to one of the masters will be made, for him to examine if the books are the same, or whether they differ in any and what respect. (*u*) But the Lord Chancellor in general prefers, if it be convenient, to compare the works, and then immediately to dissolve or to continue the injunction; or he will make any other order which in his judgment and discretion he thinks will meet the justice of the case.

(*u*) Jeffery *v.* Bowles, 1 Dick. 429. Trusler *v.* Comyns, cit. id. —— *v.* Leadbetter, 4 Ves. 681.

APPENDIX.

No. I.

A Form of the Petition for Patent.

[Page 138.]

TO THE KING'S MOST EXCELLENT MAJESTY,

The humble petition of , of, &c.

Sheweth,

That your petitioner, after considerable application and expense, hath invented or found out, [*here comes in the title of the invention*] which invention, he believes, will be of general benefit and advantage.

That he is the true and first inventor thereof; and that the same hath not been made or used by any other person or persons whomsoever, to his knowledge or belief.

Your petitioner, therefore, humbly prays that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent, under the great seal of Great Britain, for the sole working, constructing, making, selling, using, and exercising, of his said invention, and all other benefit and advantage thereof, within that part of your Majesty's United Kingdom of Great Britain and Ireland called England, your dominion of Wales, and town of Berwick-upon-Tweed, [and also in all your Majesty's colonies and plantations abroad] for the term of fourteen years, according to the statute in that case made and provided. And your petitioner shall ever pray, &c.

The Affidavit to support the Petition.

of [&c.] maketh oath and saith that, after considerable application and expense, he hath invented, or found out [*here comes in the title of the invention as described in the petition*] which invention, he believes, will be of general benefit and advantage; and this deponent further saith that he is the true and first inventor thereof, and that the same hath not been made or used by any other person or persons whomsoever, to his knowledge or belief.

Sworn at the Public Office in Southampton-buildings, London, the day of before me,

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No. II.

The Form of a Patent.

[Page 48, and page 141.]

George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these presents shall come, greeting. Whereas A. B. of hath, by his petition, humbly represented unto us, that (*a*)
The petitioner, therefore, most humbly prayed we would be graciously pleased to grant (*b*)
And we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request. Know ye, therefore, that we, of our special grace, certain knowledge, and mere motion, have given and granted, and by these presents, for us, our heirs, and successors, do give and grant, unto the said A. B., his executors, administrators, and assigns, our special licence, full power, sole privilege, and authority, that he, the said A. B., his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy and deputies, servants or agents, or such others as he, the said A. B., his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter, during the term of years herein expressed, shall and lawfully may make, use, exer-

(*a*) For the allegations of the petition.
(*b*) For the prayer of the petition.

cise, and vend his said invention, within that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed, (*c*) in such manner as to him, the said A. B., his executors, administrators, and assigns, or any of them, shall, in his or their discretions seem meet. And that he the said A. B., his executors, administrators, and assigns, shall and lawfully may have and enjoy, the whole profit, benefit, commodity, and advantage, from time to time, coming, growing, accruing, and arising, by reason of the said invention, for and during the term of years herein-mentioned, to have, hold, receive, and enjoy, the said licence, powers, privileges, and advantages, hereinbefore granted, or mentioned to be granted, unto the said A. B, his executors, administrators, and assigns, for and during, and unto the full end and term of fourteen years, from the date of these presents next and immediately ensuing, and fully to be complete and ended, according to the statute in that case made and provided. And to the end that the said A. B., his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit, and the sole use and exercise of the said invention, according to our gracious intention hereinbefore declared, we do, by these presents, for us, our heirs, and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within that said part of the United Kingdom of Great Britain and Ireland, called England, our dominion of Wales, and town of Berwick-upon-Tweed, (*c*) aforesaid, that neither they, nor any of them, at any time, during the continuance of the said term of fourteen years hereby granted, either directly or indirectly, do make, use, or put in practice the said invention, or any part of the same, so attained unto, by the said A. B. as aforesaid, nor in any wise counterfeit, imitate, or resemble the same, nor shall make, or cause to be made, any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the licence, consent, or agreement of the said A. B., his executors, administrators, or assigns, in writing, under his or their hands and seals, first had and obtained in that behalf,

(*c*) For the words—"and also within all our colonies and plantations abroad."

upon such pains and penalties, as can or may be justly inflicted on such offenders for their contempt of this our royal command, and further to be answerable to the said A. B., his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned. And moreover we do by these presents for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers whatsoever of us, our heirs, and successors, for the time being, that they or any of them do not nor shall at any time hereafter, during the said term hereby granted, in any wise molest, trouble, or hinder the said A. B., his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or any thing relating thereto.

Provided always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall be made appear to us, our heirs or successors, or any six or more of our or their privy council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention, as to the public use and exercise thereof, in that said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed,
aforesaid, or not invented or found out by the said A. B. as aforesaid; then upon signification thereof, to be made by us, our heirs or successors, under our or their signet or privy seal, or by the lords of our or their privy council, or any six or more of them, under their hands, these our letters patent shall forthwith cease, determine, and be utterly void, to all intents and purposes.

Provided also that these our letters patent and any thing hereinbefore contained, shall not extend, or be construed to extend, to give privilege unto the said A. B , his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been invented or found out by any other of our subjects whatsoever, and publicly used and exercised in that said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed , unto whom our like letters patent or privileges have been already granted, for the

sole use, exercise, and benefit thereof; it being our will and pleasure that the said A. B., his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions, by them invented or found out, according to the true intent and meaning of the said respective letters patent, and of these presents.

Provided likewise nevertheless, and these our letters patent are upon this express condition, that if the said A. B., his executors, and administrators, or any person or persons which shall or may, at any time or times hereafter, during the continuance of this grant, have or claim any right, title, or interest in law or equity of, in, or to the power, privilege, and authority, of the sole use and benefit of the said invention hereby granted, shall make any transfer or assignment, or any pretended transfer or assignment of the said liberty and privilege, or any share or shares of the benefit or profit thereof, or shall declare any trust thereof, to or for any number of persons, exceeding the number of five, or shall open or cause to be opened any book or books for public subscriptions to be made by any number of persons exceeding the number of five, in order to the raising any sum or sums of money, under pretence of carrying on the said liberty or privilege hereby granted; or shall by him or themselves, or his or their agents or servants, receive any sum or sums of money whatsoever, of any number of persons exceeding in the whole the number of five, for such or the like intents and purposes, or shall presume to act as a corporate body, or shall divide the benefit of these our letters patent, or the liberty and privileges hereby by us granted, into any number of shares exceeding the number of five, or shall commit or do, or procure to be committed or done any act, matter, or thing whatsoever, during such time as such person or persons shall have any right of title either in law or equity in or to the said premises, which will be contrary to the true intent and meaning of a certain act of parliament, intituled "An Act for the better securing certain powers and privileges intended to be granted by his Majesty by two charters, for assurance of ships and merchandizes at sea, and for lending money upon bottomry, and for restraining several extravagant and unwarrantable practices therein mentioned:" or in case the said power, privilege, or authority shall at any time hereafter become vested in, or in trust for more than

the number of persons or their representatives at any one time (reckoning executors or administrators, as and for the single person whom they represent, as to such interest as they are or shall be entitled to, in right of such their testator or intestate), that then, and in any of the said cases, these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding.

Provided also, that if the said A. B. shall not particulary describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be enrolled in our High Court of Chancery, within next and immediately after the date of these our letters patent, that then these our letters patent and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding.

And, lastly, we do by these presents for us, our heirs and successors, grant unto the said A. B., his executors, administrators, and assigns, that these our letters patent, or the enrolment or exemplification thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law, according to the true effect and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense, for the best advantage of the said A. B., his executors, administrators, and assigns, as well in all our courts of record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in that part of our said United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed aforesaid, and amongst all and every the subjects of us, our heirs and successors whatsoever and wheresoever, notwithstanding the not full and certain describing the nature or quality of the said invention, or of the materials thereto conducing and belonging.

In witness whereof, we have caused our letters to be made patent. Witness ourself at Westminster, this of , in the year of our reign.

By writ of Privy Seal.

No. III.

A form for the specification.

[Page 141.]

TO all to whom these presents shall come, I, A. B., of [*&c.*] send greeting. Whereas his most excellent Majesty King George the Fourth, by his letters patent, under the great seal of Great Britain, bearing date at Westminster the day of , in the year of his reign, did for himself, his heirs and successors, give and grant unto me the said A. B. his especial licence, that I, the said A. B., my executors, administrators, and assigns, or such others as I, the said A. B. my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times during the term of years therein expressed, should and lawfully might make, use, exercise, and vend, within England, Wales, and the town of Berwick upon Tweed, [*and also within all his Majesty's colonies and plantations abroad*] my invention of [*Here describe the invention in the words of the patent*] In which said letters patent there is contained a proviso, obliging me, the said A. B., by an instrument in writing, under my hand and seal, particularly to describe and ascertain the nature of my said invention, and in what manner the same is to be performed; and to cause the same to be enrolled in his Majesty's High Court of Chancery, within next, and immediately after the date of the said recited letters patent, as in and by the same, reference being thereunto had, will more fully and at large appear. Now know ye that, in compliance with the said proviso, I, the said A. B., do hereby declare that the nature of my said invention, and the manner in which the same is to be performed, is described and ascertained as follows; that is to say, [*Here are stated the particulars*]. In witness whereof I, the said A. B, have hereunto set my hand and seal, the day of in the year of our Lord One thousand eight hundred and

A. B. (L. S.)

Taken and acknowledged by the above-named A. B. at the Public Office, Southampton

Buildings, Chancery-lane, this day of One thousand eight hundred and
before me,

No. IV.

Notice of applying to Parliament.

[Page 148.]

London, 18

Invention of for

NOTICE is hereby given that application is intended to be made to Parliament in the next session, for an act for vesting in the above-named together with their executors, administrators, and assigns, for a term of years to be limited by such act, the sole privilege, right and authority, of making, using, and vending, a certain machine, for [*as in the patent*] for the exclusive right to make, use, exercise, and vend which machine, within that part of the United Kingdom of Great Britain and Ireland, called England, the dominion of Wales, and town of Berwick-upon-Tweed, the said obtained his Majesty's letters patent, bearing date the day of in the year of his reign for the term of fourteen years, from the date of the said letters patent; and for the exclusive right to practise, exercise, and make use of which said machine within Ireland, the said obtained his Majesty's letters patent, bearing date the day of in the year of his reign, for the term of fourteen years from the date of the said last-mentioned letters patent; and for the exclusive right to make, use, and vend, which said machine, within that part of the United Kingdom of Great Britain and Ireland, called Scotland, the said likewise obtained his Majesty's letters patent, bearing date the day of in the year of his reign, for the term of fourteen years, from the date of the said last-mentioned letters patent: and also for vesting in them the said and

their executors, administrators, and assigns, for a term of years to be limited by such act, the sole privilege, right, and authority, of making, using, and vending, certain improvements on, and additions to, his the said said machine; for the exclusive right to make, use, exercise, and vend which improvement and additions, within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales, and town of Berwick upon Tweed, and also in all his Majesty's colonies and plantations abroad he, the said obtained his Majesty's letters patent, bearing date the day of in the year of his reign, for the term of fourteen years from the date of the said last-mentioned letters patent, and for the exclusive right to use, exercise, and vend which improvements and additions, within Ireland, he the said also obtained his Majesty's letters patent, bearing date the day of in the year of his reign, for the term of fourteen years from the date of the said last-mentioned letters patent: and for the exclusive right to make, use, and vend which improvements and additions, within that part of the United Kingdom of Great Britain and Ireland, called Scotland, he the said likewise obtained his Majesty's letters patent bearing date the day of in the year of his reign, for the term of fourteen years, from the date of the said last-mentioned letters patent.

Signed by the agent for the above-named,
and

No. V.

A Form of Petition to Parliament.

[Page 148.]

To the honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled,

The humble petition and

Sheweth,

THAT your petitioner, after considerable application and expense, invented or found

out a machine, for [*describing the invention, as in the patent*] That his Majesty, by letters patent, dated the day of in the year of his reign, granted to your petitioner his executors, administrators, and assigns, the sole use and exercise of his said invention, within that part of the United Kingdom of Great Britain and Ireland, called England, the dominion of Wales, and Town of Berwick-upon-Tweed, for the term of fourteen years from the date of the said letters patent: That his Majesty, by letters patent, dated the day of in the year of his reign, also granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said invention, within Ireland, for the term of fourteen years from the date of the said last-mentioned letters patent: That his Majesty, by letters patent, dated the day of in the year of his reign, likewise granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said invention, within that part of the United Kingdom of Great Britain and Ireland called Scotland, for the term of fourteen years from the date of the said last-mentioned letter patent: That his Majesty, by letters patent, dated the day of in the year of his reign, granted to your petitioner his executors, administrators, and assigns, the sole use and exercise of certain improvements on, and additions to, his said machine, within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales, and town of Berwick-upon-Tweed, and also in all his Majesty's colonies and plantations abroad, for the term of fourteen years, from the date of the said last mentioned letters patent. That his Majesty, by letters patent dated the day of in the year of his reign, also granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said improvements and additions, within Ireland, for the term of fourteen years, from the date of the said last mentioned letters patent. That his Majesty by letters patent, dated the day of , in the year of his reign, likewise granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said improvements and additions, within that part of the United Kingdom of Great Britain and Ireland called Scotland, for the

term of fourteen years from the date of the said last mentioned letters patent.

That [*here comes in the special circumstances;*]

Your petitioners, therefore, humbly pray that leave may be given to bring in a bill, to prolong the several terms granted by the aforesaid letters patent, to your petitioner, and by him assigned to your petitioner, , and to vest in your petitioners, their executors, administrators, and assigns, the sole privilege, right, and authority, of making, using, and vending, the aforesaid machine, with the said improvements and additions, for such term of years, in such manner, and under such regulations, as to this honourable house shall seem meet.

No. VI.

21 James I. c. 3. — *An Act concerning Monopolies and Dispensations with Penal Laws, and the Forfeitures thereof.*

All monopolies, &c. shall be void.

'Forasmuch as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God One thousand six hundred and ten, publish in print to the whole realm, and to all posterity, that all grants and monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm: And whereas your Majesty was further graciously pleased expressly to command, that no suitor should presume to move your Majesty for matters of that nature; yet nevertheless upon misinformations, and untrue pretences of public good, many such grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of your Majesty's subjects, contrary to the laws of this your realm, and contrary to your Majesty's most royal and blessed intention, so published as aforesaid:' For

avoiding whereof, and preventing of the like in time to come, may it please your excellent Majesty, at the humble suit of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That it may be declared and enacted; and be it declared and enacted by authority of this present Parliament, That all monopolies, and all commissions, grants, licences, charters, and letters patent heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of any thing within this realm, or the dominion of *Wales*, or of any other monopolies, or of power, liberty, or faculty, to dispense with any others, or to give licence or toleration to do, use, or exercise any thing against the tenor or purport of any law or statute; or to give or make any warrant for any such dispensation, licence, or toleration to be had or made; or to agree or compound with any others for any penalty or forfeitures limited by any statute; or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute, before judgment thereupon had; and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same or any of them; are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect, and in no wise to be put in ure or execution.

Monopolies, &c. shall be tried by the common laws of this realm.

II. And be it further declared and enacted by the authority aforesaid, That all monopolies, and all such commissions, grants, licences, charters, letters patents, proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things tending as aforesaid, and the force and validity of them, and of every of them, ought to be and shall be for ever hereafter examined, heard, tried, and determined, by and according to the common laws of this realm, and not otherwise.

All persons disabled to use monopolies, &c.

III. And be it further enacted by the authority aforesaid, That all person and persons, bodies politic and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and uncapable to have, use, exercise, or put in ure any monopoly, or any such commission, grant, licence, charter, letters patents, proclamation, inhibition, restraint, warrant of assist-

ance, or other matter or thing tending as aforesaid, or any liberty, power, or faculty, grounded or pretended to be grounded upon them, or any of them.

IV. And be it further enacted by the authority aforesaid, That if any person or persons at any time after the end of forty days next after the end of this present session of Parliament, shall be hindered, grieved, disturbed, or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken, carried away or detained, by occasion or pretext of any monopoly, or of any such commission, grant, licence, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises; that then and in every such case, the same person and persons shall and may have his and their remedy for the same at the common law, by any action or actions to be grounded upon this statute; the same action and actions to be heard and determined in the courts of King's Bench, Common Pleas, and Exchequer, or in any of them, against him or them by whom he or they shall be so hindered, grieved, disturbed, or disquieted, or against him or them by whom his or their goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained; wherein all and every such person and persons which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained, shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed, or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away, or detained, and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid, prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than one imparlance: And if any person or persons shall, after notice given, that the action depending is grounded upon this statute, cause or procure any action at the common law, grounded upon this statute, to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of or upon

The party grieved by pretext of a monopoly, &c. shall recover trebledamages and double costs.

He that delayeth an action grounded upon this statute incurs a præmunire.

any such judgment to be stayed or delayed by colour or means of any order, warrant, power, or authority, save only by writ of error or attaint; that then the said person and persons so offending shall incur and sustain the pains, penalties and forfeitures, ordained and provided by the statute of provision and *præmunire* made in the sixteenth year of the reign of King RICHARD the Second.

