercised during, and most probably before, the reign of Edward III. (*a*). It is preserved by the Statute of Monopolies with reference to new inventions (*b*), and is not suspended during the minority or other incapacity of the reigning Sovereign (*c*).

through the medium of certain officers.

The Crown exercises its prerogative in the matter of granting patents for inventions through the medium of certain officials—viz., the Comptroller-General of the Patent Office, and the Attorney-General, or the Solicitor-General.

Grant is made at the patentee's peril.

Every grant of letters patent is made at the grantee's peril. The Crown in no way whatever guarantees the validity of the grant if the representations and conditions on the strength of which it is made are not rigidly correct and fulfilled.

Practice is regulated by Acts and rules made thereunder.

The practice, which it is necessary for any person desirous of obtaining a grant of letters patent to observe, is laid down and regulated by the Patents and Designs Act, 1907, together with the rules and regulations from time to time made by the Board of Trade in pursuance of the powers conferred by that statute.

(*a*) Year Book, part iv., 40 Edw. 3, fol. 17, 18; Darcy *v.* Allen (1602), Moore's Reps. 675.

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

(*c*) Co. Lit. 43b; 5 Co. 27a; 7 Co. 12a. See 7 Edw. 7, c. 29, s. 97.

Patent Agents.

Patent Agents.

It is the usual practice for a would-be patentee to engage the services of a patent agent to aid him in filling up the necessary forms, drafting the specifications, meeting objections, and attending the hearing of oppositions, if any, to the grant of the patent.

The form of application, and also any notice of abandonment of, or of intention not to proceed with, the application, must be signed by the applicant himself; but all other communications between the applicant and the Comptroller, and all attendances by the applicant upon the Comptroller or Examiner, may be made by or through an agent duly authorised to the satisfaction of the Comptroller, and resident, or having a place of business, in the United Kingdom. In any particular case the Comptroller may, if he think fit, require the personal signature or presence of the applicant (*d*).

Qualifications of registered patent agents.

With a view to avoid the abuse of ill-qualified persons practising as patent agents, Parliament, by sect. 1 of the Patents, Designs, and Trade Marks Act, 1888 (the provisions of which are incorporated in the Patents and Designs Act, 1907, s. 84), provided that, if after the passing of that Act any person describe himself as a patent agent, either by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent, he is liable on summary conviction to a fine not exceeding twenty pounds. But any person who proves to the satisfaction of the Board of Trade that he had been practising *bonâ fide* as a patent agent prior to December 24, 1888, is entitled as of right to be registered (*e*). A person who is not registered and knowingly describes himself as a "Patent Agent" is liable to fine, on summary conviction, notwithstanding that he *bonâ fide* practised and described himself as a patent agent before December 24, 1888—*i.e.*, by having so practised a person does not acquire a right, and registration and payment of fees is a condition precedent to his being allowed to continue so practising and describing himself (*f*).

(*d*) P. R. (1908), r. 9.
(*e*) 7 Ed. 7, c. 29, s. 84 (2).
(*f*) Storey *v.* Graham (1899), 16 R. P. C. 106.

Patent Agents.

Persons seeking to be registered as patent agents must satisfy various examinational tests before they are entitled to be placed on the register (*g*).

Register of Patent Agents.

Correct copies of the Register of Patent Agents are published annually, and may be obtained at the Patent Office, or any of the depôts where its publications are kept on sale, for the sum of one shilling. In this list will be found the names and business addresses of all the registered members of the Chartered Institute of Patent Agents for the time being.

Register of Patent Agents' Rules.

The Board of Trade have power to make such general rules as they think expedient for regulating the practice of registration (*h*). The Register of Patent Agents' Rules for the time being in force will be found in the Appendix (*i*). The rules made by the Board of Trade are submitted to Parliament, and, if not annulled by either House within forty days after they are laid on the table, they acquire the force of an Act of Parliament, and the Courts will not entertain the question of any rules made with the prescribed formalities being *ultra vires* (*k*). In case of the infraction of any rule for which a penalty is imposed—*e.g.*, practising as a patent agent without registration—the proper course is for the Institute of Patent Agents to prosecute for the penalty, and it is incompetent for the Institute or any other person aggrieved to proceed by way of action for injunction in the Supreme Court (*l*).

Anyone may act as an ordinary agent.

Notwithstanding the provisions of sect. 84, sub-sect. (1) of the Act of 1907, but, of course, subject to the new provisions of sect. 85, a person is entitled to act on behalf of another, in the matter of obtaining a patent, as an ordinary agent, and may so describe himself on every document without fear of prosecution. He is not entitled to describe himself as a "patent agent" (*m*).

With the object of remedying abuses arising from certain persons practising as agents and not being registered patent agents, Parliament by sect. 48 of the Patents and Designs

(*g*) R. P. A. R. (1908), r. 7.
(*h*) 7 Edw. 7, c. 29, s. 86.
(*i*) P. 426, *post*.
(*k*) Chartered Institute of Patent Agents *v.* Lockwood (1893), 10 R. P. C. 167; 11 R. P. C. 374.
(*l*) *Ibid.*
(*m*) See Graham *v.* Fanta (1872), 9 R. P. C. 164; Graham *v.* Eli (1898), 15 R. P. C. 259.

Patent Agents.

(Amendment) Act, 1907, which is sect. 85 of the Patents and Designs Act, 1907, made the following statutory provisions:—

(1) Rules (*n*) under this Act may authorise the Comptroller to refuse to recognise as agent in respect of any business under this Act any person whose name has been erased from the register of patent agents, or who is proved to the satisfaction of the Board of Trade, after being given an opportunity of being heard, to have been convicted of such an offence or to have been guilty of such misconduct as would have rendered him liable, if his name had been on the register of patent agents, to have his name erased therefrom, and may authorise the Comptroller to refuse to recognise as agent in respect of any business under this Act any company which, if it had been an individual, the Comptroller could refuse to recognise as such agent.

(2) Where a company or firm acts as agents, such rules as aforesaid may authorise the Comptroller to refuse to recognise the company or firm as agent if any person whom the Comptroller could refuse to recognise as an agent acts as director or manager of the company or is a partner in the firm.

(3) The Comptroller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in the United Kingdom or the Isle of Man.

Improper use of the words "Patent Office."

If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any words suggesting that his place of business is officially connected with, or is the Patent Office, he is liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds (*o*).

Application.

Any person may make an application.

Any person, whether a British subject or not, is entitled to make an application for a patent, and two or more persons may make a joint application, and a patent may be granted to them jointly (*p*).

(*n*) See p. 348, *post*.

(*o*) 7 Edw. 7, c. 29, s. 89 (5).

(*p*) 7 Edw. 7, c. 29, s. 1.

Application.

How the application must be made.

The application must be made on one of the prescribed forms (*q*).

The Comptroller permits the amendment of an application by adding the name of a party, not an inventor, as a co-applicant, or by removing the name of any party who has joined with the inventor and wishes to retire from the application.

If an invention is partly original and partly communicated from abroad, it is doubtful whether it is incumbent on the applicant to distinguish which is which (*r*); and it is an undecided point whether or not the omission to do so would render the patent void (*s*). It is the usual practice, however, to state on the application form that the invention is partly communicated from abroad.

Form No. 1 is not applicable to the case of a corporation alone, but is intended for cases where there is a personal applicant who is the true and first inventor. Form No. 1A is intended for use where there has been a communication to the applicant from abroad, whether the communicatee is a corporation or a private individual (*t*).

Application must be left at or sent by post to the Patent Office,

The applicant having filled up the form of application, which must be signed by himself, must leave it at, or send it by post to, the Patent Office. If sent by post as a prepaid letter it will be deemed to have been left at the Patent Office at the time when the letter containing the same would be delivered in the ordinary course of post, and, in case it becomes necessary to prove such sending, it will be sufficient to prove that the application was properly addressed and posted (*u*).

and must contain a declaration, and be accompanied by a specification.

The application must contain a declaration, which may be either a statutory declaration under the Statutory Declarations Act, 1835, or not, as may be from time to time prescribed (*x*), to the effect that the applicant is in possession of an invention whereof he claims, or, in the case of a joint application, one or more of the applicants claims or claim, to be the true and

(*q*) 7 Edw. 7, c. 29, s. 1 (2). The forms at present in use will be found in the second schedule to the Patents Rules, 1908, p. 377, *post*.

(*r*) Renard *v.* Levinstein (1864), 10 L. T. N. S. 177.

(*s*) *Re* Avery's Patent (1887), L. R. 36 Ch. D. 307; Moser *v.* Marsden (1893), 10 R. P. C. 209, 350.

(*t*) See Société Anonyme du Générateur du Templé's Patent (1896), 13 R. P. C. 54.

(*u*) 7 Edw. 7, c. 29, s. 5 (2); s. 81; P. R. 1908, r. 7.

(*x*) 7 Edw. 7, c. 29, s. 1 (4).

Application.

first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or a complete specification (*y*). Drawings (if any) attached to the specification are deemed to form part of it, and the Comptroller has power to require that suitable drawings shall be supplied with the specification, or at any time before acceptance of the same (*z*).

The form of declaration at present in use for the purpose of an application for a grant of a patent (*a*) is not a declaration under the Statutory Declarations Act, 1835.

Statutory declarations for use in the Patent Office are to be made and subscribed in a certain manner,

Statutory declarations required for use in the Patent Office are to be headed, made and subscribed as stated in Patents Rules, 1908, rr. 106 and 107.

If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration, or doing anything required or permitted by or under the Act of 1907, the guardian or committee (if any) of the person subject to the disability, or, if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing, in the name and on behalf of the person subject to the disability (*b*). An appointment may be made by the Court for these purposes upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the declaration or the doing of the thing (*c*).

and are exempt from duty under Stamp Act, 1870.

A statutory declaration, made under the provisions of the Statutory Declarations Act, 1835, and forming part of an application for a patent, is exempt from the stamp duty charged on a statutory declaration, under the provisions of the Stamp Act, 1870 (*d*).

Application should comprise only one invention.

An application for a patent should comprise only one invention. Sect. 14, sub-sect. (2) of the Patents and Designs Act, 1907, like the corresponding section of the repealed Act of 1883, provides that every patent shall be granted for one invention only; but the specification may contain more than one claim, and it is not competent to take any objection to the

(*y*) 7 Edw. 7, c. 29, s. 1 (3).
(*z*) 7 Edw. 7, c. 29, s. 2 (2).
(*a*) See p. 377, *post*.
(*b*) 7 Edw. 7, c. 29, s. 83 (1).
(*c*) 7 Edw. 7, c. 29, s. 83 (2).
(*d*) 47 & 48 Vict. c. 62, s. 9.

patent on the ground that it has been granted for more than one invention.

Application.

Examination and Acceptance of Application.—Every application for a patent is referred by the Comptroller-General to one of the examiners who are appointed by the Board of Trade (*e*), and whose duty it is to ascertain whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and whether the title sufficiently indicates the subject-matter of the invention (*f*). It is also the examiner's duty to report whether the invention is contrary to law and morality (*g*), and whether the application comprises more than one invention (*h*). If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not, or have not, been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, or that the application comprises more than one invention, the Comptroller may, subject to appeal to the law officer, refuse to accept the application, or require that the specification or drawings be amended before he proceeds further; and in the latter case the application must, if the Comptroller so directs, bear date as from the time when the requirement is complied with (*i*). It is also competent to the Comptroller to inquire whether the alleged invention is an invention within the definition contained in sect. 93 of the Patents and Designs Act, 1907—*i.e.*, whether it is a manufacture within the meaning of sect. 6 of the Statute of Monopolies, and, subject to appeal to the law officer, to refuse the application, if he is satisfied that it is not (*j*).

Every application is referred to an examiner appointed under the Act of 1883 to discharge certain duties.

Comptroller acts on the report of the examiner.

The Comptroller has power to refuse to grant a patent for an invention of which the use would, in his opinion, be contrary to law and morality (*k*).

The Comptroller is not entitled to exercise any discretionary power given to him by or under the Act of 1907 adversely to an applicant without (if so required within the prescribed time

Exercise of discretionary powers by Comptroller.

(*e*) See 46 & 47 Vict. c. 57, s. 83; 7 Edw. 7, c. 29, s. 63.
(*f*) 7 Edw. 7, c. 29, s. 3.
(*g*) 7 Edw. 7, c. 29, s. 75.
(*h*) 7 Edw. 7, c. 29, s. 14.
(*i*) 7 Edw. 7, c. 29, s. 3.
(*j*) Cooper's Patent (1901), 19 R. P. C. 53; Johnson's Patent (1901), 19 R. P. C. 56.
(*k*) 7 Edw. 7, c. 29, s. 75.

Application.

by the applicant) giving the applicant an opportunity of being heard (*l*). Both the Comptroller and the law officer have now power to award costs of proceedings before them, and to direct by whom and how the same are to be paid (*m*).

Right of appeal to the law officer from any decision of the Comptroller.

In any case where a person, having the right, intends to appeal to the law officer from a decision of the Comptroller, he must, within fourteen days from the date of the decision appealed against, file in the Patent Office a notice of such intention, stating the nature of the decision appealed against, and whether the appeal is from the whole or part only, and if so what part, of the decision, and he must otherwise conform to the Law Officers' Rules (*n*). Where the right of appeal to the law officer lies against a decision of the Comptroller, the effect of Nos. 1 and 2 of the Law Officers' Rules is to limit the hearing before the law officer to points specifically raised by the notice of appeal; and in opposition cases where a notice of appeal is given as to parts only of the Comptroller's decision, the person receiving such notice, if he desires to question other parts of the decision, must give a counter notice. If the original notice of appeal is only given just before the expiration of the fourteen days, the time for giving a counter notice may be extended under Rule 5 (*o*).

Example of an objection to the title.

Brown's Application (*p*) for a patent under the title "improvements in casks and tubs" may be given as an example of an objection taken to the title. It was accompanied by a complete specification in the first instance. The specification stated that the invention was applicable to barrels or other casks and also to tubs *and analogous vessels*, in which the staves are formed with a croze or groove for receiving the head or bottom. The object of the invention was stated to be to secure the bottom or head against outward displacement, and also to support the staves beyond the croze against any force or blow delivered upon the exterior of the staves such as would tend to break off their ends projecting beyond the croze. The Comptroller refused to accept the specification unless the words "and analogous vessels" were added to the title or omitted from the specification, on the ground that the title did not,

(*l*) 7 Edw. 7, c. 29, s. 73; see P. R. (1908) rr. 102—105.
(*m*) 7 Edw. 7, c. 29, ss. 39, 40.
(*n*) See p. 424, *post*.
(*o*) In the Matter of Bairstow's Patent (1888), 5 R. P. C. 289.
(*p*) (1887), Griff. L. O. C. 1.

Application.

in view of the words "and analogous vessels" in the body of the specification, sufficiently indicate the subject-matter of the invention. The law officer on appeal, however, reversed the Comptroller's decision, being of opinion that the title, taken together with the claims, which were specific, was sufficient, and he also pointed out that the patentee is entitled to frame his title in his own way, provided he does not infringe the rules of the statute.

Application comprising more than one invention may be amended by limitation to one invention.

The Patent Rules, 1908 (*q*), provide that where a person making application for a patent has included in his specification more than one invention, the Comptroller may require or allow him to amend such application and specification and drawing, or any of them, so as to apply to one invention only, and the applicant may make application for a separate patent for any invention excluded by such amendment. Every such last-mentioned application may, if the Comptroller at any time so direct, bear the date of the original application, or such date between the date of the original application and the date of the application in question, as the Comptroller may direct, and shall otherwise be proceeded with as a substantive application in the manner prescribed by the Act and the Rules thereunder for the time being in force.

The Rules further provide that where the Comptroller has required or allowed any application, specification, or drawing to be amended as aforesaid, such application shall, if the Comptroller at any time so direct, bear such date, subsequent to the original date of the application and not later than the date when the amendment was made, as the Comptroller shall consider reasonably necessary to give sufficient time for the subsequent procedure relating to such application.

Test of one invention.

When a specification comprises several distinct matters they are not deemed to constitute one invention by reason only that they are all applicable to or may form parts of an existing machine, apparatus, or process (*r*).

(*q*) P. R. (1908), r. 13 (1).

(*r*) P. R. (1908), r. 13 (1). The following cases are given as illustrations of the circumstances in which an applicant is required to amend his application so as to limit it to one invention only:—

In Hearson's Patent (1885), Griff. P. C. 266, an applicant applied for a patent, under the title "Improvements in apparatus for rapidly heating flowing water, *a part of which improvements is applicable to other purposes*," and after describing in his provisional specification an apparatus consisting of several parts, including improved mechanism, by which the turning of the taps of a geyser, other-

Application.

Lord *Herschell*, when Solicitor-General (*s*), gave it as his opinion that the general object of the invention is the test by which the question of one invention must be decided, and in reference to a particular case said—

> "If you have a particular general object of an invention to make rails rest more securely, and you describe one, or two, or three devices of an analogous nature, cognate devices, for carrying it into effect, I should say they were all one invention; but if there is no common purpose, so that you could say, 'I use this as a substitute for that,' both serving the same purpose, although there is some difference between them, but they are to serve some different purpose,

wise than in the required order, was prevented, stated: "The arrangements hereinbefore described for locking the water and gas-cocks is applicable to oxyhydrogen light apparatus, and to other apparatus in which two cocks, or a number of cocks, are required to be turned in a certain order," he was ordered to amend his application by striking out from the title the words in italics. Both the Comptroller and the law officer were of opinion that the application, as it stood before amendment, included more than one invention, and the latter pointed out that the applicant was entitled, if he so desired, to make a separate contemporary application for his new and improved cock, or arrangement of cocks by itself, and that he might of course describe the cock, or arrangement of cocks, as part of his combination or apparatus which he claimed to have invented, but that he should in doing so refer to his contemporary application if he desired to make one.

In Robinson's Patent, Griff. P. C. 267, a person applied for a patent for an invention of "improvements in the art of producing and utilising induced electrical currents for telegraphy and other purposes," and it appeared that the invention consisted in the employment in telegraphic transmitting and receiving instruments of a certain appliance. The Comptroller objected to the title, stating that the appliance could be applied to purposes other than telegraphic, and required an amendment so as to limit the invention to such purposes, and held that, if the applicant desired to claim the general use of the appliance for the production of induced currents, it must form the subject of a separate patent. On appeal, the law officer informed the applicant that if he intended to claim, as a combination, the whole of the apparatus as one telegraphic apparatus, then it might all be included in one specification; but if he was including, for all purposes, the invention of "the appliance," then it was something different, which could not be protected by the same patent. The law officer further stated that he would allow that, if the whole were limited to telegraphy, because that would make an improved telegraphic arrangement, and although consisting of several parts, he would allow it to be included in one patent; but if there were to be two separate things, which could only be allowed together because they went to make up one better kind of instrument or machine, then he would never allow the use of a part of that for a purpose independent of the main object of the machine. It was therefore a question for the applicant whether it answered his purpose better to protect "the appliance" for all purposes, or to protect improved telegraphic apparatus, consisting of the employment of "the appliance" therein. The applicant elected to take a patent for the general use of "the appliance," and the law officer allowed the title to be amended to "improvements in the art of producing and utilising induced electrical currents," the description of the telegraphic apparatus being struck out of the provisional specification.

(*s*) Jones's Patent, Griff. P. C. 265.

there is no connection between them, except that both are used in connection with rails, and it strikes me that would be two inventions. I should always allow alternative devices for producing a particular object as one invention. But if you say, 'I have invented six different kinds of railway sleepers, each of which has its own merits and purposes and objects distinct,' then those are six inventions." Application.

It is not easy to generalise from the practice of the Patent Office, but it is safe to state that examiners do not now accept as conclusive the test of "one general object" in support of a plea to claim alternative forms, and only permit separate claims for alternative solutions of the same problem when the problem is recognised and solved for the first time. Co-operating elements of a new combination may still be claimed in one patent, but, generally, interdependence is not recognised between two arrangements either of which can be used not only with the other but also with any known equivalent. A complete machine and a subordinate integer cannot be claimed in the same patent when the subordinate integer is unnecessary to the carrying out of the invention as a whole, and in itself has a character independent from that of the complete machine. On the other hand, the Office makes no objection to an applicant making separate claims for a process, apparatus for carrying out such process and the product thereof.

With reference to sect. 14 (2) of the Patents and Designs Act, 1907, which provides that every patent shall be granted for one invention only, and Rule 13 (1) of the Patents Rules, 1908, which prescribes that when a specification comprises several distinct matters they shall not be deemed to constitute one invention by reason only that they are all applicable to or may form part of an existing machine, apparatus or process, it has been stated by the law officer as follows:—It is impossible to give a definition of what constitutes "one invention" or a "distinct matter" which would be applicable to every case. Each case must be dealt with in reference to its own facts. The question is one of importance to the Office, because it has now to make a search in accordance with sect. 7 of the Patents and Designs Act, 1907, and if a patent is allowed comprising several distinct matters, and indeed involving several inventions, a search would have to be made under many

Application.

classes, and, moreover, upon the filing of subsequent applications, as the patent granted would have to be filed in several classes, and parts only of it would be applicable to those classes, a large amount of extra labour would be involved in searching beyond that which would be necessary were the claims subdivided into appropriate classes. The question cannot be decided upon any strict principle. A certain amount of discretion must be permitted to the Comptroller, and unless he exercises that discretion in any way which is clearly unreasonable the law officer ought not to interfere with it (*t*).