16 R. 2. c. 5.

Letters patents to use new manufactures, saved.

V. Provided nevertheless, and be it declared and enacted, That any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of one and twenty years or under, heretofore made, of the sole working or making of any manner of new manufacture within this realm, to the first and true inventor or inventors of such manufactures, which others at the time of the making of such letters patents and grants did not use, so they be not contrary to the law, nor mischievous to the state, by raising of the prices of commodities at home, or hurt of trade, or generally inconvenient, but that the same shall be of such force as they were or should be, if this Act had not been made, and of none other: and if the same were made for more than one and twenty years, that then the same for the term of one and twenty years only, to be accounted from the date of the first letters patents and grants thereof made, shall be of such force as they were or should have been, if the same had been made but for term of one and twenty years only, and as if this Act had never been had or made, and of none other.

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

VII. Provided also, and it is hereby further in-

tended, declared, and enacted by authority aforesaid, That this Act or any thing therein contained shall not in any wise extend, or be prejudicial to any grant or privilege, power, or authority whatsoever heretofore made, granted, allowed, or confirmed by any Act of Parliament now in force, so long as the same shall so continue in force.

Warrants granted to justices saved.

VIII. Provided also, That this Act shall not extend to any warrant or privy seal, made or directed, or to be made or directed by his Majesty, his heirs or successors, to the justices of the courts of the King's Bench or Common Pleas, and barons of the Exchequer, justices of assize, justices of *oyer and terminer* and gaol-delivery, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute, depending in suit and question before them, or any of them respectively, after plea pleaded by the party defendant.

Charters granted to corporations, saved.

IX. Provided also, and it is hereby further intended, declared and enacted, That this Act or any thing therein contained shall not in any wise extend or be prejudicial unto the city of *London*, or to any city, borough, or town corporate within this realm, for or concerning any grants, charters, or letters patents, to them or any of them made or granted, or for or concerning any custom or customs used by or within them or any of them; or unto any corporations, companies or fellowships of any art, trade, occupation or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade of merchandize; but that the same charters, customs, corporations, companies, fellowships and societies, and their liberties, privileges, powers, and immunities, shall be and continue of such force and effect as they were before the making of this Act, and of none other; any thing before in this Act contained to the contrary in any wise notwithstanding.

Letters patent that concern printing, saltpetre, gunpowder, great ordnance, shot, or offices saved.

X. Provided also, and be it enacted, That this Act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before-mentioned, shall not extend to any letters patents or grants of privilege heretofore made, or hereafter to be made, of, for, or concerning printing, nor to any commission, grant or letters patents, heretofore made, or hereafter to be made, of, for, or concerning the digging, making, or

compounding of saltpetre or gunpowder, or the casting or making of ordnance, or shot for ordnance, nor to any grant or letters patents heretofore made, or hereafter to be made, of any office or offices heretofore erected, made or ordained, and now in being, and put in execution, other than such offices as have been decried by any his Majesty's proclamation or proclamations: but that all and every the same grants, commissions, and letters patents, and all other matters and things tending to the maintaining, strengthening, and furtherance of the same, or any of them, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

This Act shall not extend to commissions for allum mines.

XI. Provided also, and be it enacted, That this Act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before mentioned, shall not extend to any commission, grant, letters patents or privilege heretofore made, or hereafter to be made, of, for or concerning the digging, compounding, or making of alum or alum mines, but that all and every the same commissions, grants, letters patents and privileges, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

XII. [Nor to the liberties of Newcastle-upon-Tyne, nor to licences of keeping taverns.]

XIII. [Nor to letters patents granted to Sir Robert Mansel, Knt., or to James Maxwell, Esq.]

XIV. [Nor to those granted to Abraham Baker, or Lord Dudley.]

No. VII.

8 Anne, c. 19.—*An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.*

'Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting and publishing, or causing to be printed,

reprinted, and published, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families:" for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books; May it please your Majesty, that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the tenth day of *April*, one thousand seven hundred and ten, the author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books, share or shares thereof, or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have the sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of *April*, and no longer; and that the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer; and that if any other bookseller, printer, or other person whatsoever, from and after the tenth day of *April*, One thousand seven hundred and ten, within the times granted and limited by this Act as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted, without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained as aforesaid: then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask and make waste paper of them; and further, that every such offender

After 10 April, 1710, the authors of books already printed, who have not transferred their rights, and the booksellers, &c. who have purchased copies, shall have the sole right of printing them for the term of 21 years.

And the authors of books not printed, to have the sole right of printing for fourteen years.

Punishment of bookseller, &c. printing without consent of the proprietor.

or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published, or exposed to sale, contrary to the true intent and meaning of this Act; the one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance shall be allowed.

'II. And whereas many persons may through ignorance offend against this Act, unless some provision be made, whereby the property in every such book, as is intended by this Act to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books may from time to time be known;' be it therefore further enacted by the authority aforesaid, that nothing in this Act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered in the register book of the company of Stationers, in such manner as hath been usual, which register book shall at all times be kept at the hall of the said company, and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid, for every of which several entries sixpence shall be paid, and no more; which said register book may, at all seasonable and convenient times, be resorted to, and inspected by any bookseller, printer, or other person, for the purposes before-mentioned, without any fee or reward; and the clerk of the said company of stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence.

Copies of books to be entered before publication in the register book of the company of Stationers; which may be inspected at any time without fee.

Penalty of the clerk refusing so to do.

III. Provided nevertheless, that if the clerk of the said company of Stationers for the time being shall refuse or neglect to register, or make such entry or entries, or to give such certificate, being thereunto required by the author or proprietor of such copy or

copies, in the presence of two or more credible witnesses, that then such person and persons so refusing, notice being first duly given of such refusal, by an advertisement in the *Gazette*, shall have the like benefit, as if such entry or entries, certificate or certificates had been duly made and given; and that the clerks so refusing shall, for any such offence, forfeit to the proprietor of such copy or copies the sum of twenty pounds, to be recovered in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

After 25 March, the archbishop of Canterbury, &c. to settle the prices of books, upon complaint made that they are unreasonable.

IV. Provided nevertheless, and it is hereby further enacted by the authority aforesaid, That if any bookseller or booksellers, printer or printers, shall, after the said five and twentieth day of *March* One thousand seven hundred and ten, set a price upon, or sell, or expose to sale, any book or books at such a price or rate as shall be conceived by any person or persons to be too high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury*, for the time being, the Lord Chancellor or Lord Keeper of the Great Seal of *Great Britain* for the time being, the Lord Bishop of *London* for the time being, the Lord Chief Justice of the Court of *Queen's Bench*, the Lord Chief Justice of the Court of *Common Pleas*, the Lord Chief Baron of the Court of *Exchequer* for the time being, the Vice-Chancellors of the two Universities for the time being, in that part of *Great Britain* called *England;* the Lord President of the Sessions for the time being, the Lord Justice General for the time being, the Lord Chief Baron of the *Exchequer* for the time being, the Rector of the College of *Edinburgh* for the time being, in that part of *Great Britain* called *Scotland;* who, or any one of them, shall and have hereby full power and authority, from time to time, to send for, summon, or call before him or them such bookseller or booksellers, printer or printers, and to examine and enquire of the reason of the dearness and inhancement of the price or value of such book or books by him or them so sold or exposed to sale; and if upon such enquiry and examination it shall be found, that the price of such book or books is enhanced, or any wise too high or unreasonable, then and in such case the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop of *London*,

two Chief Justices, Chief Baron, Vice-Chancellors of the Universities, in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or any one or more of them, so enquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer or printers, to award and order such bookseller and booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto, by reason of such complaint, and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice Chancellors of the two Universities, in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the college of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or any one of them, by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the *Gazette*; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell or expose to sale any book or books, at a higher or greater price than what shall have been so limited and settled as aforesaid, then and in every such case such bookseller and booksellers, printer and printers, shall forfeit the sum of five pounds for every such book so by him, her, or them sold or exposed to sale; one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit, in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

and if altered from the price the bookseller set, may order him to pay costs to the party complaining.

Penalty on booksellers selling at higher rates. This clause repealed by 15 Geo. II. c. 33.

V. Provided always, and it is hereby enacted, That nine copies of each book or books, upon the best paper, that from and after the said tenth day of *April*, one thousand seven hundred and ten shall be printed and published as aforesaid, or reprinted and published with additions, shall, by the printer and printers thereof, be delivered to the warehouse-keeper of the said Company of Stationers for the time being, at the hall of the said company, before such publication made for the use of the Royal Library, the libraries of the Universities of *Oxford* and *Cambridge*, the libraries of the four Universities in *Scotland*, the Library of *Sion College* in *London*, and the library commonly called the Library belonging to the Faculty of Advocates at *Edinburgh* respectively; which said warehouse keeper is hereby required, within ten days after demand by the keepers of the respective libraries, or any person or persons by them or any of them authorized to demand the said copy to deliver the same for the use of the aforesaid libraries; and if any proprietor, bookseller, or printer, or the warehouse-keeper of the said Company of Stationers, shall not observe the direction of this act therein, that then he and they so making default in not delivering the said printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered, as also the value of the said printed copy not so delivered; the same to be recovered by the Queen's Majesty, her heirs and successors, and by the chancellor, masters, and scholars of any of the said Universities, and by the president and fellows of *Sion College*, and the said faculty of advocates at *Edinburgh*, with their full costs respectively.

After 10 April, nine copies of each book shall be delivered to the warehouse keeper of the company of stationers, for the use of the university libraries, &c.

Warehouse keeper to deliver the books ten days after demand.

Penalty of proprietor, &c. not observing the directions of this Act.

VI. Provided always, and be it further enacted, That if any person or persons incur the penalties contained in this act, in that part of *Great Britain* called *Scotland*, they shall be recoverable by any action before the court of session there.

Penalties in Scotland how recoverable.

VII. Provided, that nothing in this act contained do extend, or shall be construed to extend, to prohibit the importation vending or selling of any books in *Greek*, *Latin*, or any other language printed beyond the seas; any thing in this act contained to the contrary notwithstanding.

This act not to hinder the importation, &c. of books in Greek, &c. printed beyond sea, &c.

VIII. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing or causing to be done any thing in pursuance of

General issue.

this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict be given for the defendant, or the plaintiff become nonsuited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.

This Act not to prejudice the right of the universities.

IX. Provided, that nothing in this act contained shall extend, or be construed to extend, either to prejudice or confirm any right that the said Universities, or any of them, or any person or persons have, or claim to have, to the printing or reprinting any book or copy already printed, or hereafter to be printed.

Actions for offences against this Act, to be brought in three months.

X. Provided nevertheless, that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this Act, shall be brought, sued, and commenced within three months next after such offence committed, or else the same shall be void and of none effect.

After the fourteen years, the right of printing, &c. to return to the author for other fourteen years.

XI. Provided always, that after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

No. VIII.

8 George II. c. 13.—*An Act for the Encouragement of the Arts of Designing, Engraving and Etching, Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned.*

'Whereas divers persons have by their own genius, industry, pains and expense, invented and engraved, or worked in *mezzotinto* or *chiaro oscuro*, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours: and whereas printsellers and other persons have of late, without the consent of the inventors, designers and proprietors of such prints, frequently taken the liberty of copying, engraving and publishing, or causing to be copied, engraved and published, base copies of such works, designs and prints, to the very great prejudice and detriment of the inventors, designers and proprietors thereof;' For

remedy thereof, and for preventing such practices for the future, may it please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of *June* which shall be in the year of our Lord One thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch or work in *mezzotinto* or *chiaro oscuro*, or from his own works and inventions shall cause to be designed and engraved, etched or worked in *mezzotinto* or *chiaro oscuro*, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-five, within the time limited by this Act, shall engrave, etch or work as aforesaid, or in any other manner copy and sell, or cause to be engraved, etched or copied and sold, in the whole or in part, by varying, adding to or diminishing from the main design, or shall print, reprint or import for sale, or cause to be printed, reprinted or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them respectively in the presence of two or more credible witnesses, or knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors, shall publish, sell or expose to sale, or otherwise, or in any other manner dispose of, or cause to be published, sold or exposed to sale, or otherwise, or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of, or whereon such print or prints are or shall be so copied and printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be

Property of prints vested in the inventor for fourteen years.

Proprietor's name to be affixed to each print.

Penalty on printsellers or others pirating the same.

found in his, her, or their custody, either printed or published, and exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of his Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed.

Not to extend to purchasers of plates from the original proprietors.

II. Provided nevertheless, That it shall and may be lawful for any person or persons, who shall hereafter purchase any plate or plates for printing, from the original proprietors thereof, to print and reprint from the said plates, without incurring any of the penalties in this act mentioned.

Limitation of actions.

III. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this act, the same shall be brought within the space of three months after so doing; and the defendant and defendants in such action or suit shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

General issue.

IV. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards; any thing in this act contained to the contrary notwithstanding.

'V. And whereas *John Pine* of *London*, engraver, 'doth propose to engrave and publish a set of prints, 'copied from several pieces of tapestry in the house 'of Lords, and his Majesty's wardrobe, and other 'drawings relating to the *Spanish* invasion, in the year 'of our Lord one thousand five hundred and eighty-'eight;' Be it further enacted by the authority afore-

said, That the said *John Pine* shall be entitled to the benefit of this act, to all intents and purposes whatsoever, in the same manner as if the said *John Pine* had been the inventor and designer of the said prints. Clause relating to J. Pine.

VI. And be it further enacted by the authority aforesaid, That this act shall be deemed, adjudged and taken to be a public act, and be judicially taken notice of as such by all Judges, Justices and other persons whatsoever, without s ecially pleading the same. Public act.

No. IX.

12 *George II.* c. 36.—*An Act for prohibiting the Importation of Books reprinted Abroad, and first composed or written, and printed in* Great Britain; *and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen Anne, as impowers the limiting the Prices of Books.*

' Whereas the duties payable upon paper imported ' into this kingdom, to be made use of in printing, ' greatly exceed the duties payable upon the importa- ' tion of printed books, whereby foreigners and others ' are encouraged to bring in great numbers of books ' originally printed and published in this kingdom and ' reprinted abroad, to the diminution of his Majesty's ' revenue, and the discouragement of the trade and ' manufacture of this kingdom;' For the preventing thereof for the future, may it please your most excellent Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-ninth day of *September* one thousand seven hundred and thirty-nine, it shall not be lawful for any person or persons whatsoever, to import or bring into this kingdom for sale, any book or books first composed or written, and printed and published in this kingdom, and reprinted in any other place or country whatsoever; and if any person or persons shall import or bring into this kingdom for sale, any printed book or books, so first composed or written, and printed in this kingdom, and reprinted in any other Preamble.

place or country as aforesaid; or knowing the same to be so reprinted or imported, contrary to the true intent and meaning of this act, shall sell, publish, or expose to sale any such book or books; then every such person or persons so doing or offending, shall forfeit the said book or books, and all and every sheet or sheets thereof; and the same shall be forthwith damasked, and made waste paper; and further, that every such offender or offenders shall forfeit the sum of five pounds, and double the value of every book which he or they shall so import or bring into this kingdom, or shall knowingly sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety to any person or persons that shall sue for the same; to be recovered with costs of suit in any of his Majesty's Courts of Record at *Westminster* by action of debt, bill, plaint or information: in which no wager of law, essoin, or protection, or more than one imparlance shall be allowed; and if the offence be committed in *Scotland*, to be recovered before the Court of Session there, by summary action: provided that this act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty years before the same shall be imported.

II. Provided always, That nothing in this act contained shall extend to prevent or hinder the importation of any book first composed or written, and printed in this kingdom, which shall or may be reprinted abroad, and inserted among other books or tracts, to be sold therewith, in any collection, where the greatest part of such collection shall have been first composed or written, and printed abroad; any thing in this act contained to the contrary notwithstanding.

Clause in 8 Anne, c. 19, repealed.

III. And be it further enacted by the authority aforesaid, That so much of an act made in the eighth year of the reign of her late majesty Queen Anne, intituled, *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*, whereby it was provided and enacted, That if any bookseller or booksellers, printer or printers shall, after the said five and twentieth day of *March* one thousand seven hundred and ten, set a price upon, or sell, or expose to sale any book or books, at such a price or rate as shall be conceived by any person or

persons to be high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury* for the time being, the Lord Chancellor, or Lord Keeper of the Great Seal of *Great Britain* for the time being, the Lord Bishop of *London* for the time being, the Lord Chief Justice of the Court of *Queen's Bench*, the Lord Chief Justice of the Court of *Common Pleas*, the Lord Chief Baron of the Court of *Exchequer* for the time being, the Vice-Chancellors of the two Universities for the time being, in that part of *Great Britain* called *England*, the Lord President of the Sessions for the time being, the Lord Justice General for the time being, the Lord Chief Baron of the *Exchequer* for the time being, the Rector of the College of *Edinburgh* for the time being, in that part of *Great Britain* called *Scotland*, who, or any one of them, shall, and have hereby full power and authority from time to time, to send for, summon, or call before him or them, such bookseller or booksellers, printer or printers, and to examine and enquire of the reason of the dearness and enhancement of the price or value of such book or books by him or them so sold, or exposed to sale; and if, upon such enquiry and examination, it shall be found that the price of such book or books is enhanced, or any ways too high and unreasonable, then, and in such case, the said Archbishop of *Canterbury*, Lord Chancellor, or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice-Chancellors of the Universities in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one or more of them, so enquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto by reason of such complaint, and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury*, Lord Chancellor, or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron,

Vice-Chancellors of the two Universities in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or any one of them by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the *Gazette*; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell, or expose to sale, any book or books at a higher or greater price than what shall have been so limited and settled as aforesaid; then, and in every such case, such bookseller or booksellers, printer or printers, shall forfeit the sum of five pounds for every such book so by him, her, or them, sold or exposed to sale, one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit, in any of her Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed; and every part of the said clause shall be and the same is hereby repealed.