Separate patents granted to joint applicants who are inventors of distinct parts.

If an application be made by two or more joint applicants, and it appears that the invention consists of distinct parts, invented separately by the applicants respectively, separate patents may be granted to the actual inventors in respect of the separate and distinct parts (*u*).

Appeal from Comptroller on refusal to accept application, or to require an amendment.

Where the Comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer, who shall, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions, if any, the application shall be accepted (*x*).

Notice of acceptance of application.

If the application is accepted the applicant will receive due notice to this effect (*y*), and the invention may, during the period between the date of the application and the date of sealing the patent, be used and published without prejudice to the patent to be granted for the same (*z*); though until the patent is granted the applicant cannot sue at all (*a*); and even then he is not entitled to sue in respect of infringements committed before the acceptance and publication of the complete specification (*b*).

An application for a patent may be abandoned at any time by the true and first inventor. Technically the application is not withdrawn, but there is a failure to proceed (*c*). If there are joint applicants, and the applicant alleged to be the true

(*t*) See per Evans, S.-G., Z.'s Application (1910), 27 R. P. C. 285.

(*u*) See Craig and Macfarlane's Application, P. M. J. Vol. IV. 3rd series, p. 366.

(*x*) 7 Edw. 7, c. 29, s. 3 (3). The practice on appeal to the law officer is regulated by the Law Officer's Rules, see p. 424, *post*.

(*y*) 7 Edw. 7, c. 29, s. 3 (4).

(*z*) 7 Edw. 7, c. 29, s. 4.

(*a*) 7 Edw. 7, c. 29, s. 10.

(*b*) 7 Edw. 7, c. 29, s. 13; Vol. I. pp. 181, 389.

(*c*) Wool, Hide and Skin Syndicate *v.* Riches (1902), 19 R. P. C. 127; A. and B.'s Application (1911), 28 R. P. C. 454.

and first inventor signifies his desire that the application should not proceed, no patent can be granted to the other joint applicant (*d*). Application.

Statutory Offences.—Sub-sects. 2 and 3 of sect. 89 of the Patents and Designs Act, 1907, which are a re-enactment of sect. 105 of the Act of 1883, provide that any person who represents falsely that any article sold by him is a patented article shall be liable for every offence, on summary conviction, to a fine not exceeding five pounds. The effect of sect. 10 of the Act of 1907, which is the same as sect. 15 of the repealed Act of 1883, is to render it no offence to represent an article as "patented" when the complete specification has been accepted, though the patent has not been sealed (*e*). Representation that an article is patented where no patent has been granted.

It is probably no offence under the Act of 1907 to represent an article as patented when the patent has expired, and the fair implication is that the article was made under an expired and not under an existing patent (*f*).

A person is deemed to represent that an article is patented if he sells the article with the word "patent," "patented," or any other word expressing or implying that a patent has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to the article (*g*).

The grant of a patent under the Act of 1907 does not authorise the grantee to use the Royal Arms or to place the Royal Arms on any patented article. And any person who, without the authority of His Majesty, uses in connection with any business, trade, calling, or profession, the Royal Arms (or arms so nearly resembling the same as to be calculated to deceive) in such a manner as to be calculated to lead to the belief that he is duly authorised to use the Royal Arms, is liable, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding twenty pounds (*h*). But these provisions do not affect the rights. if any, of the proprietor of a trade mark containing the Royal Arms to continue the use of the same (*i*). Unauthorised use of the Royal Arms.

In Scotland, any offence under the Act of 1907 declared to Penalties in Scotland.

(*d*) *Ibid.*

(*e*) R. *v.* Townsend (1896), 13 R. P. C. 265; in R. *v.* Wallis (1886), 3 R. P. C. 1; and R. *v.* Crampton (1886), 3 R. P. C. 367, fines were inflicted.

(*f*) See Cheavin *v.* Walker (1877), L. R. 5 Ch. D. 850; Merchandise Marks Act, 1887, s. 3.

(*g*) 7 Edw. 7, c. 29, s. 89 (3); but see Cheavin *v.* Walker (1877), L. R. 5 Ch. D. 863; Linoleum Co. *v.* Nairn (1877), L. R. 7 Ch. D. 834.

(*h*) 7 Edw. 7, c. 29, s. 90.

(*i*) *Ibid.*

Application.

be punishable on summary conviction may be prosecuted in the Sheriff Court.

Penalties in the Isle of Man.

The punishment for a misdemeanour, under the Act of 1907, in the Isle of Man, is imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the Court (*k*). And any offence committed in the Isle of Man, which would in England be punishable on summary conviction, may be prosecuted, and any fine in respect thereof recovered, at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted (*l*).

Complete specification must be filed within six or, upon leave, seven months from date of application.

Filing and Examination of the Complete Specification.—If an applicant does not leave a complete specification with his application, he may leave it at any subsequent time within six months from the date of the application; and if an application is made for an extension of the time for leaving a complete specification, the Comptroller must, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding one month (*m*). Unless a complete specification is left within that time, the application will be deemed to be abandoned (*n*).

The six months is reckoned exclusively of the day of the date of the application (*o*).

Where an application for a patent has been abandoned or become void before acceptance of the complete specification, the specification or specifications and drawings (if any) accompanying or left in connection with such application are not at any time open to public inspection, or published by the Comptroller (*p*), except in cases under the convention.

Complete specification must be signed.

The complete specification must be signed by the applicant or his authorised agent, but in the case of a joint application the Comptroller will probably not refuse to accept the complete specification on the ground that it is signed by, or on behalf of, one applicant only (*q*).

(*k*) 7 Edw. 7, c. 29, s. 96 (2).
(*l*) 7 Edw. 7, c. 29, s. 96 (3).
(*m*) 7 Edw. 7, c. 29, s. 5 (1).
(*n*) 7 Edw. 7, c. 29, s. 5 (2).
(*o*) Russell *v.* Ledsam (1843), 14 M. & W. 572, 582; 16 M. & W. 633; Williams *v.* Nash (1859), 28 Beav. 93.
(*p*) 7 Edw. 7, c. 29, s. 69 (1).
(*q*) In the Matter of Grenfell and McEvoy's Patent (1890), 7 R. P. C. 151.

Application. Drawings.

The complete specification may be accompanied by drawings; and the Comptroller has power to require that drawings shall be supplied with it, or at any time before its acceptance; and drawings (if any) are deemed to be parts of the specification (*r*). Drawings, if furnished, must comply with the requirements of Patents Rules, 1908, rr. 19—26.

Distinct and clear and succinct statement of the invention claimed.

The Act of 1907, as did the Act of 1883, prescribes that a complete specification must end with a distinct statement of the invention claimed (*s*), and it is required by Rule 14 of the Patents Rules, 1908, that the statement of the invention claimed, with which a complete specification must end, shall be clear and succinct as well as separate and distinct from the body of the specification (*t*). Claims are not disallowed merely on account of their number (*u*).

Samples and specimens as to chemical inventions.

The Patents and Designs Act, 1907, comprises a new provision (which was enacted by sect. 3 of the Patents and Designs (Amendment) Act, 1907) to the effect that where the invention in respect of which an application is made is a chemical invention, such typical samples and specimens as may be prescribed shall, if in any particular case the Comptroller considers it desirable to so require, be furnished before acceptance of the complete specification (*v*); and Rule 26 of the Patents Rules, 1908, regulates the manner in which such samples, if required, are to be supplied.

The object of giving the Comptroller the above power is to prevent the granting of mere blocking patents. It is to enable the Comptroller, on behalf of the public, to be satisfied that the alleged invention will really produce the results stated. If a claim be allowed which is in terms sufficiently vague to apparently include the production of a chemical body which, as a matter of fact, the applicant cannot produce by the alleged invention, the patent may be used to harass a subsequent meritorious inventor, who, by a different invention, is able to produce such chemical body. When the Comptroller considers it desirable to call for samples and specimens, and the applicant is unable to produce them, or satisfy the Comptroller that they can be produced, the Comptroller can, upon the report of the

(*r*) 7 Edw. 7, c. 29, s. 2 (3).
(*s*) 7 Edw. 7, c. 29, s. 2 (4); see Vol. I. p. 244.
(*t*) See Bancroft's Application (1905), 23 R. P. C. 89.
(*u*) *Ibid.*
(*v*) 7 Edw. 7, c. 29, s. 2 (5); see J Y I's Application (1911), 28 R. P. C. 625.

Application.

examiner (*x*) either refuse the application or require amendment on the ground that the specification does not fairly describe the nature of the invention. This power may enable the Comptroller to prevent the dog-in-the-manger tactics which previously were, in some cases, practised by patentees whose claims were purposely drafted in language sufficiently vague to appear to claim chemical bodies which could not be produced by the alleged invention.

Examination as to form and conformity.

The complete specification is referred to an examiner for report whether it has been prepared in the prescribed manner; and, if the examiner reports that it has not been so prepared, the Comptroller may refuse to accept it until it has been amended to his satisfaction (*y*). The examiner also reports whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification, and, if the examiner reports that it is not so, the Comptroller is empowered to refuse to accept the complete specification unless and until it shall have been amended to his satisfaction; or (with the consent of the applicant) to cancel the provisional specification, and treat the application as having been made on the date on which the complete specification was left, and the application has effect as if made on that date: provided that where the complete specification includes an invention not included in the provisional, the Comptroller may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and treat the claim for the additional invention included in the complete specification as an application for that invention made on the date at which the complete specification was left (*z*). A refusal of the Comptroller to accept a complete specification is subject to appeal to the law officer, who must, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions, if any, the complete specification shall be accepted (*a*).

The requisite amendment, if any, is to be determined by the judicial act of the Comptroller, subject to appeal to the law officer. The function of deciding what the amendment is

(*x*) See *infra*.
(*y*) 7 Edw. 7, c. 29, s. 6 (2).
(*z*) 7 Edw. 7, c. 29, s. 6 (3).
(*a*) 7 Edw. 7, c. 29, s. 6 (4).

Application.

to be is not delegated by the Act to the examiner, though the application proceeds if he reports favourably to the applicant (*b*).

The fact that the complete specification narrows the scope of the provisional is not a ground on which the Comptroller or law officer is justified in refusing it, and the applicant may be permitted to excise any abandoned portion of the provisional specification (*c*). Thus in *Everitt's Application* (*d*) the Comptroller refused to accept the complete specification on the ground that it claimed only a special means of carrying a principle into effect, whilst the provisional was apparently for the principle; but this decision was reversed on appeal, on the ground that in law the Comptroller was not entitled to refuse to accept the complete specification, which only narrowed down the ambit of the provisional and did not go outside it.

Examination as to novelty.

The examiner, when the complete specification has been deposited, in addition to the report above referred to forthwith makes an investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification), published before the date of the application, and left pursuant to any application for a patent made in the United Kingdom within fifty years next before the date of the application (*e*). A specification which is open to public inspection under the provisions of sect. 91, sub-sect. (3) of the Act of 1907 is deemed to be published for the purposes of this investigation, though there is no evidence that it has in fact been inspected by the public (*f*). This investigation extends to specifications published after the date of the application in respect of which the investigation is made, and being specifications which have been deposited pursuant to prior applications (*g*); and for this purpose an application is deemed to be prior to another application if the patent applied for when granted would be of prior date to the patent granted pur-

(*b*) See C.'s Patent (1890), 7 R. P. C. 256.
(*c*) Everitt (1886), Griff. L. O. C. 27; Vol. I. pp. 178, 179.
(*d*) (1888), Griff. L. O. C. 27.
(*e*) 7 Edw. 7, c. 29, s. 7 (1).
(*f*) Parsons and Stoney's Application (1910), 27 R. P. C. 491.
(*g*) 7 Edw. 7, c. 29, s. 8 (1).

Application.

suant to that other application (*h*). It may well be that a specification published after the date of the application, and deposited pursuant to an application which is, or is deemed to be, a prior application, will not be published till after the applicant's specification has been accepted, or a patent has been granted to him. It is specially provided by the statute that in such a case the applicant shall, "whether or not his specification has been accepted or a patent granted to him, be afforded such facilities as may be prescribed for amending his specification, and in the event of his failing to do so, the Comptroller shall, in accordance with such procedure as may be prescribed, determine what reference, if any, to other specifications ought to be made in his specification by way of notice to the public" (*i*).

The practice as regards the investigation of specifications published before the date of the application is governed by Patents Rules, 1908, rr. 28—32, and as regards the investigation of specifications published after the date of the application, it is governed by Patents Rules, 1908, rr. 33—35. The rules prescribe the form in which references to prior specifications, if necessary, are to be made, and provide that when, after the acceptance of the specification has been published, any amendment has been made, or any reference inserted therein, notice thereof shall be advertised in the Official Journal (*k*).

In November, 1909, the Patent Office issued a notice in the following terms:—"In the earlier working of the Patents Act it was thought convenient not to insist too stringently upon a strict observance of Patents Rules 30 and 31. It has been found, however, in practice that this has occasioned increasing work to the Patent Office by the multiplication of correspondence, and other communications, and has tended to delay the progress of cases.

As a consequence, it has been found impossible to cope with the extra work entailed under the present procedure, and, in carrying out the Rules, the following Office practice will therefore in future be adopted on and after December 1st:—

(1) Rule 30 must be complied with, but where good cause is shown, time will be allowed—*e.g.*, when the appli-

(*h*) 7 Edw. 7, c. 29, s. 8 (3). (*i*) 7 Edw. 7, c. 29, s. 8 (2) (3).
(*k*) P. R. (1908), r. 35.

cant is abroad or the complexity of the case requires it. Application.

(2) The interviews and correspondence between examiner and applicant will be restricted as far as possible to the absolute necessities of the case, and will aim at bringing to a clear issue at the *earliest possible date* the differences between the applicant and the examiner. A time limit will be imposed wherever practicable in accordance with the circumstances and complexity of the case.

(3) No hearing will be appointed unless there is a direct issue between the examiner and the applicant, or unless the applicant fails to submit amendments or make a real endeavour to avoid the citations within the time limited. When the issues are defined or when agreement is clearly impossible, notice of a hearing for a future date will at once be given.

(4) If the applicant desires any amendments to be considered at the hearing, other than those which he has submitted to the examiner under Rule 30, such amendments should be submitted seven days at least before the date of the hearing.

(5) At the hearing, whether attended or not by the applicant, the Comptroller may, as an alternative to the insertion of references, prescribe amendments which will be to his satisfaction under sect. 7, sub-sect. (4), and in such case the applicant must elect within such time as may be fixed by the Comptroller whether he agrees to the prescribed amendments or to the insertion of a reference. If no communication is received within the time prescribed, the references will be inserted. In cases requiring special treatment a limited time may be allowed for the precise form of amendment to be settled, and the hearing adjourned, if necessary.

(6) As far as possible, all questions between examiner and applicant will be decided at the hearing, and, except as indicated herein, no further opportunity of amendment will be allowed to the applicant, and the specification will only be accepted with the amendments or references prescribed in the Comptroller's decision.

Application.

(7) If after the decision has been given or the applicant has made his election under paragraph 5 the applicant desires to amend, he must make a special application for that purpose to the Comptroller, and for this purpose Form 17, having a 30*s*. stamp, may be used. If the amendments suggested are satisfactory to the Comptroller, a statutory reference may be removed."

If on investigation it appears that the invention has been wholly or in part claimed or described in any specification published before the date of the application, the applicant is informed thereof, and he may, within such time as may be prescribed, amend his specification, and the amended specification is then investigated in like manner as the original specification (*l*).

Acceptance of the Complete Specification.—If the Comptroller is satisfied that no objection exists to the specification on the ground that the invention claimed thereby has been wholly or in part claimed or described in a previous specification as before mentioned, he, in the absence of any other lawful ground, accepts the specification (*m*). If, however, he is not so satisfied after hearing the applicant, and unless the objection be removed by amending the specification to his satisfaction, he determines whether a reference to any, and, if so, what prior specification or specifications ought to be made in the specification by way of notice to the public. Provided that the Comptroller, if satisfied that the invention claimed has been wholly and specifically claimed in any specification to which the investigation has extended, may in lieu of requiring references to be made in the applicant's specification as aforesaid refuse to grant a patent (*n*). It is to be noticed that this proviso does not give the Comptroller power to refuse the grant when the invention is shown to have been wholly or in part described, but not claimed, in a complete specification not more than fifty years old. The reason for this is that Parliament did not intend to give the Comptroller power to decide doubtful questions of novelty which are often the most debateable the Courts have to determine. It is also to be noticed that the words "wholly and specifically claimed" are a direction that

(*l*) 7 Edw. 7, c. 29, s. 7 (2). (*m*) 7 Edw. 7, c. 29, s. 7 (3).
(*n*) 7 Edw. 7, c. 29, s. 7 (4).

Application.

when it is not established that there is an entire and specific claim to the invention in a specification not more than fifty years old, the grant is to be allowed, but subject to such specific or other references to prior specifications as may be required to protect the public. The reason for the amendment of the specification, or the insertion of specific references or disclaimers, upon the reports of the examiner are similar to those for requiring amendment or specific references or disclaimers when an opponent partially establishes a case of prior claim (*o*). An appeal lies to the law officer from the Comptroller's decision in this matter (*p*).

Investigations no guarantee of validity.

The investigations and reports above referred to are no guarantee of the validity of the patent, if and when obtained; and no liability attaches to the Board of Trade or any officer thereof by reason of, or in connection with, any such investigation or report, or any proceeding consequent thereon (*q*).

Reports of examiners are not published.

Reports of examiners are not in any case published or open to public inspection, and are not liable to production or inspection in any legal proceedings under the Act of 1907, unless the Court or officer having power to order discovery in such legal proceedings shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed (*r*). It consequently follows that where there are two applicants for a patent for the same or analogous inventions each cannot know the nature of the other's specification until the rival complete specifications themselves are open to public inspection (*s*).

Amendment of a complete specification before and after acceptance.

The applicant may, under sect. 21 of the Patents and Designs Act, 1907, seek leave to amend his specification by way of disclaimer, correction or explanation (*t*), at any time even though the complete specification has not been accepted (*u*). Sect. 21 does not authorise the amendment of the title or provisional specification, but it is competent to the Comptroller to allow a disclaimer of part of the invention covered by the title, or under sects. 3, 6 and 7 of the Act to amend the title by way of an excision which does not extend its scope (*x*). If the

(*o*) See pp. 56—66, *post*.
(*p*) 7 Edw. 7, c. 29, s. 7 (5); s. 8 (2).
(*q*) 7 Edw. 7, c. 29, s. 7 (6).
(*r*) 7 Edw. 7, c. 29, s. 68.
(*s*) P. 23, *post*; 7 Edw. 7, c. 29, s. 9.
(*t*) P. 104, *post*.
(*u*) Jones's Patent, Griff. P. C. 313.
(*x*) See Dart's Patent, Griff. P. C. 307.

Application.

complete specification has not become open to public inspection (*y*) there is no necessity for the advertisement of the request for leave to amend under sect. 21 (*z*).

The applicant should bear in mind that it is his duty to frame his specification in such a way that a patent may properly be granted; and though in suitable cases (*a*) the Comptroller or law officer will exercise the power of requiring amendments as a condition of granting a patent or allow an amendment under sect. 21 of the Act of 1907, yet it is not at all a matter of course that the necessary amendments will be allowed, if the specification is originally presented in such a form that the patent cannot be granted without alteration (*b*).

Disagreement by joint applicants as to form of specification.

When joint applicants disagree as to the form of the complete specification and desire to file separate specifications, the Comptroller and law officer have no jurisdiction to decide between them, or to accept two separate specifications, or to accept a specification at all, unless the parties come independently to an agreement and settlement as to its form (*c*).

Effect of acceptance of complete specification.

The acceptance of a specification by the Comptroller is no guarantee that it is good in law. The Comptroller is only required to be satisfied that the specification is prepared in the prescribed manner, and that the invention particularly described in the complete is substantially the same as that described in the provisional specification, and to consider and act upon the examiner's reports. After the acceptance of the complete specification and until the date of sealing a patent in respect thereof, on the expiration of the time for sealing, the applicant has the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification, except that he is not entitled to institute any proceedings for infringement until a patent for the invention has been granted to him (*d*).

Acceptance of complete

If a complete specification is not accepted within twelve

(*y*) P. 23, *post*.

(*z*) Jones's Patent, Griff. P. C. 313. In this case the complete specification was not yet open to public inspection. The term "public property" in the Attorney-General's judgment probably referred to the date of lodging the specification.

(*a*) Harrild and Parkin's Patent (1900), 17 R. P. C. 617.

(*b*) See Thomas and Prevost's Patent (1898), 16 R. P. C. 70; Garnett's Patent (1899), 16 R. P. C. 154; Mills's Patent (1901), 18 R. P. C. 322; Crist's Patent (1903), 20 R. P. C. 475; p. 66, *post*.

(*c*) Apostoloff's Patent (1896), 13 R. P. C. 275.

(*d*) 7 Edw. 7, c. 29, s. 10.

months from the date of application or within a further extended period not exceeding three months, which may be obtained by the applicant upon request and payment of the prescribed fee, then (except where an appeal has been lodged) the application at the expiration of such period becomes void (*e*).