Farther continued by 27 Geo. II. c. 18, and 33 Geo. II. c. 16.

IV. And be it further enacted, That this act (except so much thereof as repeals the beforementioned clause in the said act of the eighth year of the reign of the late Queen *Anne*, relating to the prices of books) shall continue and be in force from the said twenty-ninth day of *September* one thousand seven hundred and thirty-nine, for and during the space of seven years, and from thence to the end of the then next session of Parliament, and no longer.

No. X.

7 Geo. III. c. 38.—*An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints; and for vesting in, and securing to* Jane Hogarth, *Widow, the property in certain Prints.*

7 Geo. III. c. 38. 8 Geo. II. c. 13.

'Whereas an act of Parliament passed in the eighth 'year of the reign of his late Majesty King George 'the Second, intituled, *An Act for the Encouragement of the Arts of Designing, Engraving, and Etching, Historical and other Prints, by vesting the Properties thereof in the Inventors, and Engravers, during the Time therein mentioned,* has been found 'ineffectual for the purposes thereby intended;' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *January*, One thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or, from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in *mezzotinto* or *chiaro oscuro*, any historical print or prints, or any print or prints, of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said act and this act, under the restrictions and limitations hereinafter mentioned.

Original inventors, &c. of prints, &c.

II. And be it further enacted by the authority aforesaid, That from and after the said first day of *January*, One thousand seven hundred and sixty-seven, all and every person and persons who shall engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved, etched, or worked, any print, taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said act, and this act, for the term hereinafter mentioned, in like

intitled to the benefit of recited and present act, &c.

manner as if such print had been graved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former act, every such person shall be liable to the penalties contained in the said act, to be recovered as therein and hereinafter is mentioned.

" The sole right of printing and reprinting the late
" *W. Hogarth's* prints, vested in his widow and exe-
" cutrix for twenty years. Penalty of copying, &c. any
" of them, before expiration of the term; such copies
" excepted as were made and exposed to sale after the
" term of fourteen years, for which the said works were
" first licensed, &c."

V. And be it further enacted by the authority aforesaid, That all and every the penalties and penalty inflicted by the said act, and extended and meant to be extended, to the several cases comprised in this act, shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said act is declared and appointed; and the plaintiff or common informer, in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former act), shall recover the same, together with his full costs of suit.

VI. Provided also, That the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

The right intended, vested in the proprietors for 28 years.

VII. And be it further enacted by the authority aforesaid, That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former act and this act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former act mentioned.

Limitation of actions.

VIII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action or suit shall or may plead the general issue, and give the special matter in evidence; and if

General issue.

upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law. Full costs.

No. XI.

15 George III. c. 53.—*An Act for enabling the two Universities in* England, *the four Universities in* Scotland, *and the several Colleges of* Eton, Westminster, *and* Winchester, *to hold in perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning, and other purposes of Education; and for amending so much of an Act of the eighth year of the Reign of Queen* Anne, *as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the use of the several Libraries therein mentioned.*

'Whereas authors have heretofore bequeathed or 15 Geo. III. c. 53.
'given, and may hereafter bequeath or give the copies
'of books composed by them, to or in trust for one of
'the two universities in that part of *Great Britain*
'called *England*, or to or in trust for some of the
'colleges or houses of learning within the same, or to
'or in trust for the several colleges of *Eton*, *West-*
'*minster*, and *Winchester*, and in and by their several
'wills or other instruments of donation, have di-
'rected or may direct, that the profits arising from the
'printing and reprinting such books shall be applied
'or appropriated as a fund for the advancement of
'learning, and other beneficial purposes of education,
'within the said universities and colleges aforesaid:
'And whereas such useful purposes will frequently be
'frustrated, unless the sole printing and reprinting
'of such books, the copies of which have been or shall
'be so bequeathed or given as aforesaid, be preserved

' and secured to the said universities, colleges, and ' houses of learning respectively, in perpetuity :' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said universities and colleges respectively shall, at their respective presses, have, for ever, the sole liberty of printing and reprinting all such books as shall at any time hereafter have been, or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in *Scotland*, or to or in trust for the said colleges of *Eton*, *Westminster*, and *Winchester*, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term; any law or usage to the contrary hereof in any wise notwithstanding.

Universities, &c. to have, for ever, the sole right of printing, &c.

II. And it is hereby further enacted, That if any bookseller, printer, or other person whatsoever, from and after the twenty-fourth day of *June*, One thousand seven hundred and seventy-five, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books; and all and every sheet or sheets, being part of such book or books, to the university, college or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any persons who shall sue for the same; to be re-

Persons printing or selling such books, shall forfeit the same, and also 1*d.* for every sheet

one moiety to his Majesty, and the other to the prosecutor

covered in any of his Majesty's Courts of Record at *Westminster*, or in the Court of Session in *Scotland*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

III. Provided nevertheless, That nothing in this act extend to grant any exclusive right, otherwise than so long as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage; and that if any university or college shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted or any part thereof, or shall allow, permit, or authorize any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void and of no effect, in the same manner as if this act had not been made; but the said universities and colleges, as aforesaid, shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of her Majesty Queen Anne.

'IV. And whereas many persons may through ig-'norance offend against this act, unless some provision 'be made, whereby the property of every such 'book as is intended by this act to be secured to 'the said universities, colleges, and houses of learn-'ing within the same, and to the said universities 'in *Scotland*, and to the respective colleges of '*Eton*, *Westminster*, and *Winchester*, may be ascer-'tained and known;' Be it therefore enacted by the authority aforesaid, That nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, unless the title to the copy of such book or books, which has or have been already bequeathed or given to any of the said universities or colleges aforesaid, be entered in the register book of the Company of Stationers, kept for that purpose, in such manner as hath been usual, on or before the twenty-fourth day of *June*, One thousand seven hundred and seventy five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such register, within

No person subject to penalties, unless entered before. No Books must be entered [illegible] before [illegible]

the space of two months after any such bequest or gift shall have come to the knowledge of the vice-chancellors of the said universities, or head of houses and colleges of learning, or of the principal of any of the said four universities respectively; for every of which entries so to be made as aforesaid, the sum of sixpence shall be paid, and no more; which said Register Book shall and may, at all seasonable and convenient times, be referred to, and inspected by any bookseller, printer, or other person, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee, not exceeding sixpence.

If clerk neglect to register, &c. proprietor to have like benefit, &c.

V. And be it further enacted, That if the Clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate, being thereunto required by the agent of either of the said universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by advertisement in the *Gazette*,) shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for every such offence, forfeit twenty pounds to the proprietor or proprietors of every such copyright; to be recovered in any of His Majesty's Courts of Record at *Westminster*, or in the Court of Session in *Scotland*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, protection, or more than one imparlance, shall be allowed.

8 Anne, c. 19.

'VI. And whereas in and by an act of parliament 'made in the eighth year of the reign of her late 'Majesty Queen Anne, intituled, *An Act for the 'Encouragement of Learning, by vesting the Copies of 'printed Books in the Authors or Purchasers of such 'Copies during the times therein mentioned*, it is 'enacted, That nine copies of each book or books, 'upon the best paper, that, from and after the tenth 'day of *April*, One thousand seven hundred and ten, 'should be printed and published, as therein men- 'tioned, or reprinted and published with additions, 'shall by the printer or printers thereof be deli- 'vered to the warehouse-keeper of the said Com- 'pany of Stationers for the time being, at the Hall 'of the said Company, before such publication made,

'for the use of the royal library, the libraries of the 'four universities in *Scotland*, the library of *Sion Col-* 'lege in *London*, and the library commonly called *The* 'Library belonging to the Faculty of Advocates in 'Edinburgh, respectively; which such warehouse 'keeper was thereby required, within ten days after 'demand by the keepers of the respective libraries, 'or any person or persons by them, or any of them, 'authorised to demand the said copy, to deliver the 'same for the use of the aforesaid libraries; and if 'any proprietor, bookseller, or printer, or the said 'warehouse keeper of the said company of stationers, 'should not observe the direction of the said act 'therein, that then he and they so making default, in 'not delivering the said printed copies as aforesaid, 'should forfeit as therein mentioned: and whereas 'the said provision has not proved effectual, but the 'same hath been eluded by the entry only of the title 'to a single volume, or of some part of such book or 'books so printed and published, or reprinted and re-'published, as aforesaid;' be it enacted by the authority aforesaid, That no person or persons whatsoever shall be subject to the penalties in the said act mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, without the consent mentioned in the said act, unless the title to the copy of the whole of such book, and every volume thereof, be entered, in manner directed by the said act, in the register book of the company of stationers, and unless nine such copies of the whole of such book or books, and every volume thereof printed and published, or reprinted or republished, as therein mentioned, shall be actually delivered to the warehouse keeper of the said company, as therein directed, for the several uses of the several libraries in the said act mentioned.

No person subject to penalties in the said act, unless the title to the copy of the whole be entered, &c.

VII. And be it further enacted, by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict, or if the same shall be brought in the Court of Session in *Scotland*, a judgment be given for the defendant, or the plaintiff become nonsuited, and discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the

Limitation of actions.

General issue.

same remedy as a defendant in any case by law hath.

Public act.

VIII. And be it further enacted by the authority aforesaid, That this act shall be adjudged, deemed, and taken to be a public act; and shall be judicially taken notice of as such by all Judges, Justices, and other persons whatsoever, without specially pleading the same.

No. XII.

17 George III. c. 57.—*An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.*

17 Geo. III. c. 57.
8 Geo. II.
7 Geo. III.

'Whereas an act of parliament passed in the eighth 'year of the reign of his late Majesty King *George* 'the Second, intituled, *An Act for the Encourage-* 'ment of the Arts of Designing, Engraving, and Etch- 'ing Historical and other Prints, by vesting the Pro- 'perties thereof in the Inventors and Engravers, during 'the time therein mentioned*:* And whereas by an act 'of parliament, passed in the seventh year of the reign 'of his present Majesty, *for amending and rendering* 'more effectual the aforesaid act, and for purposes 'therein mentioned, it was (among other things) en- 'acted, That, from and after the first day of *January* 'one thousand seven hundred and sixty-seven, all 'and every person or persons who should engrave, 'etch, or work in *Mezzotinto* or *Chiaro Oscuro*, or 'cause to be engraved, etched, or worked, any print 'taken from any picture, drawing, model, or sculp- 'ture, either ancient or modern, should have, and 'were thereby declared to have, the benefit and pro- 'tection of the said former act, and that act, for the 'term therein after mentioned, in like manner as if 'such print had been graved or drawn from the ori- 'ginal design of such graver, etcher, or draughtsman: 'and whereas the said acts have not effectually an- 'swered the purposes for which they were intended, 'and it is necessary for the encouragement of artists, 'and for securing to them the property of and in their 'works, and for the advancement and improvement

'of the aforesaid arts, that such further provisions 'should be made as are hereinafter mentioned and 'contained;' may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That, from and after the twenty-fourth day of *June*, one thousand seven hundred and seventy-seven, if any engraver, etcher, printseller, or other person, shall, within the time limited by the aforesaid acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked in *Mezzotinto* or *Chiaro Oscuro*, or otherwise, or in any other manner copy in the whole, or in part, by varying, adding to, or diminishing from, the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, which hath or have been, or shall be, engraved, etched, drawn, or designed, in any part of *Great Britain*, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of, and attested by, two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit.

If any engraver, &c. shall engrave, &c. any print, without the consent of the proprietor, he shall be liable to damages and double costs.

No. XIII.

27 George III. c. 38.—*An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited time.*

27 Geo. III. c. 38. Preamble.

'Whereas it may be expedient, for the encouragement of the arts of designing original patterns for linens, calicoes, cottons, and muslins, to vest the property thereof in the designers, printers, or proprietors, for a limited time; for which purpose may it please your Majesty, that it may be enacted:' and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That, from and after the first day of *June*, one thousand seven hundred and eighty-seven, every person who shall invent, design, and print, or cause to be invented, designed, and printed, and become the proprietor of any new and original pattern or patterns for printing linens, cottons, calicoes, or muslins, shall have the sole right and liberty of printing and reprinting the same for the term of two months, to commence from the day of the first publishing thereof, which shall be truly printed, with the name of the printer or proprietors at each end of every such piece of linen, cotton, calico, or muslin; and that if any calico printer, linen draper, or other person whatsoever, from and after the first day of *June*, one thousand seven hundred and eighty-seven, within the time limited by this act, shall print, work, or copy, such original pattern or patterns, or cause to be printed, worked, or copied, such original pattern or patterns, or shall print or reprint, or cause to be printed or reprinted, any such pattern or patterns, and shall publish, sell, or expose to sale, or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or in any other manner disposed of, any linen, cotton, calico, or muslin printed without the consent of the proprietor or proprietors thereof, first had and obtained in writing, signed by him or them respectively, in the presence

From June 1, 1787, the proprietor of any original pattern for printing linens to have the sole right of printing it for two months from first publication;

and whoever shall within that period print the same, to be liable to an action for damages;

of two or more credible witnesses, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors of such pattern, then every such proprietor or proprietors shall and may, if the offence be committed in *England*, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with costs of suit, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed; and if the offence be committed in *Scotland*, every such proprietor or proprietors shall and may, by an action to be brought before the Court of Session, or any Judge competent to try civil causes within his bounds, recover such damages as the said Court of Session, or the said Judge, shall give or assess, and for payment whereof decree shall be issued, with full costs of suit, on which all such execution shall pass as is competent by the laws and practice of *Scotland* in the like cases: Provided nevertheless, that it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates, block or blocks, for printing, from the proprietors thereof, to print, reprint, and expose for sale, or cause to be printed, reprinted, and exposed for sale, from the said plates or blocks, without being liable to any action on that account.

but any person purchasing plates from the proprietors may print therefrom.

II. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for any offence committed against this act, the same shall be brought within the space of six months after so doing, and the defendant or defendants, in such action or suit, if brought in *England*, shall and may plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and receive full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law; and if such action be brought in *Scotland*, and not insisted in, or if the defender be assoilzied, then the defender shall be entitled to full costs, for the reco-

Mode of prosecuting offences against this act.

very whereof he shall have the same remedy as here-in-before is given to the pursuer.

Act to continue in force for one year, and to the end of the then next session.

III. And be it further enacted by the authority aforesaid, That this act shall continue in force for one year, and from thence to the end of the then next session of parliament; and shall be deemed, adjudged, and taken to be a public act, and be judicially taken notice of as such by all Judges, Justices, and other persons whatsoever, without specially pleading the same.

Continued by 29 Geo. III. c. 19.

No. XIV.

34 George III. c. 23.—*An Act for amending and making perpetual an Act made in the twenty-seventh Year of the Reign of his present Majesty, intituled,* An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited Time.—[4th *April*, 1794.]

34 Geo. III. c. 23. 27 Geo. III.

'Whereas an act was made in the twenty-seventh 'year of the reign of his present Majesty (intituled, '*An Act for the Encouragement of the Arts of design-*'*ing and printing Linens, Cottons, Calicoes, and Mus-*'*lins, by vesting the Properties thereof in the Designers,* '*Printers, and Proprietors, for a limited time)*; which 29 Geo. III. 'said act was, by another act made in the twenty-'ninth year of the reign of his present Majesty, con-'tinued from the expiration thereof until the first day 'of *July* one thousand seven hundred and ninety-'four: And whereas the said first recited act hath 'by experience been found to be useful and beneficial:

Expedient to extend time limited by 27 Geo. III.

'And whereas it is expedient that the time limited by 'the said first recited act for vesting the property of 'new and original patterns for printing linens, cot-'tons, calicoes, or muslins, in the designers, printers, 'and proprietors thereof, should be extended for a 'longer time:' May it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

in this present parliament assembled, and by the authority of the same, That, from and after the first day of *July* one thousand seven hundred and ninety-four, every person who shall invent, design, and print, or cause to be invented, designed, and printed, and become the proprietor of any new and original pattern or patterns for printing linens, cottons, calicoes, or muslins, shall have the sole right and liberty of printing and reprinting the same for the term of three months, to commence from the day of the first publishing thereof, which shall be truly printed with the name of the printer or proprietors at each end of every such piece of linen, cotton, calico, or muslin; and that if any calico printer, linen-draper, or other person whatsoever, from and after the said first day of *July* one thousand seven hundred and ninety-four, within the time limited by this act, shall print, work, or copy such original pattern or patterns, or cause to be printed, worked, or copied such original pattern or patterns, or shall print or reprint, or cause to be printed or reprinted, any such pattern or patterns, and shall publish, sell, or expose to sale, or in any other manner dispose of, any linen, cotton, calico, or muslin, so printed, (without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them respectively in the presence of two or more credible witnesses,) knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors of such pattern; then every such proprietor or proprietors shall and may, if the offence be committed in *England*, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with costs of suit, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed: And that in all other respects the said first recited act, and all the clauses, matters, and things therein contained, (except so far as the same is varied by this act,) shall be, and the same is hereby made perpetual.

Term further extended.

Act made perpetual.

No. XV.

38 George III. c. 71.—*An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned.*—[21st *June*, 1798.]

'Whereas divers persons have, by their own genius, industry, pains, and expense, improved and brought the art of making new models and casts of busts, and of statues of human figures, and of animals, to great perfection, in hopes to have reaped the sole benefit of their labours; but that divers persons have (without the consent of the proprietors thereof) copied and made moulds from the said models and casts, and sold base copies and casts of such new models and casts, to the great prejudice and detriment of the original proprietors, and to the discouragement of the art of making such new models and casts as aforesaid:' For remedy whereof, and for preventing such practices for the future, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, every person who shall make or cause to be made any new model, or copy or cast made from such new model, of any bust, or any part of the human figure, or any statue of the human figure, or the head of any animal, or any part of any animal, or the statue of any animal; or shall make or cause to be made any new model, copy, or cast from such new model, in alto or basso relievo, or any work in which the representation of any human figure or figures, or the representation of any animal or animals shall be introduced, or shall make or cause to be made any new cast from nature of any part or parts of the human figure, or of any part or parts of any animal, shall have the sole right and property in every such new model, copy, or cast, and also in every such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, and also in every such new cast from nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same: Provided always, that every person who shall make or cause to be made any such new model, copy,

The sole right and property of making models or casts shall be vested in the original proprietor for 14 years.

or cast, or any such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his or her name to be put thereon, with the date of the publication, before the same shall be published and exposed to sale.

Person making copies of any model or cast, without the written consent of the proprietor, may be prosecuted for damages, by a special action on the case.

II. And be it further enacted, that if any person shall, within the said term of fourteen years, make or cause to be made any copy or cast of any such new model, copy, or cast, or any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to or diminishing from any such new model, copy, or cast, or adding to or diminishing from any such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or adding to or diminishing from any such new cast of nature, or shall cause or procure the same to be done, or shall import any copy or cast of such new model, copy, or cast, or copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work aforesaid, or any copy or cast of any such new cast from nature as aforesaid, for sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to sale, or otherwise disposed of, any copy or cast of any such new model, copy, or cast, or any copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid, without the express consent of the proprietor or proprietors thereof first had and obtained, in writing signed by him, her, or them respectively, with his, her, or their hand or hands, in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid, every proprietor or proprietors of any such original model, copy, or cast, and every proprietor or proprietors of any such original model, or copy or cast in alto or basso relievo, or any such work as aforesaid, or the proprietor or proprietors of any such new cast from nature as aforesaid respectively, shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of enquiry thereon, shall give or assess, together with full costs of suit.

Except such persons who

III. Provided nevertheless, that no person who shall hereafter purchase the right, either in any such

shall purchase the same of the original proprietor.

model, copy, or cast, or in any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature, of the original proprietor or proprietors thereof, shall be subject to any action for vending or selling any cast or copy from the same; any thing contained in this Act to the contrary hereof notwithstanding.

Limitation of actions.

IV. Provided also, that all actions to be brought as aforesaid, against any person or persons for any offence committed against this Act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

No. XVI.

41 George III. c. 107.—*An Act for the further Encouragement of Learning, in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books, to the Authors of such Books, or their Assigns for the Time herein mentioned.*—[*2d July*, 1801.]

Authors of books already composed, and not printed or published, and of books to be hereafter composed, and their assigns, shall have the sole right of printing them for fourteen years.

'Whereas it is expedient that further protection should be afforded to the authors of books, and the purchasers of the copies and copyright of the same in the United Kingdom of *Great Britain* and *Ireland*;' may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the author of any book or books already composed, and not printed or published, and the author of any book or books which shall hereafter be composed, and the assignee or assigns of such authors respectively, shall have the sole liberty of printing and reprinting of such book and books, for the term of fourteen years, to commence from the day of first publishing the same, and no longer; and that if any other bookseller, printer, or other person whosoever, in any part of the said United Kingdom, or in any part of the *British* dominions in *Europe*, shall, from and after the passing of this Act, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent

Booksellers, &c. in any part of the United Kingdom, or British European dominions, who shall print, re-

of the proprietor or proprietors of the copyright of and in such book or books first had and obtained in writing, signed in the presence of two or more credible witnesses, or, knowing the same to be so printed, reprinted, or imported, without such consent of such proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the proprietor or proprietors of the copyright of such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this Act; and every such proprietor and proprietors shall and may, by and in such special action upon the case to be so brought against such offender or offenders in any court of record in that part of the said United Kingdom, or of the *British* dominions in *Europe*, in which the offence shall be committed, recover such damages as the jury on the trial of such action, or on the execution of a writ of enquiry thereon, shall give or assess, together with double costs of suit; in which action no wager of law, essoign, privilege, or protection, nor more than one imparlance, shall be allowed; and all and every such offender or offenders shall also forfeit such book or books, and all and every sheet and sheets being part of such book or books, and shall deliver the same to the proprietor or proprietors of the copyright of such book or books, upon order of any court of record in which any action or suit, in law or equity, shall be commenced or prosecuted by such proprietor or proprietors, to be made on motion or petition to the said court; and the said proprietor or proprietors shall forthwith damask or make waste paper of the said book or books, and sheet or sheets respectively; and all and every such offender or offenders shall also forfeit the sum of threepence for every sheet which shall be found in his or their custody, either printed or printing, or published or exposed to sale contrary to the true intent and meaning of this Act, the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such court of record, by action of debt, bill,

print, or import, &c. any such book without consent of the proprietor, shall be liable to an action for damages, and shall also forfeit the books to the proprietor, and 3d per sheet, half to the king, and half to the informer.

plaint, or information, in which no wager of law, essoign, privilege, or protection, nor more than one imparlance, shall be allowed: provided always, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

Authors have a second 14 years' term, if living.

Act shall not extend to books ready published, nor indemnify against penalties under former Acts in force at the Union of Great Britain and Ireland, 39 & 40 G. 3. c. 67.

II. Provided also, and be it further enacted, that nothing in this Act contained shall extend, or be construed to extend, to any book or books heretofore composed, and printed or published in any part of the said United Kingdom, nor to exempt or indemnify any person or persons whomsoever, from or against any penalties or actions, to which he, she, or they shall or may have become, or shall or may hereafter be liable for or on account of the unlawful printing, reprinting, or importing such book or books, or the selling, publishing, or exposing the same to sale, or the having the same in his or their possession for sale, contrary to the laws and statutes in force respecting the same, at the time of the passing an Act in the Session of Parliament of the thirty-ninth and fortieth years of the reign of his present Majesty, intituled, *An Act for the Union of Great Britain and Ireland.*

Trinity College, Dublin, shall for ever have the sole right of printing books given or bequeathed to them, unless they are given, &c. for a limited time only.

III. 'And whereas authors have heretofore bequeathed, given, or assigned, and may hereafter bequeath, give, or assign, the copies or copyrights of and in books composed by them, to or in trust for the college of the Holy Trinity of *Dublin;* and, in and by their several wills or other instruments, have directed or may direct, that the profits arising from the printing or reprinting such books, shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education, within the college aforesaid: and whereas such useful purposes will frequently be frustrated, unless the sole right of printing and reprinting of such books the copies of which shall have been or shall be so bequeathed, given, or assigned as aforesaid, be preserved and secured to the said college in perpetuity,' be it therefore further enacted, that the said college shall, at their own printing press, within the said college, have for ever the sole liberty of printing and reprinting all such books as shall at any time hereafter have been, or (not having been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given or assigned by the author or authors of the same respectively, or the

representatives of such author or authors, to or in trust for the said college for the purposes aforesaid, unless the same shall have been bequeathed, given or assigned, or shall hereafter be bequeathed, given, or assigned for any term of years, or any other limited term; any law or usage to the contrary thereof in anywise notwithstanding; and that if any printer, bookseller, or other person whosoever, shall, from and after the passing of this Act, unlawfully print, reprint, or import, or cause to be printed, reprinted, or imported, or knowing the same to be so unlawfully printed, reprinted, or imported, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his or their possession for sale, any such last mentioned book or books, such offender or offenders shall be subject and liable to the like actions, penalties, and forfeitures as are hereinbefore mentioned and contained with respect to offenders against the copyrights of authors and their assigns: provided nevertheless, that nothing in this Act shall extend to grant any exclusive right to the said college of the Holy Trinity of *Dublin*, otherwise than so long as the books or copies belonging to the said college, are and shall be printed only at the printing press of the said college, within the said college, and for the sole benefit and advantage of the said college; and that if the said college shall delegate, grant, lease, or sell the copyrights or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorise any person or persons, or bodies corporate, to print or reprint the same, then the privilege hereby granted shall become void and of no effect, in the same manner as if this Act had not been made; but the said college shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors can or may lawfully do under the provisions of this Act, or any other Act now in force.

Penalty on persons printing such books the same as under § 1.

To extend only to booksprinted at the college press.

But the college may sell their copyrights.

IV. Provided also, and be it further enacted, that no bookseller, printer, or other person whosoever, shall be liable to the said penalty of threepence *per* sheet, for or by reason of the printing, reprinting, importing, or selling of any such book or books, or the having the same in his or their custody for sale, without the consent of the proprietor or proprietors of the copyright thereof as aforesaid, unless before the time of the publication of such book or books by the

Booksellers, &c. shall not be liable to the penalty of 3d per sheet, unless the title to the copyright be entered by the proprietor, &c. at Station-

ers' Hall, London; nor if the consent of the proprietor be so entered.

proprietor or proprietors thereof (other than the said college) the right and title of such proprietor or proprietors shall be duly entered in the register book of the Company of Stationers in *London*, in such manner as hath been usually heretofore done by the proprietors of copies and copyrights in *Great Britain*: nor if the consent of such proprietor or proprietors for the printing, reprinting, importing, or selling such book or books, shall be in like manner entered; nor unless the right and title of the said college to the copyright of such book or books as has or have been already bequeathed, given, or assigned to the said college, be entered in the said register book before the twenty-ninth day of *September*, One thousand eight hundred and one, and of all and every such book or books as may or shall hereafter be bequeathed, given or assigned as aforesaid, be entered in the said register book within the space of two months after any such bequest, gift, or assignment shall have come to the knowledge of the provost of the said college; for every of which several entries sixpence shall be paid, and no more; which said register book shall at all times be kept at the hall of the said company, and shall and may at all seasonable and convenient times be resorted to and inspected by any bookseller, printer, or other person, for the purposes before mentioned, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence; and the said clerk shall also, without fee or reward, within fifteen days next after the thirty-first day of *December* and the thirtieth day *June* in each and every year, make or cause to be made, for the use of the said college, a list of the titles of all such books, the copyright to which shall have been so entered in the course of the half year immediately preceding the said thirty-first day of *December* and the thirtieth day of *June* respectively, and shall upon demand deliver the said lists or cause the same to be delivered to any person or persons duly authorized to receive the same for and on behalf of the said college.

Clerk of the company shall give certificates of entries, and make a half-yearly list of the books so entered for the use of Trinity College.

If the clerk refuses to make entries, &c. parties may give notice in the Lon-

V. Provided also, and be it further enacted, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate or certificates, being thereunto respectively required by

the author or authors, proprietor or proprietors of such copies or copyrights, or by the person or persons to whom such consent shall be given, or by some person on his or their behalf, in the presence of two or more credible witnesses, then such party or parties so refused, notice being first duly given by advertisement in the *London Gazette*, shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for any such offence, forfeit to the author or proprietor of such copy or copies, or to the person or persons to whom such consent shall be given, the sum of twenty pounds; or if the said clerk shall refuse or neglect to make the list aforesaid, or to deliver the same to any person duly authorized to demand the same on behalf of the said college, the said clerk shall also forfeit to the said college the like sum of twenty pounds; which said respective penalties shall and may be recovered in any of his Majesty's courts of record in the said United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed.

don Gazette, and the clerk shall forfeit 20*l*.

VI. Provided also, and be it further enacted, That from and after the passing of this act, in addition to the nine copies now required by law to be delivered to the warehouse keeper of the said Company of Stationers, of each and every book and books which shall be entered in the register book of the said company, one other copy shall be in like manner delivered for the use of the library of the said college of the Holy Trinity of *Dublin*, and also one other copy for the use of the library of the Society of the King's Inns *Dublin*, by the printer or printers of all and every such book and books as shall hereafter be printed and published, and the title to the copyright whereof shall be entered in the said register book of the said company; and that the said college and the said society shall have the like remedies for enforcing the delivery of the said copies, and that all proprietors, booksellers, and printers, and the warehouse-keeper of the said company, shall be liable to the like penalties for making default in delivering the said copies for the use of the said college and the said society, as are now in force with respect to the delivering or making default in delivering the nine copies now required by law to be delivered in manner aforesaid.

Two additional copies of books entered at Stationers' Hall, shall be delivered there for the use of the libraries of Trinity College, and the King's Inns, Dublin.

No person shall import into any part of the United Kingdom, for sale, any book first compo ed, &c. within the United Kingdom, and reprinted elsewhere.

VII. And be it further enacted that, from and after the passing of this act, it shall not be lawful for any person or persons whomsoever to import or bring into any part of the said United Kingdom of *Great Britain* and *Ireland*, for sale, any printed book or books, first composed, written, or printed, and published in any part of the said United Kingdom, and reprinted in any other country or place whatsoever; and if any person or persons shall import or bring, or cause to be imported or brought for sale, any such printed book or books into any part of the said United Kingdom, contrary to the true intent and meaning of this act, or shall knowingly sell, publish, or expose to sale, or have in his or their possession for sale, any such book or books, then every such book or books shall be forfeited, and shall and may be seized by any officer or officers of customs or excise, and the same shall be forthwith made waste paper; and all and every person and persons so offending, being duly convicted thereof, shall also, for every such offence, forfeit the sum of ten pounds, and double the value of each and every copy of such book or books which he, she or they shall so import or bring, or cause to be imported or brought into any part of the said United Kingdom, or shall knowingly sell, publish, or expose to sale, or shall cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, contrary to the true intent and meaning of this act; and the commissioners of customs in *England*, *Scotland*, and *Ireland* respectively (in case the same shall be seized by any officer or officers of customs) and the commissioners of excise in *England*, *Scotland*, and *Ireland* respectively (in case the same shall be seized by any officer or officers of excise) shall also reward the officer or officers who shall seize any books which shall be so made waste paper of, with such sum or sums of money as they the said respective commissioners shall think fit, not exceeding the value of such books; such reward respectively to be paid by the said respective commissioners out of any money in their hands respectively arising from the duties of customs and excise: provided that no person or persons shall be liable to any of the last mentioned penalties or forfeitures, for or by reason or means of the importation of any book or books which has not been printed or reprinted in some part of the said United Kingdom, within twenty years next before the same shall be imported, or of any book or

Penalty on importing, selling, or keeping for sale, any such books, forfeiture thereof, and also 10*l.* and double the value.

Books may be seized by officers of customs or excise, who shall be rewarded.

Exceptions as to books not having been printed in the United Kingdom for 20 years, &c.

books reprinted abroad, and inserted among other books or tracts to be sold therewith in any collection, where the greatest part of such collection shall have been first composed or written abroad.

VIII. And be it f rther enacted, that if any action or suit shall be commenced or brought against any person or persons whomsoever, for doing or causing to be done any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff become nonsuited, or di-continue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations, for any offence that shall be committed against this act, shall be brought, sued, and commenced within six months next after such offence committed, or else the same shall be void and of none effect. General issue. Limitation of actions under this Act six months.

No. XVII.

54 George III. c. 56.—*An Act to amend and render more effectual an Act of his present Majesty, for encour ging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts.*—[18*th May*, 1811.]

'Whereas by an act passed in the thirty-eighth year of the reign of his present Majesty, intituled *An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned;* the sole right and property thereof were vested in the original proprietors, for a time therein specified: and whereas the provisions of the said act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same, and to make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in their works, and for the advancement of the said arts:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the autho- 38 Geo. III. c. 71.

Sole right and property of all new and original sculpture, models, copies, and casts, vested in proprietors for 14 years.

rity of the same, that, from and after the passing of this act, every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure and human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy and cast of any subject, being matter of invention in sculpture, and of all and in every new and original sculpture, model, copy and cast in alto or basso-relievo, representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same; provided, in all and every case the proprietor or proprietors do cause his, her or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy or cast, and on every such cast from nature, before the same shall be put forth or published.

Name and date affixed.

Works published under Act, vested in proprietors for fourteen years.

II. And be it further enacted, that the sole right and property of all works, which have been put forth or published under the protection of the said recited act, shall be extended, continued to and vested in the respective proprietors thereof, for the term of fourteen years, to commence from the date when such last mentioned works respectively were put forth or published.

Putting forth pirated copies or pirated casts prosecuted.

III. And be it further enacted, that if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of any pirated copy or pirated cast of any such new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any such bust or busts, or of any such part or parts of the human figure, clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matters or things put forth or published under the protection of this act, or of any works which have been put forth or published under the protection of the said recited act, the right and property whereof is and are secured, extended and protected by this act, in any of the cases as aforesaid, to the detriment, damage or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

Damages.

Double costs.

Purchasers of copyright secured in same.