Application. specification must take place within a definite period.

When the complete specification is accepted, the Comptroller is required to advertise the acceptance in the Official Journal of the Patent Office, and the application and specification or specifications, with the drawings (if any), are thereupon open to public inspection and may be inspected at the Patent Office upon payment of the prescribed fee (*f*).

When a complete specification becomes public.

Patents of Addition.—Sect. 19 of the Patents and Designs Act, 1907, provides as follows:—

Statutory provisions.

> (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may, if he thinks fit, in his application for the further patent, request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired.
>
> (2) Where an application containing such a request is made, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.
>
> (3) A patent of addition shall remain in force so long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal.
>
> (4) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

This section was sect. 5 of the Patents and Designs (Amendment) Act of 1907.

The improvement or modification referred to in sub-sect. 1 must in itself, and independently of the invention upon which

Improvement must itself be an invention.

(*e*) 7 Edw. 7, c. 29, s. 6 (5); P. R. (1908), r. 37.

(*f*) 7 Edw. 7, c. 29, s. 9; P. R. (1908), rr. 38, 39.

Application.

it is an improvement or modification, be an invention, because the Crown can only grant the patent for an invention (*g*). Further, in sub-sect. (4), the term used is "the invention," and under sect. 1 of the Act, sub-sect. (3), the applicant must make a declaration to the effect that he is in possession of an invention for which he desires to obtain a patent.

Test of proper subject-matter for patent of addition.

Probably it will be held that the test of "one general object" is the true test to apply to ascertain whether the invention is proper subject-matter for a patent of addition under this section; though, as specially provided in sub-sect. (4), if once a patent of addition is granted, it is not competent to question it on the ground that it is not proper subject for a patent of addition and ought to have been the subject of an independent patent.

When original patent has not been granted.

If the original patent has been only applied for and not granted, the applicant should apply under sub-sect. (1) that the term of the patent of addition be the same as the original, and so minimise the risk of attack on the ground of personal publication (*h*). If the original patent has been granted, the patent of addition will be dated as of the day of application for the patent of addition, and the term will be the unexpired term of the original patent.

Cannot be based on previous patent of addition.

A patent of addition cannot be based on a previous patent of addition (*i*).

Duration.

Probably the true construction of the words, "a patent of addition shall remain in force so long as the patent for the original invention remains in force and no longer," which occur in sub-sect. (3), is that the patent of addition shall not remain in force longer than that for the original invention, or during any period during which the patent for the original invention is not in force. This would appear to be so from the consideration that there is nothing in the Act which renders the patent of addition free from attack upon any of the grounds upon

(*g*) See Vol. I. p. 34; Patents Form No. 1c; but see 1910 (J), 27 R. P. C. App. p. xii. Unless the dictum "the specification must not disclose a separate or different invention," which occurs in this judgment, means the specification must not disclose an invention which is not an improvement in or modification of the original invention, it is submitted that it is wrong. The common law in force at the date of the commencement of the Act of 1907, and Patents Form No. 1c (which has statutory effect) both require that the subject-matter of the patent of addition shall be an invention which is new, *i.e.*, which is different from all previously known inventions.

(*h*) See Vol. I. p. 134.

(*i*) (1910) (J.), 27 R. P. C. App. p. xii.

Application.

which the validity of an independent patent could be questioned. If the original patent is revoked or lapses, the patent of addition is no longer in force, though in the case of a lapse of the original, both patents could probably be restored, if, where the provisions of sect. 20 apply to the original patent, the patentee takes advantage of that section. A judgment for the defendant in an infringement action on the original patent which is based on the ground of invalidity of the patent, does not absolutely annul the patent (*j*). But unless and until the judgment of the Court is reversed or overruled by a Court of competent jurisdiction, or the specification is amended so as to remove the ground on which the Court held the patent bad, the original patent is not enforceable, and, possibly, within the meaning of sub-sect. (3) it would not be "in force." On the other hand, it may be that the original patent "remains in force" within the meaning of the section so long as it is not actually revoked or has not lapsed. The section is not clear on the point, and will, no doubt, be the subject of judicial interpretation in due course.

Policy.

Whether, in a particular case, it is good policy for the inventor to avail himself of the provisions of this section may be a difficult question and require careful consideration. Though procedure under this section may be economical by virtue of the latter part of sub-sect. (3), it is not always wise.

Sect. 16 of Patents and Designs Act, 1907.

Cognate Inventions.—It is provided by sect. 16 of the Patents and Designs Act, 1907, as follows:—

(1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the Comptroller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may accept one complete specification in respect of the whole of such applications and grant a single patent thereon.

(2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same and for the purpose of the provisions of this Act

(*j*) See Vol. I. p. 307.

Application.

with respect to oppositions to the grant of patents, the Court or the Comptroller, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters claimed therein.

This provision was introduced by the Patents and Designs (Amendment) Act of 1907, s. 4.

Several inventions of a cognate nature may be included in one patent.

The effect of this section is to somewhat modify sect. 14, sub-sect. (2) of the Patents and Designs Act, 1907, which was sect. 33 of the Act of 1883. In virtue of the present section, it is competent to the Comptroller to allow one patent for several inventions, provided that they are of a cognate nature or modifications one of the other. By virtue of the old provisions now contained in sect. 14, sub-sect. (2) of the Patents and Designs Act, 1907, any patent which, as a fact, is allowed, notwithstanding that it is for more than one invention, cannot be questioned upon that ground.

The applicant will be required to satisfy the Comptroller that the inventions are cognate to or modifications one of the other. It would, therefore, appear that the test of one general object will be the true test to apply. Otherwise it is difficult to interpret the idea contained in sub-sect. (1) of several inventions being a single invention.

Dangers in including cognate inventions in one patent.

There is nothing in this section, or in any other part of the Act, to negative the proposition that, in the event of a patent being granted for several inventions which are cognate or modifications one of the other, and it being proved that as regards one of the inventions, there is a good objection to validity, on the ground of want of subject-matter, novelty, insufficient specification, or any other cause, the whole patent will be void; and the patentee will incur the risk of being unable to obtain damages in respect of infringement of any of the other inventions committed before amendment of his specification by the disclaimer of the invalidating invention (*k*). The foregoing consideration is sufficient to indicate that, in some cases, patentees who avail themselves of the provisions of this section will find it anything but a blessing. An applicant who, during the course of his application, conceives modifications and variations of his original idea, which may constitute one in-

(*k*) See Vol. I. p. 110.

vention with, or be different inventions but cognate to, or modifications of, the original invention, must ponder carefully before he decides to avail himself of the provisions of this section, or to apply for patents of addition, or to apply for separate patents altogether, or to treat the modifications as one invention with the original and fit subjects for different claims under sect. 14 of the Act of 1907. The questions of policy which will arise under such circumstances are too many and complicated for general discussion here. Each case will require careful consideration as it arises. Application.

Because of the provisions of sub-sect. (2), it has become the practice for all the provisional specifications, identified by the respective dates upon which they were put in, to be published and issued with the complete specification. All provisional specifications issued with the complete.

Probably it will be held competent to an applicant, whose complete specification has been accepted, to apply under this section to have his complete specification cancelled, so as to allow of the inclusion of an invention which is cognate to, or a modification of, the original, provided that the patent can be sealed within the prescribed time (*l*) from the date of the original application. Cancellation of an accepted complete specification.

Applications under International and Colonial Arrangements.—In order to enable the British Government to join the "Union for the Protection of Industrial Property"—which besides Great Britain comprises Austria, Belgium, Brazil, Ceylon, Commonwealth of Australia, Cuba, Denmark, France, Germany, Holland and its colonies, Hungary, Italy, Japan, Mexico, New Zealand, Norway, Portugal, San Domingo, Servia, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunis, and the United States—it was provided by sect. 103 of the Act of 1883, as amended by sect. 6 of the Act of 1885, and sect. 1 of the Act of 1902, all of which provisions are re-enacted by sect. 91 (1) of the Patents and Designs Act, 1907, as follows:— Foreign applicants.

> (1) If his Majesty is pleased to make any arrangement with the Government of any foreign State for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any

(*l*) See 7 Edw. 7, c. 29, s. 12.

Appiication.

invention, design, or trade mark in that State shall be entitled to a patent for his invention or to registration of his design or trade mark under this Act or the Trade Marks Act, 1905, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign State.

Provided that—

(a) The application is made, in the case of a patent within twelve months, and in the case of a design or trade mark within four months, from the application for protection in the foreign State; and

(b) Nothing in this section shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the actual date on which his complete specification is accepted, or his design or trade mark is registered, in this country.

The word "person" includes "corporation," and so the section gives the same rights of priority to corporations, *i.e.*, bodies of persons corporate or unincorporate, as to individuals (*m*).

Protection against publication during a period of twelve months.

The section also enacts that the publication in the United Kingdom or the Isle of Man, during the above period of twelve months, of any description of the invention, or the use therein during such period of the invention, shall not invalidate the patent which may be granted for the same.

This latter provision does not apply in all cases where a patent has been previously applied for in a foreign country, but is only applicable, as part of the general provisions of sect. 91 of the Act of 1907, to cases where the patentee avails himself of the privilege given by that section. A foreign patentee, who has obtained a patent in a State which has joined the convention, has a double right—viz., either to apply in this country under the above provisions for a patent antedated to the date of his foreign application, or, running the risk of publication, to obtain a patent in the ordinary way for the full period from

(*m*) P. 305, *post*; Carez's Patent (1889), 6 R. P. C. 552; Société Anouyme du Générateur du Templé's Patent (1896), 13 R. P. C. 56.

Application.

the date of application (*n*). A foreign applicant who wishes to obtain in this country an antedated patent must make his election and claim the earlier date before the expiration of twelve months from the date of his first application in a foreign country, otherwise he will be too late, and a subsequent request for the benefit of sect. 91 of the Patents and Designs Act, 1907, will not be acceded to by the authorities at the Patent Office (*o*). The section gives protection against publication only to patents which are granted upon applications made under its provisions (*p*), and if the grant is made under the provisions of the convention, the Comptroller or law officer has no authority to date the patent as of any date other than that of the first foreign application (*q*).

These provisions apply only in the case of those foreign States with respect to which his Majesty shall, from time to time, by Order in Council, declare them to be applicable, and so long only in the case of each State as the Order in Council shall continue in force with respect to that State (*r*).

Retrospective effect of Order in Council.

An Order in Council, made under the above provisions, has a retrospective effect unless specially framed to the contrary. Thus, where a person had applied for a patent in the United States of America to which the provisions of sect. 103 of the Act of 1883 had not been extended at the date of the application, he was declared to be entitled to a British patent, bearing the date of the United States application, the provisions of sect. 103 of the Act of 1883 having been extended to such foreign State before the expiration of the period allowed by the Act (*s*).

Provisions of sect. 91 of Act of 1907 may by Order in Council be applied to British possessions.

The section further empowers his Majesty, where it is made to appear to him that the legislature of any British possession has made satisfactory provision for the protection of inventions patented in this country, by Order in Council to apply the provisions thereof with such variations or additions, if any, as may be stated in the Order; and sect. 88 of the Act provides that an Order in Council under the Act shall, from a date to be

(*n*) British Tanning Co., Ld. *v.* Groth (1891), 8 R. P C. 113; Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld. (1902), 19 R. P. C. 213.

(*o*) See Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld. (1902), 19 R. P. C. 213; 20 R. P. C. 161.

(*p*) *Ibid.*

(*q*) Scott's Application (1910), 27 R. P. C. 298.

(*r*) 7 Edw. 7, c. 29, s. 91 (4); Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld. (1902), 19 R. P. C. 213.

(*s*) In the Matter of Main's Patent (1890), 7 R. P. C. 13.

Application.

mentioned for the purpose in the Order, take effect as if it had been contained in the Act; but may be revoked or varied by a subsequent Order.

Only the person who actually made the foreign application is recognised.

A patent in this country can only be granted under the provisions of sect. 91 of the Act of 1907, to a person who has actually made application for protection in the foreign State, and not to another person on his behalf (*t*).

The rights conferred by sect. 91 are personal.

Moreover, sect. 91 of the Act of 1907 does not confer any rights on a person making an application for a British patent, in respect of an invention communicated to him from abroad. The rights conferred by the section are personal, and intended to encourage persons who have invented abroad to come to this country and to make known their inventions (*u*).

Effect of an abortive foreign application.

When an inventor makes an abortive application in a foreign country, and then a successful application, before applying in this country, the British patent is antedated to the date of the successful foreign application. Thus when a person on February 8, 1887, made an application in America for a patent, which became abortive, and on September 7, 1887, renewed his application, and then on April 8, 1888, made an application for a British patent, under sect. 103 of the Act of 1883 (now sect. 91 of the Act of 1907), to bear date September 7, 1887, the Comptroller refused the application. The law officer reversed the Comptroller's decision, and ordered a patent to be granted and dated September 7, 1887, on the ground that the patentee had no subsisting rights under his abortive application in America of February 8, 1887 (*x*).

Practice on applications under sect. 91 of the Act of 1907.

An applicant for a British patent under the provisions of sect. 91 of the Act of 1907 must include in his application a declaration that the foreign application as defined by the Patent Rules, 1908, has been made (*y*), and must specify the foreign States or British possessions in which foreign applications have been made, and the official date or dates thereof respectively. The application must be made within twelve months from the

(*t*) In the Matter of Shallenberger's Application (1889), 6 R. P. C. 550; in the Matter of Carez's Application (1883), 6 R. P. C. 552.

(*u*) In the Matter of Shallenberger's Application (1889), 6 R. P. C. 550.

(*x*) In the Matter of Van de Poele's Patent (1890), 7 R. P. C. 69.

(*y*) "Foreign application" means an application by any person for protection of his invention in a foreign State, or British possession, to which by any Order in Council for the time being in force the provisions of sect. 91 of the Act of 1907 have been declared applicable, see Patents Rules (1908), r. 3.

Application.

date of the first foreign application, and must be accompanied by a complete specification, and signed by the person or persons by whom such first foreign application was made. If such person, or any of such persons, be dead, the application must be signed by the legal personal representative of such dead person, as well as by the other applicants, if any (*z*), and letters of administration must be taken out in this country.

The application in the United Kingdom must be made on Patents Form 1B (*a*), and, in accordance with Rule 16, must be accompanied by, in addition to the complete specification left therewith, a copy or copies of the specification or specifications, and drawings or documents filed or deposited by the applicant in the Patent Office of the foreign State or British possession in respect of the first foreign application, duly certified by the official chief or head of the Patent Office of such foreign State or British possession as aforesaid, or otherwise verified to the satisfaction of the Comptroller, must be left at the Office at the same time as the application, or within such further time thereafter, not exceeding three months, as the Comptroller may allow. If any specification or other document relating to the application is in a foreign language, a translation thereof must be annexed thereto, and verified by statutory declaration or otherwise to the satisfaction of the Comptroller (*b*).

For the purposes of the official search in the Patent Office and ordering the insertion of references to other patents, the date of application is the date of the actual application in England, not the date of the first foreign application (*c*).

Difficulties have arisen with regard to the documents which an applicant for a patent under the Convention should furnish to the Patent Office. The matter is under consideration in connection with the practice of foreign patent offices. In the meantime the following practice will, in accordance with notice given on 31st March, 1911, be adopted by the British Patent Office, and applies to all applications filed on or after the 1st May, 1911:—

(*z*) P. R. (1908), r. 15.

(*a*) See p. 381, *post*.

(*b*) P. R. (1908), r. 16.

(*c*) Deutsche Gold and Silber-Scheide Anstalt vorm. Rössler's Application (1907), 24 R. P. C. 209.

Application.

(1) The certified copy of the foreign specification furnished under Rule 16 should be a copy of the specification as originally filed in the foreign country or British possession. In the case of countries where no search for novelty is made and alterations are not probable a copy of the foreign specification as finally allowed or accepted will be taken as sufficient, but in other cases it will only be admitted on a certificate by the Foreign Patent Office, that no substantial addition has in fact been made to the specification since it was originally filed.

(2) Where the Convention application is based upon a foreign application which has been filed in the Foreign Patent Office on a certain date, but an earlier date is claimed as the date of the foreign application on the ground that the subject-matter was included in a specification of an earlier foreign application and has been divided out therefrom, and the applicant desires the date so claimed should be given to the patent to be granted in this country, then a certified copy of the foreign specification of the date claimed from which the subject-matter of the application has been so divided out or of that part of the foreign specification describing the invention it is now desired to protect should be furnished under Rule 16, together with the specification filed with the actual application made at the later date in the Foreign Office.

In such cases the date when the application in the foreign country in regard to the subject-matter so divided out was actually filed in the Foreign Patent Office will not be given to the patent to be granted in this country, unless the Comptroller is satisfied that the earlier date cannot properly be regarded as the date of the application in the foreign country.

In the latter case it will be sufficient to furnish a certified copy of the specification lodged in the Foreign Patent Office with the application when filed.

(3) A Convention application in respect o renewed" application in the United States should be accompanied by a certified copy of the specification filed

in the United States with such "renewed" application, and the patent to be sealed in this country would be dated as of the date of filing such "renewed" application in the United States. Application.

(4) A Convention application in respect of a United States "reissue" application should be made in regard only to the new matter claimed for the first time in the "reissue" specification, a certified copy of which specification should be furnished under Rule 16, and the patent to be sealed in this country would be dated as of the date of filing such "reissue" application in the United States.

The Comptroller has a discretion under the Rules (*e*), to excuse, by way of an extension of time, strict compliance with the rule requiring that the certified copy of the foreign specification shall accompany the British application; and, in a proper case, he will no doubt do so in the future, as he has done in the past. Applicants should be careful to observe the rule, as non-compliance is rarely excused (*f*).

An application for extension of time for leaving the copy or copies of the foreign specification or specifications, drawings or documents must be made on Patents Form No. 5 (*g*).

If the complete specification left with the application be not accepted within twelve months from the date of application it becomes open to public inspection at the expiration of that period (*h*).

Save as aforesaid and as provided by Patents Rules, 1908, r. 83, as to payment of renewal fees, all proceedings in connection with a Convention application must be taken within the times and in the manner prescribed by the Acts or the Rules for ordinary applications (*i*).

Minor differences of departure in an applicant's English specification may be allowed, if the Comptroller and law officer are enabled, by the agreed translation of the foreign specification, to conclude that the inventions referred to in

(*e*) Patents Rules (1908), r. 109.
(*f*) See In the Matter of an Application for a Patent under sect. 103 of the Patents, &c. Acts (1906), 23 R. P. C. 788.
(*g*) Patents Rules (1908), r. 16.
(*h*) 7 Edw. 7, c. 29, s. 91 (3) (a).
(*i*) 7 Edw. 7, c. 29, s. 91 (3); P. R. (1908), r. 18.

Application.

the two documents are identical, or, at least, that the invention sought to be patented in the United Kingdom is not larger than that forming the subject of the foreign application (*k*). Should the British patent be granted for an invention different from that forming the subject of the foreign application, this fact may seriously affect the validity of the patent (*l*).

Though when an applicant applies for a British patent under the provisions of sect. 91 of the Act of 1907 his specification must not claim any invention which is not included in his foreign application, the British specification may be amplified beyond the disclosure made in the foreign specification; provided that the claim is limited to the invention covered by the foreign application (*m*).

The question to be decided always is what in fact was the invention included in the foreign application, and is the invention claimed in the British specification the same. It would appear that *primâ facie* the foreign specification should be construed and examined on precisely the same principles as that of an English patent. Where different principles apply in foreign countries, the Patent Office requires that, in order to determine what is in fact included under the terms of a foreign application some *primâ facie* evidence must be given on behalf of the applicant to show the foreign practice, though strict proof is not demanded on this point (*n*).

In the case where an invention is protected in the foreign State by more than one patent bearing the same date it is permissible to combine the various features in a single British application so long as sect. 14 (2) of the Act of 1907 is complied with. Conversely an applicant relying on sect. 91 of the Act of 1907 may be required to divide his application, notwithstanding the fact that his invention is protected by a single patent in the foreign State.

It is immaterial whether the invention be protected in a foreign State by Letters Patent, Privilege, Certificate of Addition, or by Useful Model Registration. In all cases the period of priority allowed is twelve months.

(*k*) L'Oiseau and Pierrard (1887), Griff. L. O. C. 37; in the Matter of Main's Patent (1890), 7 R. P. C. 13.

(*l*) Avery's Patent (1887), 4 R. P. C. 152; Renard *v.* Levinstein (1864), 10 L. T. 177; Milligan *v.* Marsh (1856), 2 Jur. N. S. 1083; Moser *v.* Marsden (1893), 10 R. P. C. 209.

(*m*) L'Oiseau and Pierrard's Patent (1887), Griff. L. O. C. 36.

(*n*) See (1910) (B), 27 R. P. C. App. ii.

The date of the British patent when sealed will be the date of the foreign application relied on.

Opposition—General.

Opposition.

By sect. 11 of the Patents and Designs Act, 1907, it is enacted as follows:—

Sect. 11 of Act of 1907.

(1) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds:—

(a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative; or

(b) that the invention has been claimed in any complete specification for a British patent which is or will be of prior date to the patent the grant of which is opposed, other than a specification deposited pursuant to an application made more than fifty years before the date of the application for such last-mentioned patent; or

(c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification; or

(d) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification,

but on no other ground.