IV. Provided nevertheless, that no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying or casting, or vending the same; any thing contained in this act to the contrary notwithstanding.

Limitation of actions.

V. Provided always, and be it further enacted, that all actions to be brought as aforesaid, against any person or persons for any offence committed against this act, shall be commenced within six calendar months

next after the discovery of every such offence, and not afterwards.

Additional term of fourteen years, in case maker of original sculpture, &c. shall be living.

VI. Provided always, and be it further enacted, that, from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model, or copy or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself or themselves, of such right of making or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this act.

No. XVIII.

54 George III. c. 156.—*An Act to amend the several Acts for the encouragement of Learning, by securing the Copies and Copyright of printed Books, to the Authors of such Books, or their Assigns.*—29th July, 1814.

8 Anne, c. 19. § 5.

'Whereas by an act, made in the eighth year of the reign of her late Majesty Queen Anne, intituled *An Act for the encouragement of Learning, by vesting the Copies of printed Books in Authors or Purchasers of such Copies, during the Times therein mentioned*, it was among other things provided and enacted, that nine copies of each book or books, upon the best paper, that from and after the tenth day of April one thousand seven hundred and ten should be printed and published as in the said act mentioned, or reprinted and published with additions, should, by the printer and printers thereof, be delivered to the warehouse-keeper of the Company of Stationers for the time being, at the hall of the said company, before such publication made, for the use of the Royal Library, the libraries of the Universities of *Oxford* and *Cambridge*, the libraries of the four Universities in *Scotland*, the library of *Sion* College in *London*, and the library of the Faculty of Advocates at *Edinburgh*; which said warehousekeeper is by the said act required to deliver such copies for the use of the said libraries;

and that if any proprietor, bookseller or printer, or the said warehousekeeper, should not observe the directions of the said act therein, that then he or they so making default in not delivering the said printed copies, should forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered: and whereas by an act made in the forty-first year of the reign of his present Majesty, intituled *An Act for the further encouragement of Learning in the United Kingdom of* Great Britain *and* Ireland, *by securing the Copies and Copyright of printed Books to the Authors of such Books or their Assigns, for the Time herein mentioned*, it is amongst other things provided and enacted, that in addition to the nine copies required by law to be delivered to the warehousekeeper of the said Company of Statieners, of each and every book and books which shall be entered in the register books of the said company, two other copies shall in like manner be delivered for the use of the library of the College of the *Holy Trinity*, and the library of the Society of the *King's Inns* in *Dublin*, by the printer and printers of all and every such book and books as should thereafter be printed and published, and the title of the copyright whereof should be entered in the said Register Book of the said Company: and whereas it is expedient that copies of books hereafter printed or published should be delivered to the libraries hereinafter mentioned, with the modifications that shall be provided by this act;' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of the said several recited acts of the eighth year of Queen Anne, and of the forty-first year of his present Majesty, as requires that any copy or copies of any book or books which shall be printed or published, or reprinted and published with additions, shall be delivered by the printer or printers thereof, to the warehousekeeper of the said Company of Stationers, for the use of any of the libraries in the said act mentioned, and as requires the delivery of the said copies by the said warehousekeeper, for the use of the said libraries, and as imposes any penalty on such printer or warehousekeeper for not delivering the said copies, shall be, and the same is, hereby repealed.

41 G. III. (U.K.) c. 107. § 6.

repealed.

Eleven printed copies delivered on demand, within 12 months after publication, for use of public libraries.

II. And be it further enacted, That eleven printed copies of the whole of every book, and of every volume thereof, upon the paper upon which the largest number or impression of such book shall be printed for sale, together with maps and prints belonging thereto, which, from and after the passing of this act, shall be printed and published, on demand thereof being made in writing to, or left at the place of abode of the publisher or publishers thereof, at any time within twelve months next after the publication thereof, under the hand of the warehousekeeper of the Company of Stationers, or the librarian, or other person thereto authorized by the persons or body politic and corporate, proprietors or managers of the libraries following; *videlicet*, the *British Museum*, *Sion College*, the *Bodleian Library* at *Oxford*, the *Public Library* at *Cambridge*, the Library of the *Faculty of Advocates* at *Edinburgh*, the Libraries of the four Universities of *Scotland*, *Trinity College Library*, and the *King's Inns Library* at *Dublin*, or so many of such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof respectively, within one month after demand made thereof in writing as aforesaid, to the warehousekeeper of the said Company of Stationers for the time being; which copies the said warehousekeeper shall and he is hereby required to receive at the hall of the said company, for the use of the library for which such demand shall be made, within such twelve months as aforesaid; and the said warehousekeeper is hereby required, within one month after any such book or volume shall be so delivered to him as aforesaid, to deliver the same for the use of such library: and if any publisher, or the warehousekeeper of the said Company of Stationers, shall not observe the directions of this act therein, that then he and they so making default in not delivering or receiving the said eleven printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for each copy not so delivered or received, together with the full costs of suit; the same to be recovered by the person or persons, or body politic or corporate, proprietors or managers of the library for the use whereof such copy or copies ought to have been delivered or received; for which penalties and value such person or persons, body politic or corporate, is or are now

Publishers, &c. neglecting.

Penalty.

hereby authorized to sue by action of debt or other proper action, in any Court of Record in the United Kingdom.

No copies of second, &c. edition, without addition or alteration, demanded.

III. Provided always, and be it further enacted, That no such printed copy or copies shall be demanded by or delivered to or for the use of any of the libraries hereinbefore mentioned, of the second edition, or of any subsequent edition of any book or books so demanded and delivered as aforesaid, unless the same shall contain additions or alterations: and in case any edition after the first, of any book so demanded and delivered as aforesaid, shall contain any addition or alteration, no printed copy or copies thereof shall be demanded or delivered as aforesaid, if a printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be delivered to each of the libraries aforesaid, for whose use a copy of the former edition shall have been demanded and delivered as aforesaid: Provided also, that the copy of every book that shall be demanded by the *British Museum*, shall be delivered of the best paper on which such work shall be printed.

Additions printed, and delivered separate.

Proviso for British Museum.

8 Anne, c. 19. s. 1. 41 G. 3. (U. K.) c. 107. s. 1.

IV. And whereas by the said recited acts of the eighth year of Queen Anne, and the forty-first year of his present Majesty's reign, it is enacted, that the author of any book or books, and the assignee or assigns of such author respectively, should have the sole liberty of printing and reprinting such book or books for the term of fourteen years, to commence from the day of first publishing the same, and no longer; and it was provided, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years: And whereas it will afford further encouragement to literature, if the duration of such copyright were extended in manner hereinafter mentioned; Be it further enacted, That from and after the passing of this act, the author of any book or books composed and not printed and published, or which shall hereafter be composed, and be printed and published, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same; and also, if the author shall be living at the end of that period, for the resi-

Instead of copyright for fourteen years, and contingently for fourteen more, authors, &c. shall have 28 year's copyright in works, and for residue of life.

Booksellers, &c. in any part of United Kingdom, or British dominions, who shall print, &c. any book, without consent of proprietor, liable to action for damages.

due of his natural life; and that if any bookseller or printer, or other person whatsoever, in any part of the United Kingdom of *Great Britain* and *Ireland*, in the isles of *Man*, *Jersey*, or *Guernsey*, or in any other part of the *British* dominions, shall, from and after the passing of this act, within the terms and times granted and limited by this act as aforesaid, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent of the author or authors, or other proprietor or proprietors of the copyright of and in such book and books, first had and obtained in writing; or, knowing the same to be so printed, reprinted, or imported, without such consent of such author or authors, or other proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the author or authors, or other proprietor or proprietors of the copyright of every such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this act. And every such author or authors, or other proprietor or proprietors, shall and may by and in such special action upon the case, to be so brought against such offender or offenders, in any Court of Record in that part of the said United Kingdom, or of the *British* dominions, in which the offence shall be committed, recover such damages as the jury on the trial of such action, or on the execution of a writ of enquiry thereon, shall give or assess, together with double costs of suit; in which action no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed; and all and every such

Penalty.

offender and offenders shall also forfeit such book or books, and all and every sheet, being part of such book or books, and shall deliver the same to the author or authors, or other proprietor or proprietors of the copyright of such book or books, upon order of any Court of Record, in which any action or suit in law or equity shall be commenced or prosecuted by such author or authors, or other proprietor or proprietors, to be made on motion or petition to the said Court; and the said author or authors, or other proprietor or

proprietors shall forthwith damask or make waste paper of the said book or books and sheet or sheets; and all and every such offender and offenders shall also forfeit the sum of three-pence for every sheet thereof, either printed or printing, or published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such Court of Record, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed: Provided always, that in *Scotland* such offender or offenders shall be liable to an action of damages in the Court of Session in *Scotland*, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there; and in such action, where damages shall be awarded, double costs of suit, or expenses of process, shall be allowed.

Penalty.

Offenders in Scotland.

V. And, in order to ascertain what books shall be from time to time published, be it enacted, That the publisher or publishers of any and every book demandable under this act, which shall be published at any time after the passing of this act, shall within one calendar month after the day on which any such book or books respectively shall be first sold, published, advertised, or offered for sale, within the bills of mortality, or within three calendar months, if the said book shall be sold, published or advertised in any other part of the United Kingdom, enter the title to the copy of every such book, and the name or names, and place of abode of the publisher or publishers thereof, in the Register Book of the Company of Stationers in *London*, in such manner as hath been usual with respect to books, the title whereof hath heretofore been entered in such Register Book, and deliver one copy, on the best paper as aforesaid, for the use of the *British Museum;* which Register Book shall at all times be kept at the Hall of the said Company; for every of which several entries the sum of two shillings shall be paid, and no more: which said Register Book may at all seasonable and convenient times be resorted to and inspected by any person; for which inspection the sum of one shilling shall be paid to the warehousekeeper of the said Company of Stationers, and such warehousekeeper shall, when

Within what time title of books entered at Stationers' Hall.

Copy for British Museum.

Inspection of Register Book.

and as often as thereto required, give a certificate under his hand of every or any such entry, and for every such certificate the sum of one shilling shall be paid; and in case such entry of the title of any such book or books shall not be duly made by the publisher or publishers of any such book or books, within the said calendar month, or three months, as the case may be, then the publisher or publishers of such book or books shall forfeit the sum of five pounds, together with eleven times the price at which such book shall be sold or advertised, to be recovered, together with full costs of suit, by the person or persons, body politic or corporate, authorized to sue, and who shall first sue for the same, in any Court of Record in the United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed: Provided always, that in the case of Magazines, Reviews, or other periodical publications, it shall be sufficient to make such entry in the Register Book of the said Company, within one month next after the publication of the first number or volume of such Magazine, Review, or other periodical publication: Provided always, that no failure in making any such entry shall in any manner affect any copyright, but shall only subject the person making default to the penalty aforesaid, under this act.

Certificate

Title of book not entered.

Penalty.

Proviso for Magazines, &c.

Proviso.

VI. And be it further enacted, That the said warehousekeeper of the Company of Stationers shall from time to time and at all times, without any greater interval than three months, transmit to the librarian or other person authorized on behalf of the libraries before-mentioned, correct lists of all books entered in the books of the said Company, and not contained in former lists; and that, on being required so to do by the said librarians, or other authorized person, or either of them, he shall call on the publisher or publishers of such books for as many of the said copies as may have been demanded of them.

Warehousekeeper of Stationers' Hall to transmit to librarians lists of books entered; and call on publisher for copies.

VII. Provided always, and be it further enacted, That if any publisher shall be desirous of delivering the copy of such book or volume as aforesaid, as shall be demanded on behalf of any of the said libraries, at such library, it shall and may be lawful for him to deliver the same at such library, to the librarian, or other person authorized to receive the same, (who is hereby required to receive and to give a receipt in writing for the same); and such delivery shall,

Publishers to deliver books at library.

to all intents and purposes of this act, be held as equivalent to a delivery to the said warehouse-keeper. *What deemed delivery.*

VIII. And whereas it is reasonable that authors of books already published, and who are now living, should also have the benefit of the extension of copyright; be it further enacted, That if the author of any book or books, which shall not have been published fourteen years at the time of passing this act shall be living at the said time, and if such author shall afterwards die before the expiration of the said fourteen years, then the personal representative of the said author, and the assignees or assigns of such personal representative, shall have the sole right of printing and publishing the said book or books, for the further term of fourteen years after the expiration of the first fourteen years: Provided that nothing in this act contained shall affect the right of the assignee or assigns of such author to sell any copies of the said book or books, which shall have been printed by such assignee or assigns, within the first fourteen years, or the terms of any contract between such author and such assignee or assigns. *Authors of books published, now living, to have benefit of extension of copyright.* *Proviso.*

IX. And be it also further enacted, That if the author of any book or books which have been already published, shall be living at the end of twenty-eight years after the first publication of the said book or books, he or she shall for the remainder of his or her life have the sole right of printing and publishing the same: Provided that this shall not affect the right of the assignee or assigns of such author, to sell any copies of the said book or books, which shall have been printed by such assignee or assigns within the said twenty-eight years, or the terms of any contract between such author and such assignee or assigns. *Authors living at end of 28 years, sole right of publication for life.*

X. Provided nevertheless, and be it further enacted, That all actions, suits, bills, indictments, or informations for any offence that shall be committed against this act, shall be brought, sued, and commenced, within twelve months next after such offence committed, or else the same shall be void and of no effect. *Limitation of actions.*

END OF THE APPENDIX.

SUPPLEMENT

TO PATENTS.

CHAP. I.

INTRODUCTION (*a*).

SEVERAL important decisions have of late been made in our courts of law respecting letters patent for inventions. The object of this publication is to explain the law in its present state, in a concise and intelligible manner. It was imagined that object would be most readily accomplished by a *Supplement to each Chapter*.

The reader will therefore find under the proper divisions all the new cases which relate to the matter contained in them. If the inquirer have the original Treatise before him at the time that he peruses the Supplement, he will clearly see the application of the later authorities; and it would be convenient if he refresh his memory with the rules laid down in each Chapter of the Treatise before he reads the Supplement to it.

Inventors are much indebted to the learned judges of the present day for the liberal and enlightened construction which they have put upon the letters patent and upon the words of the specification. They will

(*a*) See p. 43 of the Practical Treatise.

notice the importance of the rules established in *Bloxam* v. *Elsee*, that an inventor *may be assisted by an engineer* to complete the mechanical means for carrying his intentions into effect; in *Lewis* v. *Marling* and *Jones* v. *Pearce*, that the *prior use* of a thing by which an inventor will lose his patent (if the subject has been used before) must be a *public* use; in *Lewis* v. *Davis*, that a very *small combination* of mechanical instruments may be the subject of a patent; in the cases of *Crosley* v. *Beverley*, *Lewis* v. *Marling*, and *Jones* v. *Pearce*, that great latitude is now allowed in constructing the meaning of the words used and the description of the invention given in the specification.

In the Supplement to each Chapter the inventor will also find observations respecting the improvements which might be advantageously introduced into our laws respecting the subject discussed in that Chapter.

Chap. II.

Of the Inventor (*a*).

It was observed (*b*) that no person, who has not, without assistance, formed the original idea of the subject in his mind, will be enabled to keep any patent which he may have obtained; and in the case of *Hill* v. *Thompson* (*c*) it was laid down, that if a servant make an improvement, his master is not entitled to take out a patent for it; but it appears from the case of *Bloxam* v. *Elsee* (*d*) that an important qualification has been made, which establishes, that if the inventor employ a skilful person for the express purpose of assisting him in completing the mechanical contrivances, the additions made by that person will belong to his employer, who may include them in the specification to his patent as a part of his own invention.

It was objected in that case, that *parts* of the improvements in Foudriniers' paper machine were the inventions of Mr. Donkin, who proved that when he made those improvements he was employed as an engineer for the purpose of bringing the machine to perfection, and was paid for so doing, and that he was acting as the servant of the inventor of the machine for the purpose of suggesting those improvements. He did not discover the principle of the machine, nor

(*a*) See page 52 of the Practical Treatise.
(*b*) Ibid. p. 53.
(*c*) 8 Taunt. 395. S. C. 2 B. Moore, 456.
(*d*) 1 Car. & P. 558.

invent the important movements of it. The patent was not disturbed on that ground.

The rule of law respecting the assistance from servants may thus be stated. If the servant make a new discovery by himself, such invention becomes his property; but if the master plans, and the servant only executes with alterations of his own, then the master is the true inventor of the machine.

Letters-patent are often taken out in the joint names of two or three persons. If the secret should be discovered that one or two of those persons bore no part in the invention of the machines, the patents would be void.

In those cases (*a*) in which the patentees have had to contend against the charge that their machines were not new, because similar machines had been invented by others, although not brought into public use, it is necessary that the patentees should be clear from all suspicion of having seen the machines in an imperfect state, or whilst they were partially concealed. It is not sufficient that they bring the machines first into public use. They must also be original inventors of them without any assistance from inspection or knowledge of the other machines.

Introducer of a Foreign Invention (*b*).—It is now the common practice when the invention has been obtained from a foreigner, to state in the title of the patent, that the patentee has received the communication from a person residing abroad, but that fact need

(*a*) *Lewis* v. *Marling*, 10 B. & C. 22. And S. C. 4 Car. & P. 52; *Jones* v. *Pearce*, MS. and see *post*.

(*b*) Page 56.

not be set forth. It has been doubted whether the patent can be supported if the inventor, the foreigner, retaining any interest in the patent, be an alien enemy (*a*).