(2) Where such notice is given the Comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

Opposition—General.

(3) The decision of the Comptroller shall be subject to appeal to the law officer, who shall, if required, hear the applicant and the opponent, if the opponent is, in his opinion, a person entitled to be heard in opposition to the grant of the patent, and shall decide the case; and the law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer with the consent of the Treasury may determine.

Opposition is allowed on only four grounds.

Hence the only grounds on which a person entitled so to do may oppose the grant of letters patent are—

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

(2) That the invention has been claimed in any complete specification for a British patent which is or will be of prior date to the patent the grant of which is opposed, other than a specification deposited pursuant to an application made more than fifty years before the date of the application for such last mentioned patent.

(3) That the nature of the invention or the manner in which it is to be performed is not sufficiently described and ascertained in the complete specification.

(4) That the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification.

Formerly, want of novelty, non-utility, and lack of subject-matter were all grounds of opposition, but the Act of 1883 abolished the right of the opposer to raise any of these grounds on opposition to the grant of a patent; though, if the patent is granted, the Crown in no way guarantees that it may not be upset on one or other of these points in subsequent proceedings.

The practice on opposition to grants of patents is regulated by the Patents Rules, 1908, rr. 40—47, and the Law Officers' Rules.

Notice of opposition.

A person entitled so to do, and desirous of opposing, must, within the two months allowed from the date of the advertise-

ment of the acceptance of the complete specification, give a notice of his opposition at the Patent Office, on Patents Form No. 8, stating the ground or grounds on which he intends to oppose; and he must himself sign the notice, stating his address for service in the United Kingdom; and he must accompany his notice of opposition by an unstamped copy, which will be transmitted by the Comptroller to the applicant (*o*). **Opposition—General.**

Where the person giving notice of an opposition does not desire that the patent should be refused, but merely that the specification should be amended by disclaimer or limitation, the notice of opposition should be accompanied or supplemented as soon as may be by a written statement to that effect indicating so far as can be conveniently done the general nature of the amendments desired and the portions, if any, of the earlier specifications relied upon as necessitating such amendments (*p*). If the opponent fails to obtain a refusal of the patent and has not put in a statement suggesting an alternative remedy, he will be cast in costs, but, if he has put in such a statement and obtains a portion of the redress to which he claims to be entitled, he is not debarred from receiving his costs where he is in a large measure successful (*q*).

Where the ground of opposition is that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification, the notice of opposition should be accompanied by a written statement indicating, so far as can conveniently be done, in what respects the invention is alleged to be insufficiently or unfairly described or ascertained (*r*).

Amendment of notice of opposition.

It is in the public interest that all facts relating to the case should be before the Comptroller at the hearing, and he has power to allow an amendment of the notice of opposition by the insertion of references to prior specifications not originally included or otherwise, but the opponent seeking amendment may be penalised by costs and an adjournment at his expense in proper cases (*s*).

Evidence of opponent and applicant.

Where the ground of opposition is that the applicant has obtained the invention from the opponent, or from a person

(*o*) P. R. (1908), r. 40.
(*p*) P. R. (1908), r. 40.
(*q*) See (1910) (H), 27 R. P. C., App. p. x.
(*r*) P. R. (1908), r. 41 (2).
(*s*) (1910) (C), 27 R. P. C. App., p. i.; Airey's Application (1888), 5 R. P. C. 348; Lake (1886), No. 8,642; Griff. L. O. C. 35.

Opposition—General.

of whom such opponent is the legal representative, unless evidence in support of such allegation be left at the Patent Office within fourteen days after the expiration of two months from the date of the advertisement of the acceptance of the applicant's complete specification or such further time as the Comptroller may in any special case allow, the opposition is deemed to be abandoned (*t*).

Except in the case of the above-mentioned ground of opposition being raised, statutory declarations need not be left in connection with an opposition, but the opponent may, within fourteen days after the expiration of two months from the date of advertisement of the acceptance of the applicant's complete specification, leave at the Patent Office statutory declarations in support of his opposition, and on so leaving must deliver to the applicant copies thereof (*u*).

The applicant on his part may, within fourteen days from the delivery of such copies, leave at the Patent Office statutory declarations in answer, delivering copies thereof to the opponent, who then is allowed fourteen days from such delivery to leave at the Patent Office statutory declarations in reply, which must be confined strictly to matters in reply, and copies of which he must deliver to the applicant (*x*).

If the opponent does not leave statutory declarations in support of his opposition, the applicant may (if he desires so to do) within three months from the date of the advertisement of the acceptance of his complete specification, leave at the Patent Office statutory declarations in support of his application, and on so leaving declarations, he must deliver to the opponent copies thereof (*y*).

Within fourteen days from the delivery of such last-mentioned copies, the opponent may leave at the Patent Office statutory declarations in answer, and on so leaving must deliver to the applicant copies thereof, and within fourteen days from such delivery the applicant may leave at the Patent Office his statutory declarations in reply, which must be confined to matters strictly in reply, and at the same time he must deliver copies thereof to the opponent (*z*).

(*t*) P. R. (1908), r. 41.
(*u*) P. R. (1908), r. 42.
(*x*) P. R. (1908), r. 43.
(*y*) P. R. (1908), r. 44.
(*z*) P. R. (1908), r. 45.

No further evidence can be left on either side except by leave, or on the requisition of the Comptroller (*a*). **Opposition—General.**

If either party files a useless and unnecessary multiplicity of declarations, he runs the risk of being fixed with the costs and responsibility of them (*b*).

When the evidence is finally completed, the Comptroller appoints a time for the hearing of the case, of which he must give at least ten days' notice to the parties (*c*). **Hearing.**

If the applicant or opponent desires to be heard, he must forthwith send the Comptroller an application on Patents Form No. 9 (*d*). The Comptroller may refuse to hear either party who has not sent such application for hearing.

If either party does not desire to be heard he should as soon as possible notify the Comptroller to that effect (*e*).

If either party intends to refer at the hearing to any publication other than a specification mentioned in the notice of opposition he should, unless the same has been referred to in a statutory declaration already filed, give to the other party and to the Comptroller five days' notice at the least of his intention, together with details of each publication to which he intends to refer (*f*).

The Comptroller has power in any case in which he thinks it right so to do to take evidence *vivâ voce* in lieu of or in addition to evidence by declaration. And in case he decides to take evidence *vivâ voce* he has, in respect of requiring the attendance of witnesses and taking evidence on oath, the same powers as an official referee of the Supreme Court (*g*).

After hearing the party or parties desirous of being heard, or if neither party desires to be heard then without a hearing, the Comptroller decides the case and notifies his decision to the parties (*h*).

As a rule, at the hearing of an opposition, the applicant begins, but when the opponent alleges *fraud* as a ground of opposition, the *onus* being on him, his evidence may be ordered to be taken first (*i*).

(*a*) P. R. (1908), r. 46.
(*b*) Brand's Patent (1894), 12 R. P. C. 102.
(*c*) P. R. (1908), r. 47. The hearing may be during the legal vacations.
(*d*) P. R. (1908), r. 47.
(*e*) *Ibid.*
(*f*) *Ibid.*
(*g*) 7 Edw. 7, c. 29, s. 77.
(*h*) *Ibid.*
(*i*) Luke's Patent (1887), Griff. P. C. 294.

Opposition—General.

It is the duty of the Comptroller and law officer at the hearing of an opposition to guard the interests of the public quite apart from those of the opponent (*k*). And there may be cases where, in the public interest, amendments or disclaimers may be required, even though the opponent fails in his opposition and costs are given against him (*l*).

If the opponent does not appear at the hearing, the Comptroller will decide the case in his absence, and will not recall his decision, even though it is subsequently shown that the opponent did not, in fact, receive the notice of hearing, which was duly posted. In such a case, on appeal to the law officer, the matter would most probably be sent back to the Comptroller for rehearing (*m*). The mere withdrawal of an opposition does not entitle the applicant to the grant of a patent; the Comptroller or law officer, as the case may be, as guardian of the public interest, will hear and decide the case upon its merits in the absence of the opponent (*n*).

Appeal from the Comptroller's decision.

The procedure on appeal to the law officer is governed by the Law Officers' Rules, which see (*o*).

The evidence used on an appeal will be the same as that used at the hearing before the Comptroller, and no further evidence can be given, save as to matters which have occurred or come to the knowledge of either party after the date of the decision appealed against, except with the leave of the law officer, upon application for that purpose (*p*). Such leave may in a proper case be obtained for the examination of witnesses who did not give evidence when the matter was before the Comptroller (*q*).

An appeal to the law officer is a rehearing (*r*). The law officer is entitled, if he desires it, to the assistance of an expert (*s*); and he is also empowered, at the request of either party, to order the attendance at the hearing, for the purpose of cross-examination, of any person who has made a declara-

(*k*) Kempton and Mollan's Patent (1905), 22 R. P. C. 573; Lorrain's Patent (1888), 5 R. P. C. 142; Wadham's Patent (1910), 27 R. P. C. 172.

(*l*) See Wadham's Application (1910), 27 R. P. C. 172.

(*m*) Warmann (1887), Griff. L. O. C. 43.

(*n*) Kempton and Mollan's Patent (1905), 22 R. P. C. 573.

(*o*) P. 424, *post*.

(*p*) L. O. Rules, r. viii.; Hampton *v.* Facer (1887), Griff. L. O. C. 13; Cheeseborough's Patent, Griff. P. C. 303.

(*q*) Thwaite's Patent (1892), 9 R. P. C. 515.

(*r*) Stubbs' Patent, Griff. P. C. 298.

(*s*) 7 Edw. 7, c. 29, s. 11 (3).

Opposition—General.

tion (*t*); and he is entitled to examine witnesses on oath, and to administer oaths for that purpose, and to order costs to be paid by either party (*u*).

The law officer does not allow the cross-examination of witnesses or the admission of further evidence, when it appears to him that there has been ample opportunity for the filing of declarations when the case was before the Comptroller, and that he could not deal better with evidence given on cross-examination than with the declarations (*x*). The law officer does not take on himself to decide adversely to the applicant fine points of anticipation (*y*).

The law officer (and [*sic*] the Comptroller) is entitled to look at models in order to better understand the drawings and specifications, though the models are not exhibits, and consequently not evidence (*z*).

Power of Comptroller and law officer to impose conditions.

Both the Comptroller and the law officer have power to impose conditions on the granting of a patent, which power arises from the discretion of the Crown exercised through the Comptroller-General and the law officer to refuse the grant altogether (*a*). Many instances of conditions imposed, and the reasons for the same, will be found in the following pages, where the different grounds on opposition are separately discussed.

Patent is only refused when the opposition is proved.

A patent is only refused in cases where the opposer proves his ground or grounds of opposition beyond all possibility of doubt, as there is no appeal from the decision of the law officer. It is evident that, should the law officer wrongfully refuse a patent the applicant would suffer an irremediable injury, whereas if a grant be made in the face of what is really a valid ground of opposition the public injury thereby occasioned may be remedied in a subsequent action for infringement, or petition for the revocation of the patent.

The law officer is only justified in stopping the issue of a patent if he is satisfied that no jury could reasonably come to a decision in favour of the applicant (*b*).

(*t*) L. O. Rules, r. ix.
(*u*) 7 Edw. 7, c. 29, s. 40.
(*x*) In the Matter of Pitt's Patent (1888), 5 R. P. C. 343, 345.
(*y*) *Ibid.*
(*z*) Lancaster's Patent (1887), Griff. P. C. 294.
(*a*) P. 1, *ante;* L'Oiseau and Pierrard's Patent (1886), Griff. L. O. C. 36.
(*b*) Stuart's Application (1892), 9 R. P. C. 453.

Opposition—General.

The law officer has power, under special circumstances, to reopen cases which have been decided, *e.g.*, where there is fraud, a serious mistake, or miscarriage, he may direct a rehearing in order to see whether justice demands that another conclusion should be arrived at (*c*).

Costs.

Both the Comptroller and law officer now have power to award costs of proceedings before them, and to direct by whom and how the same are to be paid (*d*). They also have power to require security for costs from an opponent or an appellant (*e*). An order for costs made by the Comptroller or law officer is enforced by making it a rule of Court (*f*). And the practice is for the Comptroller or law officer to award an additional three guineas in the event of it becoming necessary to make the order a rule of Court (*g*). The order is made a rule of Court by counsel on motion, which is not made *vivâ voce* but by endorsement of the order required on his brief, which is then handed to the Registrar in Court (*h*).

Costs are not usually given to such an amount as would indemnify the parties. To do so would be seriously to discourage opposition, and to limit very much the usefulness of the office which the Comptroller and law officer fill in these matters (*i*).

Where an applicant, on appeal, consented to make a slight modification in his specification to satisfy the ground of opposition, but asked for costs of appeal, as he had not been previously asked to make the modification, costs were disallowed, as it was not the fault of the other side that the matter had arisen (*k*).

In cases of unsuccessful opposition, the insertion of a few explanatory words in the specification may be allowed at the hearing before the law officer, and if the amendment is not a substantial alteration the costs of the appeal may be given as if no such modification had been accepted (*l*).

Grounds of Opposition.—It will be convenient to consider separately the four grounds on which the grant of a patent

(*c*) Thomas and Prevost's Application (1898), 15 R. P. C. 258.
(*d*) 7 Edw. 7, c. 29, ss. 39, 40.
(*e*) *Ibid.*
(*f*) See 7 Edw. 7, c. 29, ss. 39, 40.
(*g*) See Goldstein's Application (1910), 27 R. C. P. 297.
(*h*) See White Book (1912), p. 877.
(*i*) See Stuart's Patent (1892), 9 R. P. C. 453.
(*k*) Woodhead (1886), Griff. L. O. C. 44.
(*l*) Fletcher (1886), Griff. L. O. C. 30.

to the applicant may be opposed by persons having a *locus standi* to oppose.

Opposition—First Ground.

I. *The applicant has obtained the invention from the opponent, or from a person of whom he is the legal representative.*

It is not necessary for an opponent on this ground of opposition to prove fraud. But he must clearly show that the invention was obtained from him either directly or indirectly, or through his agent; or he must bring the applicant, by evidence of notice or by the doctrine of estoppel or otherwise, into some known legal relationship or connection with himself. It is not sufficient to show that the invention has been handed on from A. to B. through numerous intermediate parties, and that B. has received it in entire innocence of the fact that it owed its origin to A. (*m*).

Legal representative.

A person who has obtained an assignment of a patent, with the full benefit of all improvements and modifications thereof, from the assignee of the patentee, does not thereby become the legal representative of the patentee, so as to entitle him to oppose the grant of a patent to another inventor on the ground that the applicant obtained the invention from the prior patentee (*n*); nor is a person holding a power of attorney from a patentee his legal representative within the meaning of the Act (*o*). The term legal representative must be construed in its ordinary meaning of executor or administrator (*p*).

Issue of true and first inventor is not open.

It is not the duty of the Comptroller on an application which is opposed, or of the law officer on appeal, to decide whether or not the applicant is the true and first inventor, and he cannot inquire into the circumstances under which the applicant became possessed of the invention, other than those which go to show that it was derived from the opponent, or the person of whom he is the legal representative, if this ground of opposition is properly raised (*q*).

If this objection be clearly proved no patent will be granted (*r*).

(*m*) See Francis' Application (1910), 27 R. P. C. 86.

(*n*) Spiel's Patent (1888), 5 R. P. C. 281.

(*o*) Edmunds' Patent (1888), Griff. P. C. 281.

(*p*) *Ibid.*

(*q*) See In the Matter of Adolph Spiel's Application (1888), 5 R. P. C. 281; In the Matter of Lake's Patent (1888), 5 R. P. C. 415.

(*r*) In the Matter of Marshall's Application (1888), 5 R. P. C. 661; In the Matter of Griffin's Applica-

Opposition—First Ground.

The objection may succeed as to part only of the applicant's claim, in which case a patent may be ordered to be sealed for that portion only to which this ground of opposition does not extend (*s*), or is not established (*t*).

Objection may succeed in part.

The words "obtained the invention" are to be read as meaning "obtained the invention which is purported to be patented," and as referring to the identity of the invention and not to the right of the person from whom it was obtained to be regarded as the first and true inventor (*u*).

Certain dicta of the Comptroller in a recent case (*x*) seem to suggest that it is important, in reference to this ground of opposition, to inquire whether the invention alleged to have been obtained from the opponent has been claimed in an earlier specification. There are reasons for saying that such an inquiry is irrelevant to this ground of opposition, since the question is whether "the invention which is purported to be patented" was obtained from the opponent, and not whether it has been already claimed in a specification which is or will be of prior date. The point may be the subject of a decision of the law officer on some future occasion.

Employer and employed.

With regard to the right of an employer to oppose the grant of a patent for an invention to his servant, it is to be noticed that there is no authority which lays down that, in the absence of special contract, the invention of a servant, even made in the employer's time, and with the use of the employer's materials, and at the expense of the employer, thereby becomes the property of the employer so as to prevent the person employed from taking out and exclusively enjoying a patent for it (*y*).

In *David* and *Woodley's Application* (*z*), the facts were that *Jones*, having invented some improvements in sewing machines, was introduced by *David* to *Woodley*, and *Woodley* was employed by *Jones* and *David* conjointly (*David* claiming some interest in *Jones's* invention) to make a model. *Woodley* made

tion (1889), 6 R. P. C. 296; Stuart's Patent (1892), 9 R. P. C. 452; Paterson and Dundon's Patent (1884), Griff. P. C. 295; Griffin's Patent (1888), 6 R. P. C. 452.

(*s*) Thwaite's Patent (1892), 9 R. P. C. 515.

(*t*) Ashton and Knowles' Application (1910), 27 R. P. C. 181.

(*u*) Thwaite's Patent (1892), 9 R. P. C. 515.

(*x*) Ashton and Knowles' Application (1910), 27 R. P. C. 181.

(*y*) See Heald's Patent (1891), 8 R. P. C. 429; Vol. I. pp. 21, 22.

(*z*) (1884), Griff. L. O. C. 26.

Opposition—First Ground.

some suggestions, which were embodied in the model. *Jones* took out a patent for the machine, whereupon *David* and *Woodley* applied for a patent for the suggestions made by *Woodley*. *David* and *Woodley* had also applied for a patent for alleged improvements on this invention. The Comptroller refused the grant, and the law officer upheld his decision, on the ground that when a workman is employed by an inventor to make a model for the purpose of carrying out his invention, and the workman suggests improvements in detail of the machine which are adopted in the machine or model as completed, those suggestions are the property of his employer, and the workman cannot afterwards take out a patent for them. Further, if *Woodley* was in the employment of *Jones* and *David*, and not of *Jones* alone, the invention was *Jones's*, and he had never parted with his property in it, and *Woodley* stood to *Jones* in the relation of paid servant to employer. *David* was entitled to enforce in a Court of law any claims he might have against *Jones*, founded on the alleged partnership or of a pecuniary character.

Experiments by persons other than applicant.

The fact that other persons have made experiments identical with the applicant's will not stop the patent being granted, unless the opposer shows that the applicant derived the invention from the person making such experiments, and then only if such person or his legal representative is the opponent (*a*).

Assignment of unpatented and unpublished inventions.

In cases of agreements for the assignment of unpatented and unpublished inventions questions may arise as to the right of the alleged assignee to be made the patentee.

Thus, where an opponent in carrying on business had got into difficulties and had made an agreement to sell the business to the applicant, part of the consideration being an understanding that the opponent should give the applicant the benefit of a certain invention, and the opponent opposed on the ground that the invention had been obtained from him, the patent was refused in the absence of a written assignment (*b*).

Fraud committed by applicant abroad.

Fraud committed abroad will not prejudice an applicant in

(*a*) See *Ex parte* Henry (1872), L. R. 8 Ch. 167; In the Matter of Homan's Patent (1889), 6 R. P. C. 104; Saxby *v.* Gloucester Waggon Co. (1887), Griff. L. O. C. 57.

(*b*) In the Matter of Marshall's Application (1888), 5 R. P. C. 661.

Opposition—First Ground.

respect of an invention stated to have been communicated to him from abroad.

Thus where (*c*), on an application for a patent on a communication from abroad, the opposer objected that the applicant had obtained the invention from him through a third party abroad, the patent was granted on the ground that a person availing himself of information from abroad is an inventor within the Statute of Monopolies (*d*). It is to be observed that the Comptroller and law officer have no authority to inquire into the source of the patentee's information in such a case (*e*); neither will they inquire as to any alleged fraud committed by the applicant (communicatee) against the opponent abroad (*f*).

Rights of inventor who is a foreigner.

Though a foreign applicant has important rights under sect. 91 of the Act of 1907 and the Convention of 1884, he is not entitled, on the ground that the applicant obtained part or the whole of the invention from him, to oppose an application in this country of earlier date than his own, if the communication relied upon was made abroad and not in the United Kingdom or the Isle of Man (*g*).

Probably in the case of an application for a patent for an invention communicated from abroad, if it could be shown by a third party that the applicant had no authority from the foreign communicator to make the application, but that the third party had such authority, the Comptroller would refuse to recognise the applicant, and would accept an application made by such third party (*h*).

Joint grantees.

Sometimes the patent is granted to the applicant and opponent conjointly, if it appears that the invention is the joint production of both (*i*).

(*c*) In the Matter of Lake's Patent (1888), 5 R. P. C. 415.

(*d*) 21 Jac. 1, c. 3, s. 6; Nickels *v.* Ross (1849), 8 C. B. 679.

(*e*) See Edmunds' Patent (1886), Griff. P. C. 281; In the Matter of Adolph Spiel's Patent (1888), 5 R. P. C. 281; In the Matter of Bairstow's Patent (1888), 5 R. P. C. 286; McNeil's Patent (1907), 24 R. P. C. 680; Mears-Gerkin's Application (1910), 27 R. P. C. 565.

(*f*) Higgins' Patent (1891), 9 R. P. C. 74; Edmunds' Patent (1886), Griff. P. C. 283; Spiel's Patent (1888), 5 R. P. C. 281; Bairstow's Patent (1887), 5 R. P. C. 286; Lake's Patent (1887), 5 R. P. C. 415; McNeil's Patent (1907), 24 R P. C. 680; Mears-Gerkin's Application (1910), 27 R. P. C. 565.

(*g*) Edmunds' Patent (1886), Griff. P. C. 281; In the Matter of Lake's Patent (1888), 5 R. P. C. 415.

(*h*) See Fiechter (1882), Griff. P. C. 284.

(*i*) Eadie's Patent (1885), Griff. P. C. 279; *Re* Russell's Patent (1857), 2 De G. & J. 130; Luke's Patent (1886), Griff. P. C. 294.

Opposition—First Ground.

Concurrent applications.

When there were concurrent applications for a patent in respect of the same invention, it was formerly a recognised principle that the patent would be awarded to the inventor who ran quickest through the process and was ready first to obtain the Great Seal (*k*). Now, however, since the patent is in all cases dated as on the day of application (*l*), in the case of concurrent applications on the same day, one patent would most probably be granted to the two applicants jointly, and if the concurrent applications were not made on the same day the prior applicant would be entitled to the prior patent.

Condition that grantee shall assign a share.

It may be made a condition that the grantee shall assign a certain share to another person if the interests of justice appear to require it, as in the case of joint inventors making separate applications (*m*); and each co-owner may be bound to pay a proportionate part of the fees necessary to keep the patent on foot (*n*).

Condition that opponent shall be made a joint patentee.

The condition has been imposed, under circumstances that called for it, that the grantee and opponent should enter into an agreement by which the former should undertake to do all such acts as might be necessary to secure to the latter the full rights of a joint patentee in the invention, and the latter should undertake not to commence proceedings for revocation of the patent when granted (*o*).

Rival applicants.

In the case of rival applicants, if it appear that distinct parts are the separate inventions of the rival applicants, separate patents will be ordered to be sealed to each applicant in respect of his own invention alone (*p*).

Applicant's invention only an improvement on opponent's.

When it is clear that the applicant obtained the idea of his alleged invention from the opponent, and that the alleged invention is really nothing more than an improvement upon the opponent's patented invention, the application will be allowed only on the condition that the applicant insert in his specification a statement to the effect that his invention is an improvement upon the opponent's (*q*).

(*k*) *Ex parte* Dyer, Hindmarch on Patents, p. 535; *Re* Simpson and Isaacs' Patent (1853), 21 L. T. 81.

(*l*) 46 & 47 Vict. c. 57, s. 13.

(*m*) Evans and Otway's Patent (1884), Griff. P. C. 279; Garthwaite's Patent (1886), Griff. P. C. 284.

(*n*) Evans and Otway's Patent (1884), Griff. P. C. 279.

(*o*) Luke's Patent (1885), Griff. P. C. 294.

(*p*) Craig and Macfarlane's Applications, P. M. J. vol. iv. 3rd series, p. 366.

(*q*) Hoskins's Patent (1884), Griff. P. C. 291; Newman's Patent (No. 2) (1888), 5 R. P. C. 279; for form of statement, see Griff. P. C. 292, n.

Opposition—Second Ground.

II. *The invention has been claimed in any complete specification for a British patent which is or will be of prior date to the patent the grant of which is opposed, other than a specification deposited pursuant to an application made more than fifty years before the date of the application for such last mentioned patent.*

This ground is the second ground of opposition which was provided for by the repealed Act of 1883 as interpreted by the law officer (*r*), but extended as regards patents which will be of prior date and limited as regards specifications which are more than fifty years old at the date of the application which is opposed.

Opponent must have a *locus standi*.

It would appear at first sight that this ground of opposition is open to any person, whether he have a direct interest in opposing the patent or not; but the decisions establish that only persons having a direct interest are allowed to oppose on this ground. Sub-sect. (3) of sect. 11 of the Act of 1907, as did the corresponding sub-section of the Act of 1883, directs the law officer, on an appeal, to hear the applicant and, "*in his opinion,* the opponent, if the opponent is a person entitled to be heard." It is thus evident that the section contemplates the existence of persons who have no right of opposition, and constitutes the law officer the ultimate authority to decide the question of an opponent's *locus standi* (*s*).

According to the law officer's decisions, the only persons recognised as having a *locus standi* to be heard on this ground of opposition before the Comptroller, or, on appeal from him, before the law officer, are those who whether as original owners or assignees or otherwise have a direct interest in showing that the patent sought by the applicant would, if granted, include what has already formed or will form the subject of an earlier grant (*t*). Thus in *Meyer's Patent* (*u*)

(*r*) See p. 52, *post*.

(*s*) The Queen *v.* Comptroller-General of Patents; *Ex parte* Tomlinson (1899), 16 R. P. C. 233.

(*t*) Meyer's Patent (1899), 16 R. P. C. 526; The Queen *v.* Comptroller-General of Patents: *Ex parte* Tomlinson (1899), 16 R. P. C. 233; J. and J.'s Patent (1902), 19 R. P. C. 555: Stewart's Patent (1896), 13 R. P. C. 627; Lancaster's Patent (1884), Griff. P. C. 293; Glossop's Patent (1884), Griff. P. C. 285; Heath and Frost's Patent (1886), Griff. P. C. 288; Hookham's Patent (1886), Griff. L. O. C. 32; Macevoy's Patent (1888), 5 R. P. C. 285.

(*u*) (1899), 16 R. P. C. 526.

Opposition—Second Ground.

a person who had *bonâ fide* attempted to carry out an invention but had been stopped in consequence of the existence of a patent with regard to it was held to have such an interest as entitled him to appear and support an opposition on the ground that the invention sought to be protected was identical with that which he had desired to carry out. The law officer has no wider jurisdiction than the Comptroller. He only hears cases by way of appeal, and the words "in his opinion a person entitled to be heard" refer back to the persons who are allowed to oppose by sub-sect. (1) of sect. 11 of the Patents and Designs Act, 1907 (*x*).

It was held in *Bairstow's Patent* (*y*) that where a person was about to commence to work an invention, which he alleged was included under certain expired patents, he had not such an interest in the expired patents as to entitle him to be heard in opposition to the granting of a fresh patent; and in *Macevoy's Patent* (*z*) it was held that a person who has no further interest in an expired patent than the fact that he manufactured under it is likewise not entitled to be heard in opposition to the grant of a fresh patent. Having regard, however, to the decision in *Meyer's Patent*, the decision in *Macevoy's Patent* is not now acted upon, and must be regarded as overruled (*a*).

If the opponent can prove that he carries on a *bonâ fide* manufacture, and that such manufacture is not merely of the type of the article or invention sought to be protected, but appears generally to possess the special features which characterise the applicant's invention, he is deemed to have a *locus standi* to be heard in opposition to the grant (*b*).

A person who is merely an agent—*e.g.*, a patent agent—of a prior patentee has not such an interest in the prior patent as will entitle him to oppose a subsequent application in his own name (*c*). The opposition must be in the name of the principal: otherwise this ground of opposition cannot be raised (*c*).

(*x*) See cases, note (*t*), p. 48, *ante*.
(*y*) (1888), 5 R. P. C. 286.
(*z*) (1888), 5 R. P. C. 285; see also Hookham's Patent (1886), Griff. L. O. C. 32.
(*a*) See (1911) (B.), 28 R. P. C. App. p. v.
(*b*) (1911) (B.), 28 R. P. C. App. p. vi.
(*c*) Heath and Frost's Patent (1886), Griff. P. C. 289; Lake (1887), Griff. L. O. C. 35; Hookham (1887), Griff. L. O. C. 32.

Opposition—Second Ground.

The old ground of opposition was simply that the invention had been patented, in this country, on an application of prior date. Consequently a foreigner who had made an application under the terms of sect. 91 of the Patents and Designs Act, 1907, claiming the date of his first foreign application had no *locus standi* to oppose the grant of a patent upon an application dated between the date he claimed and the actual date upon which he made his application in this country (*d*). Now, since the present ground of opposition is that the invention has been claimed in any complete specification which is or will be of prior date to the applicant's, a foreigner under the above circumstances would have a *locus standi*.

A person having a *locus standi* on the second ground of opposition is entitled to rely in his opposition upon specifications other than those in which he is, or was, interested and from which he derives his *locus standi* (*e*).

The effect of sect. 11, sub-sect. 1 (b) of the Patents and Designs Act, 1907, is to place a person who has deposited a complete specification, whether accepted or not, in the same position, for the purpose of opposition, as a person who has already got a patent upon which he can oppose (*f*); and, similarly, any other person who has a *bonâ fide* interest in showing that the invention claimed in an accepted or merely deposited complete specification, upon which no actual grant has been made, is identical with that of the applicant, would be allowed to oppose (*g*).

Upon the hearing of an application the Comptroller acting in the public interest is justified in considering and giving effect to any earlier specification, however it is brought to his notice, whether by the opponent or the authorities of the Office (*h*). Consequently, though the opponent may have no *locus standi* to be heard, and the case may be dismissed as against him, the Comptroller may refuse to seal the patent.

(*d*) Everitt's Patent (1886), Griff. L. O. C. 28; Johnson's Patent (1907), 24 R. P. C. 694.

(*e*) Stewart's Patent (1896), 13 R. P. C. 627; Glossop's Patent (1884), Griff. P. C. 285; Heath and Frost's Patent (1886), Griff. P. C. 288; Hookham's Patent (1886), Griff. L. O. C. 32; Macevoy's Patent (1888), 5 R. P. C. 285.

(*f*) See L'Oiseau and Pierrard (1887), Griff. L. O. C. 36; p. 48, *ante*.

(*g*) See *Ibid.*; Meyer's Patent (1899), 16 R. P. C. 526.

(*h*) Hughes and Kennaugh's Application (1910), 27 R. P. C. 281.

Opposition—Second Ground.

Though the law officer on appeal allows the objection that the opponent is not a person entitled to be heard, he will not interfere with the Comptroller's decision as to the grant or refusal of the patent, unless he is satisfied that, looking at the substance of it, that decision ought to be interfered with (*i*).

Though law officer overrules Comptroller on question of *locus standi*, he will not lightly interfere with result of the decision.

When an application is resisted on this ground of opposition, all the Comptroller or law officer can, on the hearing, be called on to decide is, whether or not the invention sought to be patented is the same as that claimed in the complete specification of a British patent which is or will be of prior date, and in cases of doubt the grant is allowed (*k*).

Patent allowed in doubtful cases.

It is only in the clearest cases that the law officer accepts the serious responsibility of stopping a patent. The seal is

(*i*) Heath and Frost's Patent (1886), Griff. P. C. 290.

(*k*) Cf. pp. 108, 109, *post*; Jones (1886), Griff. L. O. C. 33. In the following reported cases, decided since the Act of 1883 came into operation, patents were refused on the ground that the respective inventions had been patented on applications of prior date:—

Heath and Frost's Patent (1886), Griff. P. C. 310.
In the Matter of Daniel's Application (1888), 5 R. P. C. 413.
In the Matter of Aire and Calder Glass Bottle Works and Walker's Application (1888), 5 R. P. C. 345.
In the Matter of Wallis and Ratcliff's Application (1888), 5 R. P. C. 347.
In the Matter of Webster's Patent (1888), 6 R. P. C. 163.
Green's Patent (1887), Griff. P. C. 286.
Lancaster's Patent (1887), Griff. P. C. 293.
Re Bailey, Goodeve, P. C. 57.
Todd's Patent (1892), 9 R. P. C. 488.
Boult's Application (1893), 10 R. P. C. 275.
Stewart's Application (1896), 13 R. P. C. 627.
Whittaker's Application (1896), 13 R. P. C. 580.
Smith's Application (1896), 13 R. P. C. 200.
Wylie and Morton's Application (1896), 13 R. P. C. 97.
Van Wye's Application (1909), 26 R. P. C. 490.
Deutsche Gasglühlicht Aktiengesellschaft's Application (1909), 26 R. P. C. 101.
Bosch's Application (1909), 26 R. P. C. 710.

In the following reported cases, decided since the Act of 1883 came into operation, the objection was taken that the respective inventions had been patented on applications of prior date, but unsuccessfully:—

In the Matter of Lorrain's Patents (1888), 5 R. P. C. 142.
In the Matter of Newman's Patent (1888), 5 R. P. C. 271.
In the Matter of Pitt's Patent (1888), 5 R. P. C. 343.
In the Matter of Airey's Application (1888), 5 R. P. C. 348.
In the Matter of Sielaff's Application (1888), 5 R. P. C. 484.
In the Matter of Brownhill's Patent (1889), 5 R. P. C. 135.
Anderton (1887), Griff. L. O. C. 25.
Fletcher (1887), Griff. L. O. C. 30.
Von Buch (1887), Griff. L. O. C. 40.
Huth's Patent (1884), Griff. P. C. 292.
Cumming's Patent (1884), Griff. P. C. 277.
Stubbs' Patent (1884), Griff. P. C. 298.
Ross' Patent (1891), 8 R. P. C. 477.
Bartlett's Patent (1892), 9 R. P. C. 511.
Maxim and Silverman's Application (1894), 11 R. P. C. 314.
Marsden's Patent (1896), 12 R. P. C. 87.
Southwell's Patent (1899), 16 R. P. C. 361.
Nahnsen's Patent (1900), 17 R. P. C. 203.

Opposition—Second Ground.

not refused unless the law officer is satisfied that there is identity, and that the merit both in form and substance rests with the opponent. Each case must be decided on its particular facts (*l*). The law officer and the Comptroller have not to consider the question of subject-matter or invention pure and simple, but only the question of prior invention in a limited sense, *i.e.*, identity of the prior with the applicant's claim (*m*).

Invention described, but not claimed in a prior patent.

If an invention is only described and not claimed in a prior specification, it may, so far as this ground of opposition is concerned, be patented on an application of later date, it being a long-established and obvious rule that only that is patented which the inventor claims (*n*). There would, of course, be great doubt as to the validity of a patent granted under such circumstances (*o*). A manufacture though within the broad words of a prior claim is not considered as *patented, i.e.*, claimed, in cases before the Comptroller and law officer, unless it is clearly set out in the body of the prior specification (*p*)—*i.e.*, unless it is quite clear that the prior patent deals with the difficulties and dangers which the later applicant alleges he has contemplated and overcome (*q*). Thus where an applicant sought to patent the manufacture of a safety explosive from certain definite proportions of ingredients, which explosive so made was particularly safe against fire-damp and coaldust in mines, the seal was allowed, though opposed on the ground that a claim in a prior patent included the use of the same ingredients for making explosives and in variations of proportions which would include the specific proportions claimed by the applicant. The ground of the decision was that it could not be said that the prior patentee had contemplated the safety of the explosive from the point of view of safety by reason of the absence of deleterious effects after explosion, and that under such circumstances there *might* be invention in selecting the specific proportions claimed by the applicant (*r*).

Ambit of *opponent's* claim may be disputed.

The question of the validity of the prior patent, which is said by the opponent to cover the whole or a part of the

(*l*) Nahnsen's Application (1900), 17 R. P. C. 203.
(*m*) *Ibid.* p. 208.
(*n*) Von Buch (1887), Griff. L. O. C. 40; but see Wadham's Application (1910), 27 R. P. C. 172.
(*o*) See Vol. I. chap. iv.
(*p*) See Nahnsen's Patent (1900), 17 R. P. C. 203.
(*q*) *Ibid.*
(*r*) *Ibid.*

Opposition—Second Ground.

applicant's claim, is quite immaterial (*s*). An applicant, however, is entitled to contend that the state of common knowledge is such that the opponent's claim ought to be read in a particular way which will exclude the subject-matter of the applicant's claim (*t*).

Conjoint effect of several prior patents.

The point always is, Has what the applicant claims been already granted by the Crown, *i.e.*, has it formed the subject of a prior claim or claims, or will it be the subject of a grant bearing an earlier date than that of the application which is opposed? No doubt it requires a very clear case to stop a patent when it is sought to establish this ground of opposition by putting together claims taken from two separate prior specifications, but still this may be done (*u*); and, when the case is clear, the patent will be refused on the ground that all the applicant seeks to claim is covered by claims taken from two or more specifications (*x*).

Patent is refused when there is no appreciable difference between the applicant's and opponent's claims.

In cases where the law officer is forced to the conclusion that there is no substantial difference between the invention or combination claimed in the applicant's specification and an earlier specification, it has not only been the practice but it is the duty of the law officer to refuse the patent (*y*). For example, when the applicant merely claimed to effect a certain result by the use of one of many salts of chromium and one of many salts of iron from out of those covered by the claim in the opponent's specification, and there was no particular advantage shown in doing so, the patent was refused (*z*). But a patent may be obtained for the selection of the best material for a particular purpose when the suitability of such material for the purpose was not previously known, the test being whether the selection involves invention (*a*).

(*s*) Thornborough and Wilks' Patent (1896), 13 R. P. C. 115; Green (1887), Griff. P. C. 286; Newman (1887), Griff. P. C. 40; (1911) (C.), 28 R. P. C. App. p. viii.

(*t*) Haythornthwaite's Patent (1890), 7 R. P. C. 71.

(*u*) Ross' Patent (1891), 8 R. P. C. 477.

(*x*) Harrild and Perkin's Patent (1900), 17 R. P. C. 617.

(*y*) Per Webster, A.-G., Todd's Patent (1892), 9 R. P. C. 488; see also Thwaite's Patent (1892), 9 R. P. C. 515; Daniel's Patent (1888), 5 R. P. C. 413; Aire and Calder's Patent, (1888), 5 R. P. C. 345; Wallis and Ratcliff's Patent (1888), 5 R. P. C. 347; Webster's Patent (1888), 6 R. P. C. 163; Bailey's Patent (1887), Goodeve, P. C. 57; Boult's Patent (1893), 10 R. P. C. 275; Bridge's Patent (1901), 18 R. P. C. 257.

(*z*) Wylie's Patent (1896), 13 R. P. C. 97; see also Deutsche Gasglühlicht Aktiengesellschaft's Application (1909), 26 R. P. C. 101. See Vol. I. p. 44, as to selection from a class being the subject-matter of invention.

(*a*) Bosch's Application (1909), 26 R. P. C. 710.

Opposition—Second Ground.

When an application is opposed on the ground that an alleged invention is the same as that comprised in the opponent's patent, and it appears that there is a difference, but that such difference is quite immaterial, the patent is refused (*b*). In *Hedge's Patent* (*c*) it appeared that after eliminating matters of common knowledge nothing in the slightest degree materially different remained to distinguish the applicant's claim from the opponent's that could possibly be valid subject-matter, and the patent was refused accordingly. So also where an applicant merely claimed the use of one support between the two glass bottles in a *Thermos* flask, and it appeared that a prior patent described and claimed the use of several similar supports for the same purpose, and there was no evidence of invention in the mere use of one support only, the patent was refused (*d*).

If it is not clear beyond all reasonable doubt that no tribunal entitled to deal with the matter could reasonably find that there is invention in the difference between what is described and claimed in the applicant's specification and the specification relied on by the opponents, the patent will be sealed (*e*).

Mechanical equivalents.

It is competent to the Comptroller or law officer, when an application is opposed on the ground that the invention has been patented on an application of prior date, to consider the question of mechanical equivalents (*f*); though the application will not be refused unless it is clear that the invention in respect of which it is made is practically identical with that forming the subject-matter of the prior patent (*g*)—*e.g.*, where the only difference was the substitution of a coil for an internal cylinder in a heating apparatus (*h*), or an equivalent for a crank bar (*i*) when the opponent's claim referred to a "crank bar or its equivalent."

(*b*) In the Matter of Aire and Calder's Patent (1888), 5 R. P. C. 345; Wallis and Ratcliff's Patent (1888), 5 R. P. C. 347; In the Matter of Daniel's Application (1888), 5 R. P. C. 413; In the Matter of Haythornthwaite's Application (1890), 7 R. P. C. 70; Heath and Frost's Patent (1886), Griff. P. C. 310; Hodgkin's Application (1906), 23 R. P. C. 527.

(*c*) (1895), 12 R. P. C. 136.

(*d*) Van Wye's Application (1909), 26 R. P. C. 490.

(*e*) Krupp (Fried.) Aktiengesellschaft Germaniawerft's Application (1908), 25 R. P. C. 809.

(*f*) In the Matter of Haythornthwaite's Application (1890), 7 R. P. C. 70; Smith's Patent (1896), 13 R. P. C. 200.

(*g*) P. 51, *ante*.