Observations.—The law respecting the person to be considered the *first inventor* (*b*) does not require much alteration. If a communication be made from a foreigner residing abroad to a person in this country, that person can have a patent as being the original

(*a*) *Bloxam* v. *Elsee*, 1 Car. & P. 558.

(*b*) Inventors have been thus described by a writer in the London Journal of Arts and Sciences for 1831. "Useful inventors are of three classes; the first are men of genius, capable of producing important inventions that involve the entire projecting of new machines, or remodelling of existing ones, and the organization of new or complicated processes and systems of working. These are very few.

"The second are men who have not so extensive a scope of imagination and intellect as to project new systems or great changes, and to organize the means of effecting them, but who are capable of making marked improvements upon existing systems and machinery, or partial changes in them. This class is considerable.

"The third class is made up of men of small imagination, who are not capable of any great originality of thought, but who have a certain ingenuity which they can apply to the things that come within the range of their observation, and possess a tact for correctly and accurately executing that which they conceive.

"Their province is to improve in detail, to give a finish to the detached parts of the extensive combinations formed by superior minds, and to fill up the chasms that occur frequently in the plans of the greatest inventors. Happily this class is immense, being spread thickly over the whole body of mechanics, from the manufacturer and engineer down to the lowest workman. Such men constitute expert mechanicians, who are never at a loss for expedients for overcoming the practical difficulties of detail, that occur in their business, and are perpetually making trifling inventions which they require for immediate application."

inventor. Why not permit a foreigner in this country to give the information? And if a foreigner, why not an Englishman?

It might be advantageously enacted that the inventor might assign his right to a patent, so that the assignee should have the patent in his own name.

Chap. III.

Of a new Manufacture, or the Subject of a Patent (*a*).

A long experience has not suggested a better analysis of the different things which may be the subjects of letters patents for inventions than that already given at page 58 of the treatise.

The manufacture must not have been used (*b*).—It is necessary to keep in mind the words of the statute of James, in which it is enacted that the manufacture must be such "which *others*, at the time of making such letters patent and grants, *shall not use*."

The case of *Lewis* v. *Marling* (*c*) decided that the use must have been a *public use*, unless it could be shown affirmatively that the patentee had a knowledge of the subject in its imperfect state from the invention of another person. The patent was granted in 1818 to the plaintiffs for improvements on shearing machines,

(*a*) Page 57 of the Practical Treatise.

(*b*) Id. p. 62. S. P. in K. v. Daniel, in July, 1827, MS.

(*c*) 10 Barn. & Cress. 22. See the same case at Nisi Prius, C. & P. p. 52; and London Journal of Arts and Sciences for December, 1829.

for shearing or cropping woollen and other cloths. They claimed as their invention four things:—1st. The application of the flat spring for directing and pressing the cloth to the cutting edges. 2d. The application of the triangular steel wire on the cylinder. 3d. The application of a proper substance fixed on or in the cylinder A. to brush the surface of the cloth to be shorn; and, 4thly. "The described method of shearing cloth from list to list by a rotatory cutter."

As to the fourth thing claimed, the defendant contended that it was not new, and he proved that a similar machine was in use at New York twenty years ago, and that a specification of it was sent over in 1811 to one Thompson residing at Leeds, who employed two engineers to manufacture a machine from it; but it was never finished, in consequence of the disturbances made by the Luddites. This specification was shown to several persons, but the machine was never brought into use. It appeared also that in 1816 a model for a machine to shear from list to list by means of a rotatory cutter was brought over from America by one Smith, and he showed it to three or four persons in his manufactory, but no machine was ever made from it, nor was it publicly known to exist; and Smith always used machines manufactured by the plaintiffs. It appeared also that many years ago *one Coxon* had made a machine to shear from list to list, which was tried by a person called on behalf of the defendant,(*a*) but he did not think it answered, and soon discontinued the use of it.

For the defendant it was contended that this evi-

(*a*) It was proved at the trial that he used it nearly six months. MSS.

dence deprived the plaintiffs of the right to a patent, as their invention was not new.

Lord Tenterden observed at the trial, that as the invention of the machine for shearing from list to list by a rotatory cutter had not been generally used or known in this country, the plaintiffs might be considered the inventors within the meaning of the statute 21 Jac. 1, c. 3, s. 6, notwithstanding the specification and the model which had been brought over from America, and the making of a machine to work in that manner by Coxon, and his Lordship left to the Jury the questions, whether it had been generally known, and whether the patent had been infringed by the defendant. The jury found a verdict for the plaintiffs.

A rule was afterwards moved for, that there should be a new trial, on the ground (among others) (*a*) that the question of novelty and prior use had not been properly left to the jury by the learned judge.

Lord Tenterden said, to impugn the novelty of the invention, evidence was given that one Coxon had previously made a machine for shearing from list to list, but it was not approved of, and never came *into use*. Another piece of evidence was, that a model had been sent over from America and exhibited to a few persons, but no machine was made from it, and the very persons who had the model, bought and used machines manufactured by the plaintiffs. It was also proved that a specification had been brought over from America and two persons employed to make a machine from it. But that was never completed, so that until the plaintiff's invention came out, no machine was *publicly known* or used here for shearing from list

(*a*) See post.

to list. I told the jury, that if it could be shown that the plaintiffs had seen the model or specification, that might answer the claim of invention; but there was no evidence of that kind, and I left it to them to say whether it had been *in public use and operation* before the granting of the patent. They found that it had not, and I think that there is no reason to disturb their verdict.

Mr. *Justice Bayley* observed, if the model brought from America had been seen by the plaintiff, he could not afterwards have claimed to be the inventor. But if I discover a certain thing for myself, it is no objection to my claim to a patent that another also has made the discovery, provided I first introduce it *into public use.* Here there was no ground to doubt that the plaintiffs were the inventors of the machine, and first introduced it into *public use.*

Mr. *Justice Parke*—There was no evidence in this case to show that the plaintiffs were not the inventors of this machine, in this country at least, but the statute further requires that it shall not have been used by others, and it is said that the latter part of the condition has not been satisfied. But there was no evidence of the use of such a machine before the grant of the patent, and there is no case in which a patentee has been deprived of the benefit of his invention because another also had invented it, unless he had also brought it into use.

Before this decision was made, it was the generally received opinion in Westminster Hall, (*a*) that a know-

(*a*) When that model was produced, to four counsel in consultation, (of whom one is now a judge and two are King's counsel,) one of the counsel exclaimed "there is an end of the patent—the production of the model will be sufficient, res ipsa loquitur."

ledge of an invention much less strong than those facts disclose would have made a patent invalid.

That case has however been followed by another, *Jones* v. *Pearce*, (*a*) in which the words—public use—have been more fully explained.

Jones had a patent granted to him in 1826 for a new and improved description of carriage wheels, which were made entirely of iron. They were formed on the *principle of suspension*, that is, by suspending the weight on the circumference of the wheel instead of its being borne on the nave. In ordinary carriage wheels the weight is supported by the spoke or spokes which happen to be immediately under the box or nave of the wheel, while the spokes above the nave support no part of the weight. In Jones's wheels the weight, by means of iron rods, was suspended from the upper part of the wheel. That desirable effect was produced by the rods or spokes passing into the nave without being blocked in it, but were permitted to play a little into the nave as the spokes approached and came in contact with the ground.

On behalf of the defendant it was proved that Mr. H. Strutt, (*b*) of Belper, near Derby, had discovered the principle of suspension wheels for carriages from an observation on his water wheels, which were founded on the principle of suspending the water, and that he made, about 17 or 18 years ago, a wheel-barrow, a strong cart, and a small cart, composed of wood and iron, upon that principle. The strong cart had been

(*a*) MS. and see London Journal of Arts and Sciences for July, 1832.

(*b*) A gentleman of great genius for mechanical discoveries, who died in early life much lamented.

used in a stone quarry about two miles from Belper, and the milk cart upon the farm. Neither of them had been sold or taken out of the neighbourhood of Belper. In consequence of Mr. Strutt's death the invention was not pursued. The carts after frequent repairs were thrown aside.

There was not any evidence to show that Jones had ever seen or heard of the wheels made by Strutt.

Mr. *Justice Pattcson*, who tried the cause, thus addressed the jury (*a*). Gentlemen—If on the whole of this evidence either on the one side or the other, it appeared that this wheel, constructed by Mr. Strutt's order in 1814, was a wheel on the same principles and in substance the same wheel as the other for which the plaintiff has taken out his patent, and that it *was used openly in public*, so that every body might see it, and had continued to use the same thing up to the time of taking out the patent, undoubtedly then that would be a ground to say that the plaintiff's invention is not new, and if it is not new, of course his patent is bad, and he cannot recover in this action; but if, on the other hand, you are of opinion that Mr. Strutt's is an experiment, and that he found it did not answer, and ceased to use it altogether, and *abandoned it as useless*, and nobody else followed it up, and that the plaintiff's invention which came afterwards was his own invention, and remedied the defect, (if I may so say,) although he knew nothing of Mr. Strutt's wheel, he remedied the defects of Mr. Strutt's wheel, then there is no reason for saying the plaintiff's patent is not good; it depends entirely upon what is your opi-

(*a*) London Journal of Arts and Sciences for August, 1832.

nion upon the evidence with respect to that, because, supposing you are of opinion that it is a new invention of the plaintiff's, the patent is then good.

Then the only remaining question would be, whether the defendant has or has not infringed the patent. Now, as I have told you before, it seems the defendant has constructed a wheel whose construction is on the suspension principle,—that alone would not make it an infringement of the plaintiff's patent, because the suspension principle might be applied in various ways; but if you think it is applied in the same way, as according to the plaintiff's patent it is applied, then the want of two or three circumstances in the defendant's wheel, which is contained in the plaintiff's specification, would not prevent the plaintiff recovering in this action for an infringement of his patent.

It would be quite a different thing if it was shown that the defendant had had communication long before with Mr. Strutt, and had taken up Mr. Strutt's invention in Derbyshire, and had constructed something like Mr. Strutt's, without any knowledge of the plaintiff's patent, and had actually borrowed it from Mr. Strutt's, which was good for nothing. It would be the hardest possible thing to say that this was an infringement of the plaintiff's patent, but it merely comes to this by reason of the variance between the defendant's and the plaintiff's; it is only less useful and less desirable, but is in effect the same thing; then the two points for your consideration clearly are these—whether the plaintiff's invention is new, and if new, whether the defendant has so constructed his wheel as that it is an imitation of the plaintiff's patent; if you are of opinion for the plaintiff, on

both those points, your verdict will be for the plaintiff —but if you are of opinion on either of these two points against the plaintiff, then your verdict will be for the defendant. The jury found for the plaintiff.

The Manufacture must not have been used by the Patentee (*a*). The words of the statute of monopolies have been shown to apply as well to the public use of an invention before the date of the patent by the patentee himself, as by the community.

That doctrine is very well illustrated in the case of *Pennock and Sellers* v. *Dialogue*, in the Supreme Court of the United States of America (*b*). The patentees made their invention complete in 1811, and commissioned a person to sell the invented article for them, until the year 1818, when they applied for and obtained letters patent.

The Court, in delivering their judgment, made (among others) the following observations. "It is obvious that many of the provisions of our patent act are derived from the principles and practice which have prevailed in the construction of the law of England in relation to patents.

The true meaning of the words of the patent law, "not known, or used before the application," is, not known, or used *by the public* before the application.

If an inventor should be permitted to hold back from the knowledge of the public the secrets of his invention: if he should for a long period of years re-

(*a*) p. 64 of the Practical Treatise.

(*b*) See vol. ii, p. 1, of Reports "by Richard Peters, Counsellor at Law and Reporter of the decisions of the Supreme Court of the United States," which are given with great ability and knowledge of the subject under discussion.

tain the monopoly, and make and sell his invention publicly, and thus gather the whole profits of it, relying upon his superior skill and knowledge of the structure, and then, and then only, when the danger of competition should force him to procure the exclusive right, he should be allowed to take out a patent, and thus exclude the patent from any further use than what would be derived under it during his fourteen years, it would materially retard the progress of science and the useful arts, and give a premium to those who should be least prompt to communicate their discoveries."

The Manufacture must be material and useful (*a*).—In the case of *Bloxam* v. *Elsee*(*b*) the Chief Justice left the question to the jury, (on contradictory evidence,) whether the machine for which the first patent was granted was capable of producing useful paper; and directed them to find for the plaintiffs, if they were of opinion that it was, otherwise for the defendant, and the jury found a verdict for the plaintiff.

A Combination or Arrangement of things already known (*c*).

The case of *Lewis* v. *Davis* (*d*) is very important in showing what "Combination or arrangement of things already known" may be the subject of a grant. A patent had been granted in 1815 to Lewis for a machine for shearing cloths.

Another patent was granted in 1818 to Lewis and

(*a*) See page 66 of the Practical Treatise. S. P. Webster v. Uther, MS.
(*b*) 6 Barn. & Cress. 173. (*c*) See p. 75 of the Practical Treatise.
(*d*) 3 Car. & Pay. 502.

another person, entitled " Improvements of a machine for shearing and cropping woollen cloths, the same being improvements in a machine for which John Lewis had obtained a patent on the 27th July, 1815.

The specification of the patent granted in 1815, was given in evidence, from which it appeared that it was granted for a machine with rotatory cutters, which were to shear the cloth *from end to end.*

In the specification to the patent granted in 1818 one of the things claimed was " To shear with rotatory cutters *from list to list*, in the manner specified."

It appeared in evidence that the first method of shearing cloth was by the use of common shears in men's hands, which operation was performed from list to list: that machine was invented in 1788, which carried the shears from list to list—that the next improvement was disclosed in the patent of 1815, by which the rotatory cutter passed *from end to end.*

The question therefore arose whether these plaintiffs could have a grant for cutting cloth with a rotatory cutter *from list to list.*

It was proved that some alteration in the machine for cutting from end to end was necessary, and had been made by the plaintiffs before it could be applied to cut from list to list. Those alterations or improvements were all useful. The defendant had not taken into his machine any of those alterations or improvements, being *three* mechanical contrivances (*a*), claimed by the plaintiff, but had combined the rotatory cutter, which was old, with other mechanical contrivances.

(*a*) Ante, p. 7. In R. v. Fussell, the patent was held by Tenterden, C. J., to be void, because the only alteration was using *steam* instead of *hot water*. MS.

The Lord Chief Justice said, It appears that a rotatory cutter to shear from end to end was known, and that cutting from list to list by means of shears was also known. However, if before the plaintiffs' patent, the cutting from list to list, and the doing that by means of rotatory cutters *were not combined*, I am of opinion that this is such an invention as will entitle them to maintain the present action.

A Principle, Method, or Process carried into Practice by tangible Means. (*a*)

Some careful enactment is much wanted which should clearly define this rule of law. A large mass of evidence upon it was presented to the Committee of the House of Commons. Sometimes an accident discovers a principle, which, being known, may be applied in a thousand ways to different manufactures, and sometimes it is a discovery resulting from laborious investigation and ingenious deductions. The decisions made by the judges are carefully collected and commented upon in the Practical Treatise at a great length.

In that part of the specification to Jones's (*b*) patent for carriage wheels in which *the claim* is stated, the words would indicate that he claimed the suspension principle, but the learned judge who tried the cause said he should construe the words to mean that the patentee claimed the principle of suspension *only*, *as carried into effect* by the mechanical means before described.

(*a*) See p. 78.

(*b*) Jones v. Pearce, tried before Mr. Justice Patteson, MS.

The opinion of the Court of King's Bench, in *Hullett* v. *Hague* (*a*), is very important to inventors. It illustrates the position of law, that several persons may have several patents, founded on the same principle, if they use different mechanical contrivances.

The object to be obtained by two patents, was the evaporation of fluids at comparatively low temperatures: each party effected that object by the introduction of heated air into the fluid; but they both did it by different mechanical means, and were therefore entitled to hold their patents.