(*h*) Smith's Patent (1896), 13 R. P. C. 200.

(*i*) Whittaker's Patent (1896), 13 R. P. C. 580.

Opposition—Second Ground.

Conflict as to utility.

In cases where there is a conflict of testimony on the declarations as to the comparative utility of what is claimed in the applicant's and opponent's specifications respectively, the Comptroller will not, except in very exceptional cases, attempt to decide the point by actual experimental demonstration. It is only when no proper protection can be given by means of disclaimer, or reference, or other amendment of the applicant's specification, that experimental proof will be entertained. When experimental proof is necessary, the proper course is for the experiment to be made in the presence of both parties, and preferably in the presence of an expert chosen by the Comptroller (*k*).

Notice of opposition must be distinct.

The notice of opposition must distinctly allege this ground of opposition in specific terms; it will be wrong in form if it allege that the prior invention was the same, "*or substantially the same*," as the applicant's (*l*), or that the applicant's invention is "*a direct infringement of the opponent's patent*" (*m*).

Claim by applicant to something not foreshadowed in the provisional specification of patent relied on by the opponent.

Where something claimed by the applicant is not to be found foreshadowed in the provisional specification of the patent relied on by the opponent, though it may possibly be found described in the complete specification of such patent, and the said complete specification was in fact filed after the date of the application, these dates become most important. In such a case the patent of the applicant should be sealed on the ground that, by refusing it, great injustice might be done to the applicant. He might succeed, if the patent is allowed, in satisfying a Court that the subject of his claim was in fact novel and his invention at the date of his application, since it was not foreshadowed in the opponent's provisional (*n*).

Expiration of prior patent relied on is no bar.

Whenever the application is opposed on the ground now under discussion it does not signify that the prior patent has expired (*o*); but if an invention has only been described in a provisional specification it cannot be made an objection to a later application (*p*).

(*k*) See (1910) (D.), 27 R. P. C. App. p. iv.

(*l*) Jones (1887), Griff. L. O. C. 33.

(*m*) In the Matter of Daniel's Application (1888), 5 R. P. C. 413.

(*n*) See Bartlett's Patent (1892), 9 R. P. C. 511.

(*o*) Lancaster's Patent (1884), Griff. P. C. 293.

(*p*) Bailey's Patent (1884), Griff. P. C. 269; Paterson's Patent, Griff. P. C. 295.

Opposition—Second Ground.

Object of the power to refuse the patent, or to require an amendment or a disclaimer.

It is the duty of the Comptroller, and the law officer on appeal from him, to see that no claim in an applicant's specification is allowed which is wide enough to include something which might unquestionably form part of that which is claimed in a prior specification relied on by the opponent (*q*). This principle is given effect to by disallowing the claim, or by ordering the claim as originally drawn to be modified, or a general or special disclaimer of the principle embodied in the prior patent to be inserted in the applicant's specification (*r*).

The exercise of the authority of the Comptroller and law officer to impose conditions on the grant of a patent in this way operates for the protection of previous inventors (*s*) and the public generally (*t*).

If a subsequent patent be granted and a specification accepted which actually or apparently claims something which is included in a prior patent, or something which is not patentable, the prior patentee in the one case, or the public in the other, suffers what may be a disadvantage to them, in so far as the subsequent patentee may endeavour under his grant to lay claim to the exclusive monopoly in the particular thing in question, yet they do not sustain any permanent injury, for the subsequent patent granted under such circumstances would be void (*u*).

It is not to the interests of subsequent patentees that their patents should be apparently for an original or far-sweeping invention, when, as a matter of fact, they can only claim a particular combination which they have described; and it is not to the interest of the public that they should be led into supposing that a description in a specification is entirely general, whereas it can only be supported as a specification of valid letters patent if the description be understood to be a description of an improvement (*v*).

(*q*) Curtis and André's Patent (1892), 9 R. P. C. 499; Hamilton's Patent (1901), 19 R. P. C. 33.

(*r*) Curtis and André's Patent (1892), 9 R. P. C. 495; Hamilton's Patent (1901), 19 R. P. C. 35.

(*s*) In the Matter of Newman's Patent (1888), 5 R. P. C. 271; Griff. L. O. C. 40.

(*t*) In the Matter of Lorrain's Patent (1888), 5 R. P. C. 142; In the Matter of Guest and Barrow's Patent (1888), 5 R. P. C. 312; Teague's Patent (1884), Griff. P. C. 298; Wadham's Application (1910), 27 R. P. C. 172.

(*u*) Vol. I. chap. iii. In the Matter of Hill's Application (1888), 5 R. P. C. 599.

(*v*) Hoskins' Patent (1884), Griff. P. C. 291; In the Matter of Newman's Patent (No. 2) (1888), 5 R. P. C. 279; see also Hamilton's Patent (1901), 19 R. P. C. 35.

Opposition—Second Ground.

Grounds for requiring a disclaimer.

The Comptroller and law officer do not insert disclaimers in the applicant's specification simply because the applicant's claim may amount to an infringement of the opponent's patent. And it is not their duty to stop a patent at the instigation of an opponent on the ground of the infraction of some other principle of patent law (*w*), or to consider whether the alleged invention is proper subject-matter (*x*), or whether the patent, if granted, would be invalid from any other cause (*y*); and the applicant in all cases frames his specification at his peril (*z*). Thus when the opponent desired a special reference in the applicant's specification on the ground that a claim in the prior specification amounted to a legitimate broad claim to a principle as carried out by the means described by the applicant, which were analogous to those claimed in the opponent's specification, the law officer allowed the patent without a disclaiming clause at all, though the opponent might possibly succeed in an action for infringement if the applicant worked under his patent (*a*). To obtain a disclaimer the opponent must show that the applicant's claim, without it, will be a repetition of the opponent's (*b*). That is to say, it is a principle recognised by the law officers that where there is an existing patent, and there is fair ground for supposing that on the true construction a claim made by a subsequent applicant would interfere with the rights claimed by an existing patentee, he is entitled to be protected; and such protection is usually given by the insertion in the specification of the subsequent applicant of a general disclaiming clause or special reference (*c*).

Where the applicant describes, though he does not claim, something which is the subject of a claim made by a prior

(*w*) Newman's Patent (1887), 5 R. P. C. 277; Sielaff's Patent (1887), 5 R. P. C. 481; McHardy's Patent (1891), 8 R. P. C. 432; Todd's Patent (1892), 9 R. P. C. 487; Jones (1887), Griff. L. O. C. 35.

(*x*) Jones (1887), Griff. L. O. C. 53.

(*y*) P. 1, *ante*.

(*z*) Lorrain's Patent (1888), 5 R. P. C. 142.

(*a*) Marsden's Patent (1896), 13 R. P. C. 87.

(*b*) Stell's Patent (1891), 8 R. P. C. 236; Hill's Patent (1888), 5 R. P. C. 599.

(*c*) In the Matter of Newman's Patent (1888), 3 R. P. C. 271; In the Matter of Hall and Hall's Patent (1888), 5 R. P. C. 283: In the Matter of Lynde's Patent (1888), 5 R. P. C. 663; In the Matter of Gozney's Patent (1888), 5 R. P. C. 597; In the Matter of Guest and Barrow's Patent (1888), 5 R. P. C. 312; In the Matter of Wallace's Patent (1889), 6 R. P. C. 134; Anderson and McKinnell (1887), Griff. L. O. C. 23; In the Matter of Hoffman's Patent (1889), 7 R. P. C. 92; see pp. 58—66, *post*.

Opposition—Second Ground.

patentee, amendment by excision or disclaimer may be required (*d*).

It would appear that, if there be a distinct reference in the applicant's provisional specification to an invention or device, which was within the specification of the opponent properly construed, the opponent is entitled to have a disclaimer on the face of the complete specification (*e*).

It is to the interests of the public that, where patents overlap, the distinctions between the inventions described in the specifications filed under the earlier and later applications should be made clear (*f*); but it must be remembered that the object of a disclaiming clause is to guard against the inclusion in a new patent of something embraced by the old patent, not of something merely mentioned in the old patent, but of something which has been claimed as part of the previous invention (*g*).

Principles upon which special disclaimers are ordered.

Thus Lord *Alverstone*, L.C.J., then *Webster*, A.-G., in *Stell's Patent* (*h*) stated the principles on which special disclaimers, *i.e.*, references *nominatim* to prior patents, are ordered or refused as follows:—

> "The principles upon which the law officers have acted now for some years in allowing disclaiming clauses are, first, if it appears clear that upon the invention claimed by the prior patentee there will be a repetition of the claim to the earlier invention in the later patent; and, secondly, if it is clear that the public would be misled by the later specification without disclaimer."

And in *Atherton's Patent* (*i*)—

> "I consider, assuming a proper statement of prior knowledge is inserted for the protection of the public, that the claims in a specification are inserted at the risk of the patentee, because he jeopardises his own patent by inserting too much. . . . With regard to the point as to statement

(*d*) Teague's Patent (1884), Griff. P. C. 298; Hetherington's Patent (1889), 7 R. P. C. 419; Wadham's Application (1910), 27 R. P. C. 172.

(*e*) Hookham (1887), Griff. L. O. C. 32; see also In the Matter of Hoffman's Patent (1890), 7 R. P. C. 92.

(*f*) In the Matter of Hill's Application (1888), 5 R. P. C. 599; see also Wadham's Application (1910), 27 R. P. C. 172.

(*g*) In the Matter of Gozney's Patent (1888), 5 R. P. C. 597; In the Matter of Hoffman's Patent (1890), 7 R. P. C. 92.

(*h*) (1891), 8 R. P. C. 236.

(*i*) (1889), 6 R. P. C. 547.

Opposition—Second Ground.

of prior knowledge, an important question of principle is involved, upon which I have more than once expressed my opinion, but I wish to express it again. There is no objection at all to a patentee inserting (provided he does it fairly) what he believes to be a statement of prior knowledge. It is, in my opinion, a very convenient course. He does it at his own peril; but I consider it to be a protection to the public in directing their attention to what the patentee believes to be the state of knowledge, and, further, in enabling them to see whether the patentee has made a mistake in the event of his having thought that the prior knowledge did not cover any particular device which he included, as matter of invention, in the specification. . . . But I object to any one putting in his construction of written documents, because, in my opinion, written documents have to speak for themselves or be interpreted by the Court. . . . A patentee has no right to try and put on the public what he believes to be the construction of the written document. He has a perfect right to give his own statement of the prior knowledge and say he refers, in support of his statement, to any number of previous specifications."

And in *Guest and Barrow's Patent* (*k*)—

"I have on many occasions pointed out that the insertion of these disclaimers does not affect the rights of the prior patentee at all. They are inserted for the purpose of preventing the subsequent patentee from alleging that his invention is wider than he is entitled to claim, both in his own interests, in order that his specification may not be considered as being too wide, and in the interests of the public, on the ground that the public are entitled to know what a subsequent patentee may claim, and to have a fair description of the existing state of knowledge. It is not because a particular patentee, or a prior inventor, has made a broad claim that he is entitled to have limiting words inserted, unless he can show, upon a fair view of the evidence before the law officer, or before the Comptroller, that such words are really necessary to protect him" (*l*).

The present Comptroller-General has thus formulated the

(*k*) (1888), 5 R. P. C. 312.

(*l*) See also Newman's Patent (1888), 5 R. P. C. 279, 281; Hoffman's Patent (1890), 7 R. P. C. 92; Brockie's Patent (1908), 25 R. P. C. 817.

Opposition—Second Ground.

principles which ought to regulate the practice of the Office as regards the insertion of specific references or disclaimers:—

> "What is requisite is to ascertain the true values of the inventions involved, and I think the real underlying principle which should govern the insertion of specific references is this, 'Is the governing idea or basic principle of the invention sought to be protected claimed or protected in a specific earlier patent? In other words, the condition necessary is, that the new invention should be based on a definite invention already protected, and the earlier invention should be clearly and unequivocally repeated or involved in the new specification. . . . There are two classes of case to be considered—(1) where what is called 'a master patent' is involved; (2) where there is no claim to a 'master patent' as such. . . . And in this sense a specific reference is rightly inserted if the new invention is merely an improvement or amendment on the 'master patent.' . . . In cases where there is no proper 'master patent' involved, I think the same general principle in regard to specific references applies, but the conditions are stricter and more severe. I think in such cases a specific reference should only be allowed where the following conditions are present, viz.:—(a) The patent to which reference is asked should be clear and distinct in its own field and as far as can be gathered free from anticipation; (b) The invention claimed therein must be clearly and unequivocally claimed or included in the later specification; (c) It must be claimed or included substantially as a whole and not merely as a part; (d) The improvement or addition claimed by the applicant must be small and insignificant, and the governing principle, so to speak, must come from the prior patent" (*m*).

Special references and concurrent applications.

Under the Act of 1883 there was some doubt as to whether the principles applicable to the insertion of references were the same in the case of concurrent applications as in the more common case where the application for the patent on which the opponent relied was not concurrent with that of the applicant (*n*). It appears clear that the same principles apply in both cases under the present Act of 1907, and the Comptroller has so decided (*o*). Sect. 8 of the Act empowers the Comp-

(*m*) Hopkins' Patent (1909), 27 R. P. C. 388.
(*n*) See Gaunt's Patent (1897), 14 R. P. C. 72.
(*o*) (1910) (G.), 27 R. P. C. App. p. viii.

troller, apart from any question of opposition, to order a reference to a specification of a patent which if granted will be of earlier date than that of the applicant, though it was not published when the application was made; and there does not appear to be anything in the Act to support the contention that any different principle should apply when the specification on which the opponent relies under sect. 11 has become published (*p*). **Opposition—Second Ground.**

Where a specification only contains a statement of general knowledge, there is nothing in the Patent Law to prevent a patentee on the face of his specification referring to the general defects which he alleges rightly or wrongly exist; but it would appear that, if a prior patentee is referred to specifically in a subsequent specification, no reference to any defect in the prior invention ought to be allowed in the latter specification (*q*). **References to defects.**

The Comptroller and law officers are always very unwilling to order the insertion of a special reference to the patent of a prior inventor and opponent, unless they can be sure that they have the whole knowledge of the trade before them, and that there are no other specifications which claim part of the ground claimed by the applicant (*r*)—*e.g.*, where it is practically admitted by the applicant that the governing principle was for the first time discovered or disclosed in the opponent's specification (*s*). **Pioneer or Master Patent.**

The rule was stated by *Webster*, A.-G., in *Southwell's Patent* (*t*), to the effect that unless the parties before the Comptroller agree on a state of knowledge that is to be assumed to be the basis of both inventions, if an opponent is desirous of having a claim in an earlier specification construed as a pioneer or master claim to such an extent that he is entitled to a wide construction for the purpose of stopping future patents, he is bound to bring the state of knowledge before the Comptroller. A person who describing in specific language a method of arriving at a given end, afterwards seeks to say that the language is to include something which is on the face of it different, cannot ask the Comptroller so to act without estab-

(*p*) See *ibid.*
(*q*) Guest and Barrow's Patent (1888), 5 R. P. C. 316.
(*r*) See Stell's Patent (1891), 8 R. P. C. 236; Kilner's Patent (1889), 8 R. P. C. 35.
(*s*) Welch's Patent (1891), 8 R. P. C. 442.
(*t*) (1899), 16 R. P. C. 362.

Opposition – Second Ground.

lishing that for the purposes of the Comptroller's decision the earlier patent is to be regarded as a master patent (*u*). The fact that during the performance of an applicant's process certain results are obtained which may be the same as results obtained by another patented process does not make the patent for the earlier process a master patent *quoad* the applicant's process (*x*). Where, however, the specification of the applicant shows at best a mere minimum of invention the position of an alleged master patent will not be discussed by the law officer in any narrow spirit (*y*).

As a rule of practice it is requisite for the opponent, if he intends to claim the position of a master patent for the patent on which he relies, to furnish to the Office and the applicant a statement of the invention for which the patent is claimed to be a master patent. This statement should be made either in a declaration under Patents Rules, 1908, Rule 42, or in appropriate cases under Rule 40. Any further statement as to a search or investigation having been made is not strictly necessary, but the opponent who makes such a claim must, if the statement is challenged, be prepared to deal with the prior state of the Act and any suggested anticipation. It is open to the applicant to produce any evidence against the claim of "master patent" position, and for the purpose to cite from specifications and other publications in this country, with the object of limiting the opponent's claim to a particular construction (*z*).

General disclaimers are more usually required than special disclaimers.

The Comptroller and law officer usually prefer to insert a general disclaimer of the principle included in the invention of the prior patentee (*a*), bearing in mind that every prior patentee does not possess a right to have a disclaiming clause inserted in a subsequent specification, because, as was pointed out by Lord *Cairns*, every specification must be read as though the patentee had a knowledge of every previous complete and published specification of earlier letters patent (*b*).

(*u*) Southwell's Patent (1899), 16 R. P. C. 362.

(*x*) Meyenberg and the Clayton Anilin Co.'s Application (1905), 22 R. P. C. 353.

(*y*) Sach's Patent (1900), 18 R. P. C. 221.

(*z*) (1911) (C.), 28 R. P. C. App. p. viii.

(*a*) Anderson and McKinnell (1887), Griff. L. O. C. 23; In the Matter of Sielaff's Application (1888), 5 R. P. C. 484; In the Matter of Wallace's Patent (1889), 6 R. P. C. 134; Kilner's Patent (1889), 8 R. P. C. 35.

(*b*) See In the Matter of Newman's Patent (1888), 5 R. P. C. 279.

Opposition—Second Ground.

Speaking generally, a special reference, at the request of the opponent, to a prior patent ought to be allowed only, if, in the event of the insertion of that reference being refused by the applicant, the Comptroller or law officer would be justified in saying that the patent with the proposed claim should not be sealed at all (*c*), or where there is substantial identity between the fundamental parts of the two inventions, but a difference which can only be justified upon the ground of improvement (*d*). Sometimes the opponent is allowed to elect whether the objectionable claim of the applicant should be struck out or a disclaiming clause should be inserted in his specification (*e*).

The legitimate objects for which general and special disclaimers are ordered.

Disclaimers, and especially special disclaimers, ought not to be ordered for the mere purpose of making earlier patents known, but only for the purpose of explaining what the claim of the applicant really is. A claim may be so general in its terms as to include something which has been the subject of a prior grant, as well as the improvement which the applicant has, or thinks he has, invented. It is in such a case, where it might be the duty of the Comptroller and law officer to refuse the patent altogether, unless the claim were amended in such a way as to show that it is not directed to the matters which have formed the subject of the prior grant or grants, that a special disclaimer referring *nominatim* to the prior patent or patents should be ordered. The special disclaimer is only a substitute for the more scientific way of altering the language of the claim itself to the form it ought to have assumed if it had been skilfully drawn in the first instance, having regard to the prior patent or patents (*f*). Where the applicant's specification is ambiguous and it is difficult or impossible to introduce amendments or disclaimers or to re-write it so as to disclose the true scope of the invention and distinguish it from what has gone before, it may be necessary to protect the public, and to do justice to prior patentees, by the rough and ready means of inserting specific references in certain special cases. It should, however, be borne in mind that this is not the best or most scientific method, and that it is

(*c*) Per Finlay, S.-G., Marsden's Patent (No. 2) (1897), 14 R. P. C. 174; but see per Evans, S.-G., Brockie's Patent (1908), 25 R. P. C. 817; see also Stell's Patent (1891), 8 R. P. C. 235.

(*d*) Newton's Patent (1899), 17 R. P. C. 124.

(*e*) Teague's Patent (1885), Griff. P. C. 298.

(*f*) Marsden's Patent (1896), 13 R. P. C. 87; Adam's Patent (1896), 13 R. P. C. 548; Marsden's Patent (1897), 14 R. P. C. 174.

Opposition—Second Ground.

merely employed to save time and trouble in cases where other amendment seems impossible (*g*).

In cases, therefore, where the rights of prior patentees or the public cannot be effectually protected without special mention of the prior patents, the insertion of a special disclaimer is usually made a condition of the granting of a patent to a subsequent applicant, and the form of reference generally ordered is to the effect that the patentee is aware of the existence of the prior patent, and that he does not claim anything claimed and described therein (*h*). So also in the case of concurrent applications and cross oppositions, if it appear that the specification of one of the applicants includes something which is the sole invention of the other applicant, the Comptroller will insist on the first applicant amending his specification so as to confine it to what has actually been invented by him (*i*).

On the same principle, if an invention is merely an improvement on and subsidiary to a prior patented machine or process, the Comptroller and law officer will require a disclaimer by reference to the name and number of the prior patent, since it is only just to the opponent and in the interests of the public that this should be so (*k*).

Form of specific reference.

P. R. (1908), rr. 32 and 34, prescribe a specific form which is insisted upon, unless by amendment a specific reference is rendered unnecessary. (*P.'s Application* (1906), 23 R. P. C. 644.)

The Comptroller and law officer are bound to protect the public from being misled (*l*); and the object for which special references to prior patents are ordered to be inserted in the applicant's specification is to guide the public to the proper construction of the claim made by the applicant (*m*). So a special disclaimer may be ordered for the purpose of removing

(*g*) See I. O. J., No. 1072, p. 1239.