The case cannot be understood without a statement of the specifications. *Hullett* was the assignee of *Kneller* of a patent granted for " certain improvements in evaporating sugar" (which improvements were also applicable to other purposes). The specification was as follows. "I *W. G. Kneller* do declare that my invention consists in a method or process, and certain apparatus as hereinafter described, by which I am enabled to evaporate liquids and solutions at a low temperature, and thereby to avoid the injury to which certain substances, which require a nice and delicate application of heat, such as sugar, for instance, are liable by being exposed to too high a temperature: and I do further declare that my said invention and improvement consists in forcing, by means of bellows or any other blowing apparatus, atmospheric or any other air, either in a hot or cold state, through the liquid or solution subjected to evaporation, and this I do by means of pipes, whose extremities reach nearly (or within such distance as may be found suitable under

(*a*) 2 Barn. & Ad. 370.

peculiar circumstances), to the upper part or interior *area* of the bottom of the pan or boiler containing such liquid or solution, the other extremities of such pipes being connected with larger pipes, which communicate with the bellows, or other blowing apparatus, which forces the air into them. The pan or boiler may be of any shape or dimensions, but I prefer it with a flat level bottom, and I introduce the liquid or solution to the depth of from four to six inches. The heat may be applied to the lower or exterior area of the bottom of such pan or boiler, by naked fire, steam, or hot air, in the usual manner, and by means well understood; the air then forced into the heated liquid or solution keeps it in a constant agitation, abstracts its heat, and carries off the steam or vapour, which is to be expelled by raising the degree of heat under the pan or boiler, and increasing the quantity and velocity of the air injected into the liquid or solution; or, on the contrary, by lowering the heat and moderating the injection of air, the evaporation is retarded at the pleasure of the operator." The specification then, after describing at what degree of temperature this might be done, proceeded as follows:—"And I further declare that this, my invention, may be applied to the evaporation of other liquids as well as sugar, and that the form or construction of the apparatus, which I use to produce the above effect, may be varied according to circumstances, and the form or position of the pan to which it is to be applied: but two things are essential in its construction; the first of which is, that however numerous the blowing pipes may be, their lower orifices should be distributed as evenly and equally over the whole surface of the bottom of the

pan as possible; and secondly, that a stream of air should issue from the lower end of every one of them at the same time. To ensure this latter object it is immaterial whether the bottom of the pan or boiler be perfectly level, but it is quite necessary that all the lower ends of the blowing tubes should be on a level and parallel to the surface of the fluid to be evaporated, in order that there may not be a higher column of fluid in one tube than in another. The mode of construction necessary to produce these objects may be various, but in order the more distinctly to explain my meaning and my mode of operating, I hereunto subjoin a drawing of the apparatus which I have used, and find to answer the purpose." (The drawing was annexed to the specification.) "The form of this apparatus may be varied, provided its essential properties of the air blowing through all the *descending* tubes, and these being so disposed as to produce greatly divided and equally distributed currents of air over the whole bottom of the vessel at once, are maintained; because my invention consists in producing rapid evaporation at lower temperature than usual by the means herein-before described."

This specification having been read on the part of the plaintiff, the defendant put in another patent, under which he acted, granted to Richard Knight and Rupert Kirk on the 9th of May, 1822, entitled "a patent for the invention of a process for the more rapid crystallization and for the evaporation of fluids at comparatively low temperatures, by a peculiar mechanical application of air;" and the specification was as follows:—"We, the said Richard Knight and Rupert Kirk, do by these presents particularly de-

scribe and ascertain the nature of our said invention, and in what manner the same is to be performed, as follows; that is to say," (They then stated the inconveniences resulting from the common process of boiling fluids by the too rapid access of heat, and proceeded as follows:) "To obviate this and similar difficulties, and also for the purpose of facilitating the process of evaporation of fluids in general, we declare this our invention to be peculiarly adapted, and we do hereby set forth and describe the means by which we effect the same; that is to say, we propel a quantity of heated air into the lower part of the vessel containing the liquor, syrup, or fluid, whether in a cold or heated state, and cause such heated air to pass through the whole body of the liquor, in finely divided streams. The means used by us for heating and applying the air to the fluid are as follows: that is to say, a quantity of air is propelled (by means of a blowing engine, bellows, or other machine used for propelling air,) through a pipe or pipes (made of lead, copper, iron, or other fit material,) into the *lower part* of the copper, pan or vessel containing the heated syrrup, liquid, fluid, or other matter to be operated on, coiled or otherwise shaped and accommodated to the nature or form of the vessel; the said coil of pipe within and lying at the bottom of the said vessel being perforated with a number of small holes; the heated air being thus forcibly driven out in minutely divided currents passes rapidly through the liquid, and according to the quantity and temperature of the air so passing through the liquid, a greater or a less quantity of the liquid will be converted into vapour and carried off with the air. In lieu of the perforated pipe, a shallow

metallic vessel, of the nature of a cullendar, within the boiler, may be connected with the air pipe; and the cullendar being perforated with small holes, the heated air may be driven through this perforated cullendar, or any similar contrivance that may best suit the form of the vessel, or the nature of the fluid or material to be acted upon."

The specification then described how the heat might be applied, and proceeded thus:—"We further declare, that our invention consists *in the application of currents* of heated air, when forced or made to pass through the body of any fluid for the purpose of producing or facilitating evaporation; and we also declare, that the same may be advantageously applied to processes dependent upon the disengagement of aqueous vapour during the evaporation, concentration, and crystallization of various substances when dissolved in fluids, as in the manufacture of sugar, glue, salt, alum, soap, tallow, and similar processes." It was contended by the defendant's counsel that the patent assigned to the plaintiff was void; first, because the assignor claimed, according to his specification, the merits of the same invention for which Knight and Kirk had obtained a patent several years before; the object of both patents being the same, viz. the causing of evaporation by means of streams of atmospheric air introduced in any vessel near the bottom of the liquid; and the means also the same, viz. forcing the air through the liquid by bellows or other blowing machines. Secondly, supposing that the process described in the plaintiff's patent was an improvement on that pointed out in Knight and Kirk's specification, it was said that Kneller should have confined his pa-

tent to that improvement only. *Lord Tenterden* was of opinion that although the object to be effected by the two patents was the same, the means of effecting it were different; and that the patent granted to Kneller must be considered as one granted for effecting that object by the particular method described in the specification. A verdict was found for the plaintiff, but liberty reserved to the defendant to move to enter a nonsuit.

A motion was made to enter a nonsuit but it was refused: and in delivering the opinion of the Court, *Lord Tenterden* said, that Knight and Kirk's was, in substance, an invention of a process for the more rapid crystallization and for the evaporation of fluids at comparatively low temperatures; this object being effected by means of a coil of pipes lying at the bottom of the vessel, perforated with small holes, and thus operating on the liquid, or by a shallow cullendar placed at the bottom of the vessel. It was proved, that a pipe employed and acted upon in the manner described in the specification, viz. by forcing the air at the end of it, would accomplish that object.

"The patent on which the plaintiff relied, and for the infringement of which this action was brought, was for certain improvements in evaporating sugar, which improvements were also applicable to other purposes. By the specification Kneller declares that his invention consists in a method or process, and certain apparatus as thereinafter described. He does not claim as his invention the principle, but the apparatus, by which the principle of causing evaporation is to be carried into effect: for he states that, by his apparatus, he is

enabled to evaporate liquids and solutions at a low temperature. It is evident that the object of the two patents is the same. But the mode of effecting that object is different. The specification continues, "and I further declare that my said invention and improvement consists in forcing, by means of bellows or any other blowing apparatus, atmospheric or any other air, either in a hot or cold state, through the liquid or solution subjected to evaporation." Now it was said, that the words which immediately follow, "and this I do by means of pipes," constituted a separate and distinct sentence from those which immediately preceded them, and that the patentee had stated his invention in the preceding sentence, and had claimed the same invention as that described by Knight and Kirk in their specification. But we think that the words "and this I do by means of pipes," &c., must in conjunction with those which immediately precede them, be taken to form one entire sentence, and that they amount altogether to an allegation on the part of the patentee, that his invention consisted of the method or process of forcing, by means of bellows or any other blowing apparatus, hot or cold air through the liquid subjected to evaporation, this being effected by means of pipes placed as described in the specification. Now the method described in Knight and Kirk's patent appears to us to be perfectly different. It is either to have a pipe, accommodated to the form of the vessel, or a cullendar, *placed at the bottom* of the vessel. The method described in the plaintiff's specification is to have a large horizontal tube (*near the surface* of the liquid), into which there are introduced a number of small perpendicular tubes, descending

through the liquid to the bottom of the vessel, and having their lower ends exactly on a level, and parallel to the surface of the fluid. The air is then forced by the blowing apparatus from the open end of the large tubes to the other end, which is closed, and as soon as the large tube is filled the air descends through the smaller tubes to the bottom of the vessel, and bubbles up through the liquid, and the evaporation is thereby kept up constantly and equally in all parts. It appears to us that this is a method or apparatus perfectly distinct from the other, and for that method and apparatus the patent was taken out."

Observations. Great care will be required in framing a new act to give a proper definition to the subject of a patent, particularly as to first principles and chemical discoveries (*a*).

There should be a body of law made expressly for the discoveries in chemistry, because the rules which apply to the inventor of a machine do not adapt themselves to the discoverer of a chemical truth.

How far the first discoverer of a principle should be protected in a monopoly of the principle, and not be confined to the means by which he brings it into use, is a question of great dificulty; but it seems to be very dangerous to give a monopoly of the principle.

What shall be the extent of an alteration or improvement which shall support a patent, is also a question of great difficulty, but it might be removed by a good legislative definition of an improvement (*b*).

(*a*) See page 96 of the Practical Treatise.

(*b*) On this matter, there are some good observations in the London Journal of Arts and Sciences for 1832. "As for instance, A. invents a

But it is worthy of observation by inventors, that a slight combination of mechanical means, which form an instrument that is new and useful, will support a patent.

Chap. IV.

Of the Specification (*a*.)

Respecting that important Instrument, the specification, several cases have been decided in the courts of law. They will be introduced under the heads of the Analysis to be found in the Treatise.

No further improvements can be suggested in the manner of framing the specification, than that the

useful printing press (supposing that such a machine was not known before), for this he claims and obtains a patent; B. examines this press, works it, and studies it, which forms the very seed of a second invention by B. for an improved press—he also claims and obtains a patent; and although B.'s press is different from that of A.'s in some things, or in many things, yet it is its offspring; it is an apple grafted on a crab tree, which most likely would never have existed if the crab tree were not in being. The talents of B. having been added to those of A. have produced the improved press; B. runs away with all the reward (that of A. being inferior can find no customers), to the great prejudice, perhaps the ruin of A. Can it then be said that A. had justice done him? No, certainly not. Such proceedings must naturally check and damp the exertions of talented men, when original inventions present themselves to their views. On the other hand, it often happens that in cases similar to the one mentioned, A. brings an action against B. for infringement on his patent right, gains his cause, to the prejudice of B. Must not this discourage attempts at improvements of patented machines?"

(*a*) See page 100 of the Practical Treatise.

judges should have power to amend the description *in all matters* which could not have misled the public, and that the inventors should be at liberty to deposit a model in some public building: and that if a patent were bad as to part it should not be bad as to the whole.

When the price of patents has been reduced, it may be urged that we have not any public building that would contain the models. The answer is obvious. There would not be any necessity to keep the model more than 14 years, after which time it might be destroyed. In May 1829, the number of patents then in force was 1855, of which a great number would not require any drawing or model.

The title of the Patent (*a*).—The rules of law respecting the title of the patent have not been relaxed, and it would be imprudent, under any change in the system, that they should be much altered.

In the case of *Bloxam* and another, assignees of Fourdrinier and another, v. *Elsee* (*b*), it appeared that a patent was granted to *Gamble* for a *machine* for making paper in single sheets without seam or joining *from one to twelve feet and upwards wide* and from one to forty-five feet and upwards in length, the method of making which machine had been communicated to him by a certain foreigner, with whom he was connected.

The description in the specification showed that the machine invented was so constructed as to be capable of producing paper *of one definite width only*, and in order to vary the width, a new machine was required.

(*a*) Page 102.

(*b*) 6 Barn. and Cress. 169 and 178. For other points decided by that case see *post*.

The patent was declared to be void, and the *Chief Justice* (*Abbott*) said: I think one of the objections which has been taken in this case is valid and must prevail; and consequently it is not necessary to give any opinion upon the others. By the patent it appears that the patentee had represented to the crown that he was in possession of a machine for making paper in single sheets, without seam or joining, from one to twelve feet and upwards wide, and from one to forty five feet and upwards in length. Upon this representation the patent is granted. The consideration of the grant is the invention of a machine for making paper in sheets of width and length, varying within the limits designated. If any material part of the representation was not true, the consideration has failed in part, and the grant is consequently void, and a defendant in an action for infringing the patent has a right to say that it is so. Now I think it impossible to say that both width and length are not important parts of this representation. It may be that if the representation had mentioned length only, a patent would have been granted for the invention, which (in its improved state at least) is eminently useful in a very important manufacture, as saving both time and labour in a very considerable degree. But although I may think this probable, I am not at liberty to pronounce judicially that it would have been so. I must therefore see whether the representation was true. It has been contended in support of the patent that the recital does not import that paper of different widths was to be made by one and the same machine, but may mean only that the width might be obtained by different

machines, each adapted and constructed to the extent required. But I think this construction of the recital cannot be allowed; for it is a different thing whether a manufacturer must supply himself with several different machines or with one only, capable alone of accomplishing all the purposes to be obtained by many. And if the width is not to be considered as material, the length cannot so be considered, and then the representation will only be that he has invented machines, by the use of several of which, paper of various widths and lengths may be made without seam or joining. And this will be at variance with all the specifications, which plainly show that whatever was done was to be done by one and the same machine. Then if the representation be (as I think it is) that paper of various widths may be obtained by one and the same machine, I must look to the evidence to discover whether the patentee was possessed of a machine, or of the invention of a machine, capable of accomplishing this object. And unfortunately the evidence shows that he was not. I say unfortunately, because it is to be lamented that the advantage of great ingenuity, labour, anxiety, and expense should be lost to those who have bestowed them. The patentee was at the time possessed of one machine, and one only, and this adapted to one degree of width, and one degree only. And he was not then possessed of any method by which different degrees of width might be manufactured by that machine or any other.

General rules for making the specification (*a*).—It

(*a*) Page 108.

was observed, that although the description of the invention is addressed to the public in general, it need not be so circumstantial, or so explanatory, that persons entirely ignorant of the elements of the science from which the subject is taken, may thereby alone be able to learn and use the invention.

That position of law is confirmed by authority in the case of *Crosley* v. *Beverley* at nisi prius (*a*). In the specification to that patent for an improved gas apparatus no direction was given respecting the condenser, which is a necessary part of every gas apparatus. Lord Tenterden said: a workman who is capable of making a gas apparatus would know that he must put in a condenser. The patentee does not direct it to be put in, but he does not say that it is to be left out.

When terms used in Specification are ambiguous (*b*). Taking the title, patent and specification of Champion's patent together (*c*), it was very difficult to say whether the word *whatever* referred to the total exclusion of starch, or whether when combined with the words "without any starch," it was merely a description of the kind of sail cloth which had been improved. For that ambiguity the patent was declared to be void.

Necessary descriptions omitted in the Specification (*d*).— Every part of the invention which is new must be accurately described as to the manner in which it is

(*a*) 3 Car. and Paine, 513.
(*b*) Page 109.
(*c*) *Campion* v *Benyon*, 3 Brod. & Bing. 5; and see *post*.
(*d*) Page 111.

to operate. In the case of *Felton* v. *Greaves* (*a*). The patent was granted for a machine for an expeditious and correct mode of giving a fine edge to knives, razors, *scizzors* and other cutting instruments." The machine described in the specification consisted of two circular rollers of steel made *rough*, *like files*, and the instrument to be sharpened was passed backward and forward in an angle formed by their intersection. It appeared in evidence that if the machine was intended to give a fine edge to *scizzors* that the one roller should be smooth.

In the specification it was also stated that *other materials* besides steel *might* be employed, and it appeared that if Turkey stones, instead of steel, were used for both the rollers, it was possible to succeed with scizzors. The Lord Chief Justice observed :—The specification describes both the rollers as files. It is not stated either that the rollers must be one rough and the other smooth, or that Turkey stones must be substituted for the files, when it is intended to sharpen the edges of scizzors. The specification is insufficient.

There are persons who imagine that if they introduced the words, " and for other useful purposes," into the title of the patent that the title must be good; and that if they insert the words " other materials may be used," or " any other substance from which the thing can be obtained," into the description, that it is impossible to find fault with the specification. There is not a greater error. In the last case it appeared that the words, " other materials," did not assist the description or save the specification.

(*a*) 3 Car. & Payne's Rep. 611.

In addition to the old authorities, another case (*a*) has been decided, by which it appears that the words "any other substance" had been nearly fatal to an important patent. In the introductory part of the specification, Clegg, the original patentee, used these words, "My improved gas-apparatus is for the purpose of extracting inflammable gas by heat from pit-coals, tar, *or any other substance* from which gas or gases, capable of being employed for illumination, can be extracted by heat;" and then he went on to mention the other inventions. In the description of the retort, he called it "a horizontal flat retort, in which coal, or other materials capable of producing inflammable gas, are heated, and the gas extracted by distillation;" and in the course of it he spoke of the "coal or other substance," being "spread in a thin layer." Throughout the description of the retort, and the explanation of the drawings, he always spoke of "coal," or "coal or coke," or "coal or other substance," only.

It appeared that the retort was incapable of obtaining gas, except very imperfectly, or by considerable modifications, *from oil.*

The date of the patent was December 9, 1815, that, of the specification, June 8, 1816. At these periods it was known, as a philosophical fact, that gas was producible from oil; but it had not been proposed to manufacture such gas for purposes of illumination. Some speculations, indeed, were then going on, and a patent was obtained about the same time for making it; and the manufacture was subsequently brought into use, though not very generally.

(*a*) *Crosley* v. *Beverley.* 1 Mood. & Malk. 283, and see 3 Car. & P. 513.

The counsel for the defendant submitted that the unfitness of the retort for making gas from oil was fatal to the patent, and contended that it was the duty of the patentee not to overstate the limits within which his invention will be useful, that no person may be led to unavailing expense in trying it upon purposes for which it is unfit.