(*h*) In the Matter of Lorrain's Patent (1888), 5 R. P. C. 142; In the Matter of Airey's Patent (1888), 5 R. P. C. 348; In the Matter of Lynde's Patent (1888), 5 R. P. C. 663; In the Matter of Newman's Patent (1888), 5 R. P. C. 271; In the Matter of Wallace's Patent (1889), 6 R. P. C. 134; Hoskins' Patent (1884), Griff. P. C. 291; Welch's Patent (1884), Griff. P. C. 300.

(*i*) Paterson's Patent (1884), Griff. P. C. 295; Craig and Macfarlane's Application, P. M. J. vol. iv. 3rd series, p. 366.

(*k*) Hoskins' Patent (1884), Griff. P. C. 291; Welch's Patent (1884), Griff. P. C. 300; In the Matter of Newman's Application (1888), 5 R. P. C. 271, 279; In the Matter of Lynde's Patent (1888), 5 R. P. C. 663; Levinstein's Patent (1894), 11 R. P. C. 349; Tattersall's Patent (1892), 9 R. P. C. 150.

(*l*) Lorrain's Patent (1888), 5 R. P. C. 143.

(*m*) Van Gelder's Patent (1892), 9 R. P. C. 326; p. 63, *ante*.

Opposition—Second Ground.

an ambiguity (*n*). If, on the other hand, a special disclaimer might prejudice the construction a mere reference to the prior patent will be ordered instead (*o*), or a disclaimer following the identical words of the opponent's claim, but without any special reference to the opponent's patent (*p*)—*e.g.*, in *Maxim and Silverman's Patent* (*q*), where neither the Comptroller nor the law officer could come to a clear conclusion that the invention had been patented on the application of prior date relied on, and the Comptroller had ordered a special disclaimer in the words, "We are aware of the specification of patent No. of granted to , *and we make no claim to anything described and claimed therein*," the law officer, on appeal, to meet the justice of the case and the public interest, ordered the words, "*and we make no claim to anything described and claimed therein*," to be struck out (*r*). And in *Newton's Patent* (*s*), where the Comptroller had ordered a special reference to the opponent's patent, the law officer not being satisfied that the difference between the applicant's alleged invention and the opponent's was one which could only be justified on the ground of improvement ordered a disclaimer in terms identical with the opponent's claim, but without any special reference to the opponent's patent.

It must be borne in mind that a statement of public knowledge in the terms of an opponent's claim has by no means the same effect as a special reference. It does not allow the inference that the ambit of the invention is the same in whole or in part in both cases, but leaves the question of invention to be determined from the consideration of that which the earlier patentee and the later patentee have described (*t*). A special disclaimer may be ordered on the ground that though in the applicant's specification there are differences from the opponent's, yet there is a very strong resemblance between the mechanism as claimed by the opponent's specification and that described in the applicant's specification and drawings (*u*).

A special reference will sometimes tend to stop further

(*n*) Brand's Patent (1895), 12 R. P. C. 102.
(*o*) Van Gelder's Patent (1892), 9 R. P. C. 325; Maxim and Silverman's Patent (1894), 11 R. P. C. 314.
(*p*) Newton's Patent (1899), 17 R. P. C. 123, 125.
(*q*) (1894), 11 R. P. C. 314.
(*r*) *Ibid.*
(*s*) (1899), 17 R. P. C. 123.
(*t*) *Ibid.*
(*u*) Thornborough and Wilks' Patent (1896), 13 B. P. C. 115.

Opposition—Second Ground.

litigation where a general disclaimer would not, and will be ordered to be inserted on that account (*x*).

Agreement between parties as to the meaning of a specification.

If the meaning of a specification be ambiguous, the Comptroller or law officer may, on the hearing of the application, order it to be placed on record to what the specification is understood to be confined by the statement and agreements of both the opposer and applicant (*y*); and, if the provisional specification contain a reasonably clear indication of the improvement it is ultimately desired to protect by the patent, the Comptroller has power to order any amendment which will put the particular description of the invention claimed absolutely beyond doubt (*z*).

Striking out claims.

Sometimes a claim in an applicant's specification is ordered to be struck out altogether, when it includes something claimed by the complete specification under a prior patent (*a*); but it must be remembered that the applicant is entitled to frame his specification as he pleases, so long as he does not interfere with existing rights (*b*). The Comptroller or law officer has no authority to order a claim to be struck out merely because it may invite the public to infringe a prior patent, if the applicant, in the body of the specification, shows some invention with regard to the thing claimed (*c*). Nor can the Comptroller or law officer require the amendment of a claim in order to make it conform to the description in the specification, if the claim is otherwise a real statement of the invention claimed (*d*).

Necessity for amendment or disclaimer should be avoided.

The applicant should draft his claim in the first instance so as to embrace only his real invention. If he does not do so, he runs the risk, in the event of opposition, of not being allowed to make such an extensive amendment as might be required to remedy a defective claim, or to remedy the claim by the less scientific method of inserting a special reference to the opponent's patent (*e*). Thus the law officer refused to seal a patent when the applicant's specification contained a

(*x*) In the Matter of Lyude's Patent (1888), 5 R. P. C. 663.

(*y*) Anderton (1887), Griff. L. O. C. 25.

(*z*) Chandler's Patent (1884), Griff. P. C. 270, 274.

(*a*) In the Matter of Hall and Hall's Patent (1888), 5 R. P. C. 283; In the Matter of Webster's Patent (1889), 6 R. P. C. 163; Hamilton's Patent (1901), 19 R. P. C. 35.

(*b*) See p. 22, *ante*.

(*c*) In the Matter of Webster's Patent (1889), 6 R. P. C. 165.

(*d*) Smith's Patent (1884), Griff. P. C. 268.

(*e*) See Whittaker's Patent (1896), 13 R. P. C. 580.

claim wide enough to include, without doubt, what had been patented by the opponent; and he further refused to allow a special disclaimer or words limiting the claim, on the express ground that the claim should have been drawn originally for the slight alleged improvement if the intention was to claim it (*f*). Further, the fact that the law officer may not have the materials before him necessary to enable him to say whether, having regard to prior patents, the amended claim sought by the applicant should be allowed or not may sufficiently justify him in disallowing it (*g*). Opposition—Second Ground.

On the other hand, a case may well arise in which the applicant would, at the hearing of an opposition, be allowed to amend by making a claim entirely differing from that in the complete specification as originally framed (*h*).

An opponent, though not appealing against the grant of a patent, is entitled to appeal against the Comptroller's decision that no reference to his patent be inserted in the specification (*i*). Appeal.

III. *That the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification.*

This ground of opposition was not open to an applicant before the Patents and Designs Act of 1907.

It is clear that the old grounds of opposition I. and IV. are not open to any person, but only to particular persons specified who have a special interest in opposing the grant.

It is not quite so clear whether the words "any person" with which sect. 11 of the Act of 1907 commences, when applied to this third ground of opposition, include any person generally, or are limited to persons having a special interest. It has been decided that the second ground of opposition is not open to any person generally, but only to persons, whether *Locus standi.*

(*f*) Lupton and Place's Patent (1897), 14 R. P. C. 261.

(*g*) See Mills' Patent (1901), 18 R. P. C. 324.

(*h*) Harrild and Perkin's Patent (1900), 17 R. P. C. 617; but see Mills' Patent (1901), 18 R. P. C. 324; and Lancaster's Patent (1902), 20 R. P. C. 366, where a substituted claim was disallowed by the law officer on the ground that it was for something absolutely different from what was described in the provisional specification.

(*i*) Brownhill's Patent (1899), 6 R. P. C. 135.

Opposition—Third Ground.

as original owners, assignees, or otherwise, having a direct interest in opposing the grant (see *ante*, pp. 48—51). The *ratio decidendi* (viz. that the words "if the opponent is, in his opinion, a person entitled to be heard" which occur in subsect. (3) of sect. 11 of the Act, point to persons who are not entitled to be heard) of the cases which establish this point as to the second ground of opposition are equally applicable to this new third ground; and it is, therefore, to be assumed that this ground is only open to persons having a direct interest. It is apparent that there may be persons who have a direct interest in preventing the grant on the ground of insufficient description, *e.g.*, a prior (actual or prospective) patentee, when the applicant's specification is sufficiently vague to be capable of a construction which would include something within the prior claim; or a manufacturer who is actually making, or *bonâ fide* proposing to make, something which is old, and yet, by virtue of the applicant's insufficient description, might possibly be held to come within his claim; or a person who is *bonâ fide* desirous of embarking on the manufacture of the invention as a licensee (compulsory or otherwise), but is unable to appreciate, from the description given in the specification, the manner in which the invention is to be performed; or a person who *bonâ fide* believes himself a prior user and desires to have the invention unequivocally defined so as to exclude his prior user; or a concurrent applicant for a patent for a very nearly related invention. The reasons upon which the constituted tribunals held that the old ground of opposition based on prior claim was only open to persons having a direct interest in stopping the grant are equally applicable to this new ground. It will probably be held that this new ground is not open to any person, but only to any person who has a direct interest. Ever since the Act of 1852, up to the passing of the Act of 1907, it has been competent to an applicant to question the *locus standi* of an opponent on any authorised ground of opposition. Since the Act of 1907 does not define the term "any person" as used in sect. 11, it is likely that the term will, in accordance with the well-established rule, be construed as bearing the limited meaning which the decided cases under the older and consolidated Acts put upon it.

Irrelevant matter.

A specification which includes matters irrelevant to the

claim is open to the objection that it does not give a fair description of the invention, and the irrelevant matter may, at the hearing of an opposition based upon this ground, be deleted, or a disclaimer with respect to it may be required according to circumstances (*k*).

Opposition—Third Ground.

The Comptroller has jurisdiction to require, at any stage when the matter comes before him, and whether the point is taken by an opponent or not, any amendment of an applicant's specification which he considers necessary to prevent ambiguity (*l*). The inclusion of this ground of opposition in the notice of opposition will often be of material assistance to an opponent whose case is mainly based upon the ground of prior claim (*m*).

Jurisdiction of Comptroller to prevent ambiguity.

IV. *That the complete specification describes and claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification.*

The real object of this ground of opposition is to prevent a patentee getting a prior date for an invention which is not his own, and which he has obtained from the specification of later date. This would not occur where the opponent's application was of the same date as the applicant's, and under such circumstances, the opponent could not bring his case within the specific provisions of this ground of opposition (*n*).

Object of this ground of opposition.

Before the existence of this ground of opposition, which was first introduced by the repealed Act of 1888, the opponent was unable to obtain a patent for an invention which he himself made between the dates of the applicant's provisional and complete specifications, and which was included in the applicant's claim. Though such inclusion effected a disconformity between the applicant's specifications, it was not competent for the Comptroller or law officer to consider the

(*k*) See Francis' Application (1910), 27 R. P. C. 86.
(*l*) *Ibid.*
(*m*) See Wadham's Application (1910), 27 R. P. C. 172.
(*n*) See (1910) (A.), 27 R. P. C. App. p. i.

Opposition—Fourth Ground.

question of disconformity between the applicant's specifications, and the opponent suffered, although the applicant's patent was rendered void by the inclusion of the invention made by the opponent (*o*).

When disconformity is a ground for refusing the patent.

Disconformity, however, will not induce the Comptroller and law officer to refuse to seal a patent after the specification has been accepted, unless in accordance with the above-stated ground of objection the matter in the applicant's complete specification which is in excess of the provisional has, in the interval between the leaving of the two documents, formed the subject of an application by the opponent.

When this objection is raised it is the duty of the Comptroller or law officer to ascertain what is the real and proper construction of the language of the provisional specification, and not to accept any meaning suggested by the applicant which the document itself will not bear out (*p*). It then becomes important to ascertain whether the alleged excess invention is really only a legitimate development of the invention to be found described in the provisional (*q*), or whether it is really a different one, and the same as that forming the subject of the opponent's subsequent application. If it is only a legitimate development the opposition will fail (*r*). The law officer should carefully consider the question whether the patent should be stopped, because should he improperly allow the seal, his decision might affect the question of disconformity if subsequently raised in the superior Courts (*s*).

Wilson's Patent (*t*) and *Hudson's Patent* (*u*) afford good illustrations of this ground of opposition. In the former case the invention related to bicycle tyres, and the applicant's provisional specification described various combinations of parts for the construction of tyres, but did not allude to any method or methods of fastening the tyres to the wheels. The complete specification, on the other hand, described the tyres as fitted to specially constructed wheel rims with special means for fastening the tyres; and the rims, combined with the

(*o*) See Green's Patent (1885), Griff. P. C. 286; Hawthorn's Patent (1890), 7 R. P. C. 70.

(*p*) Birt's Patent (1892), 9 R. P. C. 489.

(*q*) See Vol. I. p. 182.

(*r*) Edward's Patent (1894), 11 R. P. C. 461; Miller and Miller's Patent (1898), 15 R. P. C. 718; Birt's Patent (1892), 9 R. P. C. 489.

(*s*) See Hudson's Patent (1904), 22 R. P. C. 218.

(*t*) (1892), 9 R. P. C. 512.

(*u*) (1904), 22 R. P. C. 218.

methods of fastening, were the subjects of claims. The grant was opposed by four different opponents, who had, between the dates of the filing of the applicant's provisional and his complete specification, made application for patents for the various methods of attachment claimed in the applicant's complete specification. The Comptroller ordered the excision of the figures and drawings and of the corresponding description and claims referring to the methods of fastening the tyres to the wheels. The law officer on appeal somewhat varied the Comptroller's decision, but required that the complete specification should be amended so as to prevent the applicant from claiming as a part of his invention the means of fastening the tyres to the wheels as distinct from the construction of the tyres themselves.

Opposition—Fourth Ground.

Sealing the Patent.

If there be no opposition, or if there be opposition, and the determination is in favour of the grant of a patent, and the applicant desires to have a patent sealed he must, within the period allowed by sect. 12 of the Patents and Designs Act, 1907, pay the sealing fee by leaving at the Patent Office Patents Form No. 10 duly stamped. The seal of the Patent Office is equivalent for this purpose to the Great Seal of the United Kingdom (*x*).

Seal of the Patent Office.

A patent cannot be sealed after the expiration of fifteen months from the date of application (*y*), except in the following cases:—

Time within which the patent must be sealed.

(1) When the Comptroller has allowed an extension of the time within which a complete specification may be left or accepted, in which case a further extension of four months after the said fifteen months is allowed for sealing the patent (*z*).

(2) When the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, in which cases the patent may be sealed at such time as the law officer may direct (*a*).

(*x*) 7 Edw. 7, c. 29, s. 14 (1).
(*y*) 7 Edw. 7, c. 29, s. 12 (2).
(*z*) 7 Edw. 7, c. 29, s. 12 (2) (a).
(*a*) 7 Edw. 7, c. 29, s. 12 (2) (b).

Sealing the Patent.

(3) When the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, in which case the patent may be sealed at any time within twelve months after the date of such death (*b*).

(4) When, in consequence of the neglect or failure of the applicant to pay any fee, a patent cannot be sealed within the period allowed by sect. 12 of the Act of 1907, in which case that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed (*c*).

In the case of delay caused by opposition, a patent may, as above stated, be sealed at such time as the law officer appoints, even though the opposition is not adjudicated upon till after the expiration of fifteen months from the date of the application (*d*); the case, however, is different when the delay is caused by the applicant. Thus, where there was an opposition which caused some delay, and the applicant by mere inadvertence neglected to comply with the Comptroller's requisition till long after fifteen months from the application, the law officer refused to seal the patent on the ground that the delay was not caused by the opposition (*e*). An applicant may, under some circumstances, desire to delay the sealing of the patent for a longer period than fifteen months from the date of application. If this be so, he should arrange that the allowable extension to nineteen months may suffice his purpose. It is neither right nor politic that he should attempt to gain time by means of a bogus or collusive opposition to the grant; and such a proceeding would more likely than not have the effect of losing him the patent altogether, as the law officer, on the ground that the opposition was not genuine, might refuse the necessary extension of time for sealing the patent (*f*). In fact, according to the report of one such case the law officer refused to extend the time upon the express ground that, as

(*b*) 7 Edw. 7, c. 29, s. 12 (2) (c).

(*c*) 7 Edw. 7, c. 29, s. 12 (2) (d). As to conditions, see Patents Rules, 1908, r. 48.

(*d*) See Somerset and Walker's Patent (1879), L. R. 13 Ch. D. 397; *Re* Johnson's Patent (1879), L. R. 13 Ch. D. 398, n.

(*e*) A. and B.'s Patent (1896), 13 R. P. C. 63.

(*f*) See A. and B.'s Patent (1902), 19 R. P. C. 403.

Sealing the Patent.

the delay had not been caused by the opponent, but had been brought about for an ulterior object, he had no jurisdiction at all under sect. 12 (3) (a) of the Patent Act, 1883 (*g*).

It is expressly enacted that every patent shall be dated and sealed as of the day of the application: save as otherwise expressly provided for by the Patents and Designs Act, 1907 (*h*). If an application is left at the Patent Office on any particular day after office hours it must bear date as of the following day (*i*).

Several applicants for same invention.

Before the Act of 1883, where there was more than one applicant for a patent for the same invention, the applicant who first obtained the Great Seal was held to be entitled to the benefit of it, and the patent of any other applicant, if granted at all, was dated subsequently (*j*). Such is not the case now, for the patent of each applicant (if granted) must bear the date of the application; and consequently the first applicant is the one who gets the real benefit of the invention, for where there is more than one patent for the same invention, anything done under those subsequently dated is an infringement of that which bears the earliest date (*k*). Formerly, however, in cases where there was evidence of *mala fides*, the patent of a second applicant was ordered to be dated before that of the prior applicant (*l*). The reason was that the Crown will not grant a second patent in derogation of its own grant, and the system of ante-dating enabled the question of validity to be decided in subsequent proceedings (*m*).

Extent and Duration of Letters Patent.

Geographical extent.

Every patent when sealed has effect throughout the United Kingdom and the Isle of Man (*n*), but not the Channel Islands. To extend the patent to the Channel Islands the patentee should enrol copies at the Royal Courts of Jersey

(*g*) A. and B.'s Patent (1902), 19 R. P. C. 556.

(*h*) 7 Edw. 7, c. 29, s. 13.

(*i*) Mathews and Stranger's Patent (1910), 27 R. P. C. 288.

(*j*) *Ex parte* Bates and Redgate (1876), L. R. 4 Ch. 577, 580; see Vol. I. p. 17.

(*k*) Saxby *v.* Hennett (1873), L. R. 8 Ex. 210.

(*l*) *Ex parte* Scott and Young (1871), L. R. 6 Ch. 274; Saxby *v.* Hennett (1873), L. R. 8 Ex. 210; *Re* Vincent's Patent (1867), L. R. 2 Ch. D. 341.

(*m*) *Ex parte* Bailey (1872), L. R. 8 Ch. 61; *Ex parte* Henry (1872), L. R. 8 Ch. 167, 169; *Ex parte* Bates and Redgate (1869), L. R. 4 Ch. 577.

(*n*) 7 Edw. 7, c. 29, s. 14 (1).

Extent and Duration of Letters Patent.

and Guernsey. The term for which every patent is granted originally, save as otherwise expressly provided for by the Act of 1907, is fourteen years (*o*), which may, however, in certain cases, be prolonged on petition to the Court (*p*). The time from which a patent runs dates from, and includes, the day on which the patent is dated (*q*).

Conditional on payment of renewal fees.

A patent is conditional on the patentee making the prescribed payments within the prescribed times (*r*), and ceases if he fail to do so (*s*); but it is provided that the Comptroller, upon the application of the patentee, shall, on receipt of such additional fee, not exceeding ten pounds, as may be prescribed, enlarge the time to such an extent as may be applied for, but not exceeding three months (*t*).

Enlargement of time for payment of fees.

Whenever the last day fixed by the Act of 1907, or the Rules, for doing anything falls on a day when the Office is not open, or on a Saturday, which days are excluded days for the purposes of the Act and the Rules, it is lawful to do any such thing on the day next following such excluded day or days (*u*).

Restoration of lapsed patents.

Before the 1st January, 1908, the date of commencement of the Patents and Designs Act, 1907, if the patentee failed to make a prescribed payment, whether he had obtained an enlargement of time or not, and his patent became void accordingly, it could only be revived by a special Act of Parliament (*x*), which was not likely to pass unless it was clear that the renewal fees were not paid in consequence of some special circumstance such as the serious illness of the patentee (*y*). And such special Acts always provided protection for persons who might have used the subject-matter of the invention after notice of the lapse of the patent (*z*).

The Patents and Designs Act, 1907, invests the Comptroller, subject to an appeal to the Court, with power to restore a patent

(*o*) 7 Edw. 7, c. 29, s. 17 (1).
(*p*) 7 Edw. 7, c. 29, s. 18.
(*q*) Russell *v.* Ledsam (1847), 14 M. & W. 574.
(*r*) 7 Edw. 7, c. 29, s. 65; p. 421, *post*.
(*s*) 7 Edw. 7, c. 29, s. 17 (2).
(*t*) *Ibid.*
(*u*) 7 Edw. 7, c. 29, s. 82; P. R. (1908), rr. 110, 111.
(*x*) *E.g.*, Wright's Patent Act (1884); Boult's Patent Act (1885); Bradbury and Leman's Patent Act (1884); Auld's Patent Act (1885); Potter's Patent Act (1887). See also Appendix A to Report of Select Committee on Potter's Patent Bill [H. L.], Skrivanow's Patent Bill [H. L.], and Gilbert and Sinclair's Patent Bill [H. L.].
(*y*) See Report on Select Committee on Potter's Patent Bill [H. L.], Skrivanow's Patent Bill [H. L.], and Gilbert and Sinclair's Patent Bill; Worms and Bale's Patent Act (1891).
(*z*) *Ibid.*; Potter's Patent Act (1887); Worms and Bale's Patent Act (1891).

which had lapsed owing to the failure of the patentee to pay any prescribed fee within the prescribed time. Sect. 20 of the Act provides as follows:— **Extent and Duration of Letters Patent.**

(1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Comptroller in the prescribed manner for an order for the restoration of the patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional and that no undue delay has occurred in the making of the application, the Comptroller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(4) Where such notice is given the Comptroller shall notify the applicant thereof.

(5) After the expiration of the prescribed period the Comptroller shall hear the case and, subject to an appeal to the Court, issue an order either restoring the patent or dismissing the application: Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had been announced as void in the illustrated official journal.

The procedure under this section is regulated by Patents Rules, 1908, rr. 55—59. The applicant is required to show that the omission was unintentional, and that no undue delay has occurred in making the application (*a*); and in case of an opposition the opponent will not be able to stop the restoration unless he can show an intentional omission. The section is only intended to meet such a case as a mistake of fact. Consequently, where a patentee intentionally refrains from paying a fee under a mistaken notion of patent law or patent practice, he is not protected by the section (*b*).

(*a*) *Supra.*
(*b*) (1910) (I.), 27 R. P. C. xi.; Land's Patent (1910), 27 R. P. C. 481.

Extent and Duration of Letters Patent.

The appeal to the Court from a decision of the Comptroller upon a hearing of the case is by petition to the Court presented within one calendar month from the decision of the Comptroller, or within such further time as the Court may under special circumstances allow. The petition must state the nature of the decision appealed against, and whether the appeal is from the whole, or part only, and if so what part of the decision. It must also state concisely the grounds of the appeal, and no grounds other than those so stated shall, except with the leave of the Court to be given on such terms and conditions as may seem just, be allowed to be taken by the appellant at the hearing (*c*). "The Court" here means such judge of the High Court as the Lord Chancellor may select for the purpose of hearing the appeal (*d*).

The object of an opponent may be not so much to prevent an order for restoration being obtained as to secure the insertion in the order of some special provision for his benefit. The Rules (*e*) provide that in every order of the Comptroller restoring a patent, provision shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent has been announced as void in the journal, and that such provisions shall restrain the patentee from commencing or prosecuting any action or proceeding, and from recovering any damage in respect of certain infringements which are particularly specified in the Rule (see p. 360, *post*). The Rules also require that the order shall further provide that if any person within one year after the date thereof makes an application to the Board of Trade for compensation in respect of money, time or labour expended by the applicant upon the subject-matter of the patent in the *bonâ fide* belief that such patent had become and continued to be void, it shall be lawful for the Board, after hearing the parties concerned or their agents, to assess the amount of such compensation, if in their opinion the application ought to be granted, and to specify the party by whom and the day on which such compensation shall be paid, and if default shall be made in payment of the sum awarded, then the said patent shall become void, but the sum awarded shall be recoverable as a debt or damages (*f*).

(*c*) R. S. C., Ord. liiiA. r. 11.
(*d*) See 7 Edw. 7, c. 29, s. 92 (2).
(*e*) P. R. (1908), r. 58.
(*f*) P. R (1908), r. 59.

Extent and Duration of Letters Patent.

Sect. 15, sub-sect. (1) of the Patents and Designs Act, 1907, re-enacts the provisions of sect. 35 of the Act of 1883, which provided that a patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Application in fraud of true and first inventor.

Duplicates of letters patent.

In the event of a patent being lost or destroyed, or its non-production being accounted for to the satisfaction of the Comptroller, the Comptroller has authority at any time to cause a duplicate to be sealed (*g*).

Adverse decision in action of infringement does not annul the patent.

A decision in an action brought upon a patent to the effect that a claim in the specification cannot be supported does not annul the patent (*h*). Such a decision is not an order for revocation, but merely a decision that the specification is bad as it stands. The defect may well be one capable of being cured by amendment (*i*), in which case fresh actions might be successfully brought upon the patent after amendment (*k*).

Illustrated Journal and Reports of Cases.

Illustrated journal and reports of cases.

The Comptroller is required to cause to be issued periodically an illustrated journal of patented inventions, as well as reports of cases decided by Courts of law, and any other information that he may deem generally useful or important (*l*). The Comptroller is also required to keep on sale copies of the illustrated journal, and all complete specifications of patents for the time being in force; and to prepare and publish indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit (*m*).

(*g*) 7 Edw. 7, c. 29, s. 44; P. R. (1908), r. 100.

(*h*) Deeley's Patent (1894), 11 R. P. C. 75.

(*i*) See chap. ii., *post*.

(*k*) P. 131, *post*.

(*l*) 7 Edw. 7, c. 29, s. 46 (1).

(*m*) 7 Edw. 7, c. 29, s. 46 (2), (3). The Illustrated Official Journal, with accompanying reports of the cases decided by the Courts of law, the Comptroller, and the law officers, is at present published weekly. Cases decided before the Comptroller or the law officer ought not to be cited before the High Court of Justice or the Court of Appeal; Siddell *v.* Vickers (1888). 5 R. P. C. 416, 436.

Patent Office Museum.

Patent Office Museum.

Patent Office Museum.

The control and management of the Patent Museum is vested in the Board of Education, subject to such directions as His Majesty in Council may see fit to give (*n*).

The Board of Education may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade (*o*).

Register of Patents.

Register of patents under Act of 1883.

The Act of 1907 (*p*) provides that there shall be kept at the Patent Office a book called the Register of Patents, with which the Register of Patents existing at the commencement of the Act is incorporated and forms part, and wherein shall be entered the names and addresses of grantees of patents, notifications of assignments, and of transmissions of patents, of licences under patents, and of amendments, extensions and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed. Such other matters include applications for amendments of specifications and notices of oppositions thereto, as well as the decisions of the Comptroller and law officer; requests for entry of notifications of assignments, licences, Orders in Council affecting the patent; certificates of enlargements of time within which renewal fees may be paid; and notifications of the expiration of patents.

The present practice relative to the Register of Patents is regulated by the Patents Rules, 1908, rr. 82—90. Any person interested in a particular patent may lodge at the Patent Office a request that he be informed if and when any attempt is made to register an assignment or other similar document, and if he do so the Office will notify him of any application for registration of any assignment or other similar document affecting the patent, and the registration will be suspended for a few days so as to afford such person an opportunity of taking

(*n*) 7 Edw. 7, c. 29, s. 47 (1). (*o*) 7 Edw. 7, c. 29, s. 47 (2).
(*p*) Sect. 28.

Register of Patents.

any steps to prevent registration he may consider advisable. Where a person has lodged such a request and thinks himself aggrieved by an attempted registration, the proper course for him to adopt is to notify the Office and to apply to the Court for leave to serve notice of motion for an early date, which would be granted as a matter of course (*q*).

Register is *primâ facie* evidence.

The Register of Patents is *primâ facie* evidence of any matters by the Act directed or authorised to be inserted therein (*r*). The register is admissible evidence of the various matters referred to therein, but the weight and effect of the evidence is to be considered by the Court in subsequent proceedings. Thus, though from entries on the register it appeared that a defendant to an infringement action was entitled to a licence from the patentee, the Court found to the contrary, since it was established that the order entered on the register was obtained under circumstances calculated to arouse suspicion of collusion between the defendant and the grantee of the patent who was under contract to assign it to the plaintiff in the action (*s*).

Effect of registration.

Where any person becomes entitled by assignment, transmission, or other operation of law, to a patent, it is the duty of the Comptroller on request, and on proof of title to his satisfaction, to cause the name of such person to be entered as proprietor of the patent in the Register of Patents; and the person registered as the proprietor of a patent has, subject to the provisions of the Act of 1907, and to any rights appearing from the register to be vested in any other person, power absolutely to assign, grant licences as to or otherwise deal with the patent, and to give effectual receipts for any consideration for such assignment, licence, or dealing: Provided that any equities in respect of such patent may be enforced in like manner as in respect of any other personal property (*t*). And where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent he is entitled, on request and on proof of his title to the satisfaction of the Comptroller, to have notice of his interest entered in the manner prescribed by the Patents Rules, 1908, in the Register of Patents (*u*).

(*q*) See Viola *v.* Sharpe (1904), 22 R. P. C. 23.
(*r*) 7 Edw. 7, c. 28, s. 28 (3).
(*s*) See Actien Gesellschaft für Cartonnagen Industrie *v.* Temler (1900), 18 R. P. C. 14.
(*t*) 7 Edw. 7, c. 29, s. 71 (1), (3); P. R. (1908), rr. 82—94.
(*u*) 7 Edw. 7, c. 29, s. 71 (2); P. R. (1908), rr. 82—94.

Register of Patents.

According to the practice of the Office, no entry is allowed in respect of a lapsed patent (*x*).

Notices of trusts, as such, cannot be registered,

By sect. 66 of the Act of 1907 it is provided that no notice of any trust—expressed, implied, or constructive—is to be entered on the Register of Patents, nor is any such notice receivable by the Comptroller.

but documents affecting the proprietorship—*e.g.*, equitable assignments—can be registered.

The effect of sect. 66, read, as it must be, together with sects. 28 and 71, and the Patents Rules, 1908, rr. 83—94, is only to exclude from the register simple notices of trusts, but not documents affecting the proprietorship of a patent, whether by creating trusts or otherwise. Consequently equitable assignments of a patent, or of a share in a patent, may be entered on the register as documents affecting the proprietorship (*y*). But an assignment does not justify the entry of the assignee on the Register as proprietor unless it is a legal assignment (*z*), and so an assignee under a deed purporting to be an assignment of a patent not actually sealed will not be entered as proprietor, but, if he desires it, he is entitled to an entry of his interest in the patent as equitable assignee (*a*).

Documents creating neither legal nor equitable interests cannot be registered.

A document which creates neither a legal nor an equitable interest cannot be registered. Thus, a patentee wrote a letter agreeing to give an exclusive licence, and, the patentee and proposed licensee subsequently disagreeing as to whether the amount of royalty had been fixed by subsequent parol agreement, the licensee obtained an entry of the letter on the register. On subsequent motion for rectification of the register, *North*, J., held that, even assuming the royalty had been subsequently fixed by parol agreement, the letter itself did not give any legal or equitable interest in the patent, and could not be registered (*b*).

Documents of earlier date than the patent.

Questions sometimes arise as to the entry on the register of documents of earlier date than the patent.

For example, where it appeared that, before the date of a patent, the grantee and another person signed a document referring to certain proposed dealings with the ownership of patents to be obtained for a process said to be the invention

(*x*) (1910) (E.), 27 R. P. C. App. v.

(*y*) Stewart *v.* Casey (1891), 9 R. P. C. 9; in view of this case the decision in Haslett *v.* Hutchinson (1891), 8 R. P. C. 457, would appear to be wrong.

(*z*) (1910) (E.), 27 R. P. C. App. v.

(*a*) *Ibid.*

(*b*) In the Matter of Fletcher's Patent (1893), 10 R. P. C. 252.

Register of Patents.

for which a patent was subsequently granted, the Comptroller refused to enter this document on the Register of Patents, on the ground that it was dated before the grant of the patent; and this decision was upheld on motion to the Court, but upon the ground that the applicant did not appear to be entitled to any share in the patent (*c*).

It would appear from the judgment in *Parnell's Patent* (*d*) that there may be documents dated before the grant of a patent which ought to be entered in the register after the patent is obtained, and that an agreement as to the ownership is such a document.

Registration is not notice to all persons.

Registration is not notice to all persons; and it has been held that the registration of an exclusive licence for a district did not operate so as to prevent an innocent purchaser of the patented article outside the district using it within the district (*e*).

Inspection of register.

The Register of Patents is at all convenient times open to the inspection of the public, subject to the provisions of the Act of 1907, and to the prescribed regulations (*f*); and any person requiring it, on payment of the prescribed fee, may obtain a certified copy, sealed with the seal of the Patent Office, of any entry made in the register (*g*).

Evidence of entries on the register.

Printed or written copies or extracts, purporting to be certified by the Comptroller, and sealed with the seal of the Patent Office, of or from patents, specifications, disclaimers, and other documents in the Patent Office, and of or from registers and other books kept there, are admitted in evidence in all Courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals (*h*).

A certificate purporting to be under the hand of the Comptroller as to any entry, matter, or thing which he is authorised by the Act of 1907, or any general rules made thereunder, to make or do, is *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone (*i*).

(*c*) In the Matter of Parnell's Patent (1888), 5 R. P. C. 126.
(*d*) (1888), 5 R. P. C. 128.
(*e*) Heap *v.* Hartley (1888), 5 R. P. C. 603; 6 R. P. C. 495.
(*f*) Patents Rules (1908), r. 94.
(*g*) 7 Edw. 7, c. 29, s. 67.
(*h*) *Ibid.*
(*i*) 7 Edw. 7, c. 29, s. 78.

Register of Patents.

Rectification of register.

The Court is empowered, by sect. 72 of the Act of 1907, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of Patents of any entry, or by any entry made therein without sufficient cause, or by any entry wrongly remaining therein, or by an error or default in any entry therein, to make such order for making, expunging, or varying such entry as it may think fit. The Court may in any proceeding under the section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register. The section further provides that the prescribed notice under the section shall be given to the Comptroller, who shall have the right to appear and be heard thereon, and shall appear if so directed by the Court; and any order of the Court rectifying the Register shall direct that notice of the rectification be served on the Comptroller, in the prescribed manner, who shall upon the receipt of such notice rectify the Register accordingly. Under the existing Supreme Court Rules, the manner of application to the Court is by way of motion; and the Comptroller is entitled to four clear days' notice of the application to the Court (*k*).

The purchaser of a share of a patent is "a person aggrieved" by the entry of an assignment of a share purporting to have been made by a person in fact a bankrupt (*l*).

Before the Court will accede to a request for the rectification of the register by the entry of a person's name as assignee of a patent or share of a patent the applicant must of course prove his title (*m*).

It is submitted that the Court has power to expunge any entry fraudulently made in the register, and to enter any facts relative to the ownership of a patent, but not any legal inference to be drawn from these facts. It was held that the repealed Act of 1852 (*n*) gave such power to the Master of the Rolls alone (*o*).

An appeal lies from any order made by the Court or a

(*k*) See P. R. (1908), r. 113.
(*l*) Manning's Patent (1902), 20 R. P. C. 74.
(*m*) *In re* Holmstrom (1904), 22 R. P. C. 213.
(*n*) Sect. 38.
(*o*) *Re* Morey's Patent, 25 Beav. 581; *Re* Green's Patent (1857), 24 Beav. 145; *Re* Horaley and Knighton's Patent (1869), L. R. 8 Eq. 475; *Re* Berdan's Patent (1875), L. R. 20 Eq. 346.

Judge for the rectification of the register (*p*), though formerly there was no appeal from the decision of the Master of the Rolls. **Register of Patents.**

If any rectification of the Register of Patents is required in pursuance of any proceeding in a Court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification must be served on the Comptroller, who is required to rectify the register accordingly (*q*).

It is a misdemeanour for any person to make, or cause to be made, a false entry in the Register of Patents, or a writing falsely purporting to be a copy of an entry in such register, or to produce or tender, or cause to be produced or tendered, in evidence any such writing, knowing the writing or entry to be false (*r*). **Falsification of the register is a misdemeanour.**

(*p*) See *Re* Morgan's Patent (1876), 24 W. R. 245; *Re* Myer's Patent (1882), W. N. 53, 76.

(*q*) 7 Edw. 7, c. 29, s. 94 (7), and s. 95 (3).

(*r*) 7 Edw. 7, c. 29, s. 89 (1).

CHAPTER II.

REVOCATION ON APPLICATION TO THE COMPTROLLER.

I.—Under Section 26 of the Patents and Designs Act, 1907.

Power of Comptroller to revoke patents.

The Patents and Designs (Amendment) Act, 1907, by sects. 14 and 15, which are now embodied in the Patents and Designs Act, 1907, as sects. 26 and 27, conferred upon the Comptroller authority to revoke patents on certain specific grounds.

Provisions of sect. 26 of the Act of 1907.

Sect. 26, sub-sect. (1) of the Patents and Designs Act, 1907, provides as follows:—

> Any person who would have been entitled to oppose the grant of a patent, or is the successor in interest of a person who was so entitled, may, within two years from the date of the patent, in the prescribed manner apply to the Comptroller for an order revoking the patent on any one or more of the grounds on which the grant of the patent might have been opposed.
>
> Provided that when an action for infringement or proceedings for the revocation of the patent are pending in any Court, an application under this section shall not be made except with the leave of the Court.

The Comptroller is required by the statute (*a*) to give notice of the application to the patentee, and he is empowered, after hearing the parties, if desirous of being heard, to make an order revoking the patent or requiring the specification relating thereto to be amended by disclaimer, correction or explanation, or dismissing the application; but it is also enacted that the Comptroller shall not make an order revoking the

(*a*) 7 Edw. 7, c. 29, s. 26 (2).

patent unless the circumstances are such as would have justified him in refusing to grant the patent had the proceedings been proceedings in an opposition to the grant (*b*).

Under sect. 26 of the Act of 1907.

The effect of sect. 26 of the Act, therefore, is to prolong, for two years from the date of the patent, *i.e.*, the application, the period during which the grant may, upon the grounds stated in sect. 11 of the Act, be objected to by a person who was entitled to oppose the grant, or is the successor in interest of such a person. A proceeding under sect. 26 may be considered as an opposition to the grant, but commenced and prosecuted after the seal has been obtained.

"Successor in interest."

It would seem that a person is not entitled to apply for revocation as a "successor in interest" of a person who would have been entitled to oppose unless he is the legal representative of such person, *e.g.*, an assignee from a person who might have opposed is not entitled to apply for revocation under these provisions (*c*).

Procedure.

The prescribed procedure for the revocation of a patent by application under sect. 26 of the Act is that the application shall be made on Patents Form No. 22, and shall be accompanied by an unstamped copy of the form, which shall be transmitted by the Comptroller to the patentee. When the ground of application is that the applicant for the patent obtained the invention from the person applying for revocation, evidence by way of statutory declaration in support of such allegation must be left at the Patent Office at the same time as the application for the revocation, or as soon as may be thereafter. In other cases evidence in support of his case by way of statutory declarations may be so left by the applicant for revocation if he desires. Copies of any declaration so left at the Office shall be delivered by the applicant to the patentee (*d*). The provisions of the Patents Rules, 1908, applicable to opposition cases, apply *mutatis mutandis* to the furnishing of further evidence and to the hearing of the case before the Comptroller (*e*). At the hearing the patentee has the right to begin, except in cases where the ground upon which revocation is sought is that the patentee obtained the invention from the petitioner or from a person of whom he is the legal repre-

(*b*) *Ibid.*
(*c*) See Gascoine's Patent (1910), 27 R. P. C. 78.
(*d*) P. R. (1908), r. 75.
(*e*) P. R. (1908), r. 76.

Under sect. 26 of the Act of 1907.

sentative (*f*). In fact, the case proceeds before the Comptroller as if it were an opposition to the grant as regards evidence whether by declaration or *vivâ voce*.

In cases of opposition under sect. 11, the grant of a patent is refused only when the ground of opposition relied upon is clearly proved. If there is any doubt, the grant is allowed, but subject to such modifications of the specifications, references and disclaimers as may be required to protect the opponent and the public. The practice in this respect on application to the Comptroller under sect. 26 is similar to that established with reference to cases under sect. 11. Questions as to the *locus standi* of persons claiming to be entitled to oppose the grant of a patent and the general principles upon which amendments, references, and disclaimers are ordered in opposition proceedings have been fully discussed in Chapter I. of this volume.

Apparently proceedings properly commenced under sect. 26 of the Act are not stayed by the subsequent commencement of an action for infringement or proceedings for revocation of the patent (*g*).

The proviso to sect. 26, sub-sect. (1).

A proceeding for revocation under sect. 25 is clearly one which is within the proviso to sect. 26, sub-sect. (1), of the Act; but it is doubtful whether proceedings for revocation taken under sects. 24 or 27 are proceedings within the meaning of such proviso. First, as regards proceedings under sect. 24. It may be that, since the proceeding is before the Court and *inter alia* for revocation, the proviso applies. On the other hand, it may be that the proceeding is only for revocation as an alternative remedy, and the term "revocation" in sect. 24 means cancellation of the patent on the ground of an improper use, or mis-use of it, and not on any ground of objection to its validity, which, under any circumstances, could be removed by amendment of the specification; whereas sub-sect. (2) of sect. 26 shows that the proceedings for revocation referred to in the proviso are such as in some cases may be removed by amendment of the specification, and sub-sect. (1) indicates that they are such as in all cases are based upon some ground or grounds of objection to the validity of the patent itself. Secondly, as regards sect. 27, the grounds for revocation under

(*f*) See (1910) (F.), 27 R. P. C. App. p. vii.

(*g*) See p. 141, *post*.