Lord Tenterden said—I must look at the whole of the specification together; and doing so, I think it is evident that it only represents the retort as suited to materials of the same kind as coal. I am of opinion also that I ought to understand the "other substances" mentioned to signify *substances then known* to be available for the purpose of illuminating with gas, not every thing which will burn with a flame; for all these, in a certain sense, will produce gas. It is clear, on the evidence, that oil was not then generally considered as such a substance; and the fact that some speculations were going on at the time with respect to its being so will make no difference. The patentee cannot be required to foresee the success of these speculations, if they have succeeded; but I must consider him, as a practical man, to have spoken of things which practical men then treated as usable for the purpose specified. On both grounds, therefore, I must decide against the objection. The law is severe enough in breaking up patents altogether for a fault in any part of them, without straining it in favor of such an objection.

This position of law was further illustrated in the case of *Crompton* v. *Ibbotson* (*a*). The patent was for an

(*a*) Danson and Lloyd's Reports, 33.

improved method of drying and finishing paper. The specification contained these words: "the invention consists in conducting paper by means of a cloth or cloths against a heated cylinder; which cloth may be made *of any suitable material*, but *I prefer* it to be made of linen warp and woollen weft; which cloth is shown in the drawing by blue lines."

It appeared by the evidence of the plaintiff's witness, that, as to the conducting medium, he had tried several things, but he was not aware of any thing that would answer the purpose except the material which the patentee said he preferred. Whereupon Mr. Justice Bayley directed a nonsuit.

A motion was made to set aside that nonsuit. It was refused, and Lord Tenterden said, the patent was obtained for the discovery of a proper conducting medium. The plaintiff found, after repeated trials, that nothing would serve the purpose except the cloth described in the specification; yet he says the cloth may be made of any suitable material, and merely that he prefers the particular kind there mentioned. Other persons, misled by the terms of this specification, may be induced to make experiments which the patentee knows might fail, and the public has not the full and entire benefit of the invention—the only ground on which the patent is obtained.

Parts of the Manufacture claimed not original (*a*).—In the case of *Campion* v. *Benyon* (*b*), it appeared that the patent was taken out "for an improved method of making sail-cloth without any starch

(*a*) Page 112. (*b*) Brod. & Bing. 5.

whatever." The improvement or discovery consisted in a new mode of texture, and not in the exclusion of starch, and the advantage of excluding that substance had been discovered and made public before that time. The Court held that the patent was void, as claiming, in addition to what the patentee had discovered, the invention of something already made public. Mr. *Justice Park* observed, " In the patentee's process he tells us that the necessity of using starch is superseded, and mildew thereby entirely prevented: but if he meant to claim as his own an improved method of texture or twisting the thread to be applied to the making of unstarched cloth, he might have guarded himself against ambiguity, *by disclaiming* as his own discovery the advantage of excluding starch."

Parts or things put in the Specification to mislead (*a*).—The rule that if any considerable part of the things described in the specification be unnecessary, it will be presumed that it was inserted only with a view to perplex and embarrass the inquirer, was confirmed by the case of *Savory* v. *Price* (*b*).

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

The specification enrolled within the time required by the patent, *set out three distinct recipes*, and described the modes and proportions in which the results were to be mixed, in order to produce the " Seidlitz Powder."

(*a*) Page 116. (*b*) Ryan & Moody, 1.

It was proved that the three products so mixed answered the purpose professed in the patent, and that *the combination was new* and useful.

But upon cross-examination of the plaintiff's witnesses, the following facts were established. The recipe *No.* 1. produced the substance called "Rochelle Salts." Rochelle Salts were known to the world before 1815 under that name, and also as Soda Tartarizata.

Recipe *No.* 2. produced "Carbonate of Soda," which was known before 1815, and was in the Pharmacopœia of 1809; and a more expensive, but more perfect way of making it was also known, and it might be bought in shops.

The recipe *No.* 3. produced "Tartaric Acid," the method of making which was known at the time of the patent, and under that or some other name it might be bought in chemists' shops; and other methods of making it were known, all of which would be equally efficacious for the combination of Seidlitz Powders.

Rochelle salts, carbonate of soda, and tartaric acids *mixed in the manner prescribed*, produced the Seidlitz Powders.

The Chief Justice said—"It is the duty of any one, to whom a patent is granted, to point out in his specification the plainest and most easy way of producing that for which he claims a monopoly; and to make the public acquainted with the mode which he himself adopts. If a person, on reading the specification, would be led to suppose a laborious process necessary to the production of any one of the ingredients, when, in fact, he might go to a chemist's shop and buy the same thing as a separate simple

part of the compound, the public are misled. If the results of the recipes, or of any one of them, may be bought in shops, this specification, tending to make people believe an elaborate process essential to the invention, cannot be supported."

The Drawings incorrect (*a*). —On the trial at nisi prius it was objected in the case of *Bloxam* v. *Elsee* (*b*), that the specification was bad because there were several words in it not in English: such as *vice de pression*, *vice repulsion* and *vice de re-action*, for different screws: and the French word *chapitre*, for a cap, also occurred. It was however proved, that, from the drawings annexed to this specification, a skilful mechanic might make the machine; but it was contended that, as a specification could not be made by drawings alone, it must be made in apt words, intelligible to mechanics; and if this specification were held good, every thing mentioned in a specification might be called by a wrong name, and drawings referred to for the whole. Even the scale appended to the drawings was a scale of *pieds* and *pouces*, terms unknown to English mechanics.

The Lord Chief Justice observed, "It was proved that the names to the scale were quite immaterial: for relative proportion, which was all that was wanted, the scale would have been as good if there had been no names at all.

"An inventor of a machine is not tied down to make such a specification as, by words only, would enable a skilful mechanic to make the machine, but he is to be allowed to call in aid the drawings which he annexes to the specification, and if, by a comparison of

the words and the drawings, the one will explain the other sufficiently to enable a skilful mechanic to perform the work, such a specification is sufficient."

When one of different ways or different ingredients fails in its operation (*a*).—In the case of *Lewis* v. *Marling* (*b*) a most important point was settled. A patent was granted for improvements on shearing machines for shearing or cropping woollen and other cloths. The patentees in their specification claimed (amongst other things) " the application of a proper substance fixed on or in the cylinder *to brush* the surface of the cloth to be shorn." The brush for the surface of the cloth was soon found to be useless, and the patentees never sold any machines with it.

The Court decided that if the patent be granted for several things, one of which is supposed (at the time of enrolling the specification) to be useful, but is afterwards found not to be so, yet the grant is good in law. The opinions of the judges are very excellent.

Lord Tenterden observed, " As to the objection, on the ground that the application of a brush was claimed as a part of the invention, adverting to the specification, it does not appear that the patentee says the brush is an essential part of the machine, although he claims it as an invention. When the plaintiffs applied for the patent, they had made a machine to which the brush was affixed, but before any machine was made for sale they discovered it to be unnecessary. I agree, that if the patentee mentions that as an essential ingredient in the patent article, which is not so, nor even useful, and whereby he misleads the public, his patent may

(*a*) See page 119. (*b*) 10 Barn. & Cress. 22.

be void; but it would be very hard to say that this patent should be void, because the plaintiffs claim to be the inventors of a certain part of the machine not described as essential, and which turns out not to be useful. Several of the cases already decided have borne hardly on patentees, but no case has hitherto gone the length of deciding that such a claim renders a patent void, nor am I disposed to make such a precedent."

Mr. *Justice Bayley* said, "I am of the same opinion. To support a patent, it is necessary that the specification should make a full and fair disclosure to the public of all that is known to the patentee respecting his invention. If it does not, the consideration on which he obtains his patent fails. If he represents several things as competent to produce a specific effect, when only one will answer, that is bad; or if he suppresses any thing which he knows will answer, that also is bad. But it is objected here, that the plaintiffs described the application of the brush as parcel of their discovery. At the time when the patent was obtained a brush was used, and there is no reason to doubt that the plaintiffs at that time thought it necessary."

Mr. *Justice Park*.—"The objection to the patent as explained by the specification may be thus stated: the patent is for several things, one of which being supposed to be useful is now found not to be so; but there is no case deciding that a patent is on that ground void, although cases have gone the length of deciding, that if a patent be granted for three things, and one of them is not new, it fails in toto. The prerogative of the crown as to granting patents was restrained

by the statute 21 Jac. 1, c. 3, s. 6. to cases of grants, 'to the true and first inventors of manufactures, which others at the time of granting the patent shall not use.' The conditions, therefore, is, that the thing shall be new, not that it shall be useful; and although the question of its utility has been sometimes left to a jury, I think the condition imposed by the statute has been complied with, when it has been proved to be new."

The things described are not the best known to the Patentee (*a*).—Another important rule of law was established in the case of *Crosley* v. *Beverley* (*b*). Mr. Clegg, the patentee, had a grant for an improved gas apparatus, and he claimed a gas meter (or part of it), as described in the specification. It appeared on the examination of Mr. Clegg himself, that he had invented the method of making the gas meter, as described in the specification, in the time *between the dates of the patent and the specification*. Before he took out the patent he had completed the design of the meter, but he had not actually made one, and he found several improvements upon it before he sent in his specification, in which he described the meter so improved as the invention claimed by him. The Court were clearly of opinion the patent was valid in law, and *Lord Tenterden* observed, that he was at a loss to know upon and for what reason a patentee is allowed time to disclose his invention, unless it be for the purpose of enabling him to bring it to perfection. If, added his Lordship, in the intermediate time another person were to discover the improvements for so much of the

(*a*) See p. 121. (*b*) 9 Barn. & Cress. 63.

machine the patent would not be available. And Mr. *Justice Bayley* said,—It is *the duty* of a person taking out a patent to communicate to the public any improvement that he may make upon his invention before the specification has been enrolled.

Chap. V.

Of the Practice of obtaining Letters Patent for Inventions (*a*).

There has not been any important new decision respecting the method of obtaining the letters patent: but the practice requires much alteration, and observations will be made upon the different steps which the inventor is obliged to take before he obtains possession of his patent.

He is required to attend at several offices under government; which is a course that necessarily increases *the price paid* for the grant.

The question, whether the price of a patent ought or ought not to be *high*, has been much debated. There are advocates who strenuously contend on each side(*b*) of that important question. It is quite clear

(*a*) See p. 137 of the Practical Treatise.

(*b*) In the London Journal of Arts and Sciences for June, 1830, it is observed by a writer, "After all, the advocates of cheap patents make a much more mighty stumbling block of this first cost of a patent than it really is, and they seem to consider it as the great impediment to invention; which being removed, invention would flourish with a

that the present amount of fees is very heavy, but it is very doubtful whether patentees in general would be benefited by the grant of the right being made nearly gratuitously to every person who applied for it.

The conclusion to which the majority of persons have arrived is, that the price of the patent should be about one half of its present amount. If it were reduced to that sum, and the inventor could obtain his patent by paying (at one place for all the offices) one half of the money, on presenting his petition, and the other half on its completion, a large saving would also be made in his time, and a great reduction in the necessary professional assistance.

The amount of fees might also vary according to the length of time for which the privilege was granted.

The following sums of money are paid for letters patent for an invention, as appeared by several returns made to the House of Commons in the year 1826.

1. Return from the office of Secretary of State for the Home Department, England.

Reference to the Attorney or Solicitor General	£2	2	6
Royal Warrant	7	13	6

luxuriance hitherto unseen. Now the real cause which, under the present law, represses invention and makes capitalists loth to speculate in inventions, is the uncertainty which reigns through every stage of a patent, from the beginning to the end; uncertainty, first, whether the invention will answer; and secondly, whether the patent will stand the brunt of an action at law, through which ordeal it will surely have to pass, so soon as it has become profitable to the inventor. Both of these points can only be settled at great expense, and it is the fear of that expense, and not the first costs of a patent, which deters men from taking up the inventions of others, and ought to deter all prudent men of small means from attempting to take out patents and work them at their own risk."

With an addition of 1*l.* 7*s.* 6*d.* if the patent of invention extends to His Majesty's Colonies and Plantations abroad; and if the patent is granted to more than one person an additional fee upon the royal warrant of 1*l.* 7*s.* 6*d.* for each additional person.

King's Bill	£7 13 6

With an addition of 1*l.* 7*s.* 6*d.* if the patent extends to the Colonies; and if granted to more than one person an additional fee upon the King's Bill of 1*l.* 7*s.* 6*d.* for each additional person.

2. From the office of the Secretary of State for the Home Department, Scotland.

Reference to the Lord Advocate . .	£2 2 6
Royal Warrant and Stamp	16 17 0

And if granted to more than one person, an additional fee of 2*l.* 15*s.* for each additional person.

3. From the office of the Secretary of State for the Home Department, Ireland.

Reference to the Lord Lieutenant . .	£2 2 6
Warrant and Stamp	9 3 6

And if granted to more than one person an additional fee of 1*l.* 7*s.* 6*d.* for each additional person.

Signed by Geo. R. Dawson.

Whitehall, 6th April, 1826.

4. Return from the Attorney or Solicitor General's offices of the expenses incurred there for taking out a patent for England.

To the Attorney General for his report .	£3 3 0
To the Clerk	1 1 0

If a caveat be entered the Clerk receives . .	£0	5	0
To the Attorney General for his approving, settling and signing the bill	5	0	0
If the patent is opposed (which sometimes happens) the following fees are charged:			
To the Clerk for every summons summoning the parties to attend before the Attorney General	0	5	0
To the Attorney General for the hearing of the parties by themselves or their agents and witnesses; each party	2	12	6
To the Clerk	0	12	6

The same fees are paid whether the patent passes the office of the Attorney or Solicitor General.

Signed by H. HAINES and H. OWENS,

10*th April*, 1826. *Clerks to the Attorney and Solicitor General.*

5. Return from the Patent Office of the Attorney General of the expenses incurred there for taking out a patent for England.

Stamp duty on the warrant from the King to prepare a bill for His Majesty's signature to pass the great seal	£1	10	0
To the Clerk of the Patents for preparing the bill and docquet, and his fee	5	10	6
Stamp duty on the bill	1	10	0
Ingrossing Clerk	1	1	0
To the Clerk of the Patents for preparing and engrossing two transcripts of the bill to be passed through the signet and privy seal offices, parchment for such transcripts, and transmitting the same to those offices; each transcript 13*s.* 9*d.*	1	7	6
Stamp duty on each transcript 1*l.* 10*s.* . .	3	0	0

Signed by M. POOLE,

10*th April*. 1826. *Clerk in the Patent Office.*

6. Return from the Signet Office, of the fees payable there for a common patent for an invention for England, and also for Ireland.

For England	£4	7	0
For Ireland	3	3	0

Signet Office,
10th April, 1826.

Signed THOS. VENABLES,
Deputy Clerk of the Signet attending.

7. Return from the Privy Seal Office, of the ordinary expenses payable there for a grant of a patent for an invention passing the Privy Seal for England.

Office Fees	£4	0	0
Stamp	0	2	0
	4	2	0

Privy Seal Office,
April, 1826.

JOHN THOMAS FANE,
Clerk of the Privy Seal in attendance.

8. Return from the Lord Chancellor's Patent Office, of the fees payable there on a patent for an invention for England passing under the great seal.

Patent Office	£5	17	8
Stamps	30	2	0
Boxes	0	9	6
Deputy	2	2	0
Hanaper	7	13	6
Deputy	0	10	6
Recipe	1	11	6
Sealers	0	10	6
	£48	17	2

Every additional name pays an additional fee to the Hanaper of 2*l.* 13*s.* 6*d.*

Patent Office, Adelphi,
17th April, 1826.

Signed, JAMES SETON,
D. C. Patents.

In Chap. x. will be given the different amounts of fees paid in several countries, from which it will appear that the price paid for the English patent is very great in proportion to that paid for foreign grants to secure inventions.

A perusal of this list of fees must convince every impartial inquirer, that the mode of granting a patent for an invention is very dilatory and too expensive. The charges of additional fees for additional names, and further fees if the grant is extended to the colonies, appear to be illegal (*a*).

(*a*) In the London Journal of Arts and Sciences for February 1830, there is a very able letter on the subject of these fees, signed Vindicator, from which the following extract is made:—" We will refer to the several stages of the petition and subsequent documents, as described by Mr. Abbott, a gentleman in the Petty Bag Office (Report, p. 47, et seq.) Mr. Attorney General's classic production, called the 'Bill,' changes its cognomen for the purpose of showing its activity in collecting the fees, as fantastically as harlequin does his dress. It is 'Mr. Attorney General's Bill,' as the proper father—then 'The King's Bill,' by adoption—then the 'Signet Bill,' by grace—then the 'Privy Seal Bill,' without grace; but now comes the legerdemain par excellence; it is not converted into 'My Lord Chancellor's Bill,' yet the fees to the Old Hanaper and to Mr. Deputy Hanaper, its trusty custos, are converted out of the patentee's pocket to the amount of £8 4*s*., although there is not a single official act done, no, not even a scratch of the pen, for the extravagant charge: nor does Mr. Deputy even make his appearance on behalf of himself and the 'Hanaper.' How then is the business managed? Mr. Abbot explains it. He says (p. 49,) 'The Bill originally used to pass another stage which is now dispensed with, it used to go to the Hanaper—to pay the Hanaper fees on it,' (an important public object, no doubt); 'it is not now taken to the Hanaper Office.'

" The reader's unmystified intellect will naturally draw the inference, that as the bill was formerly taken to the Hanaper to pay the Hanaper fees on it, and that as this stage of the business is now dispensed with, the fees are necessarily dispensed with. A conclusion from sound

Several of the numerous instruments which the inventor is obliged to make may be dispensed with. The inventor might present a petition with a notice (not an affidavit) that he intends to procure patents for Ireland and Scotland, and take it to the office of the Secretary of State for the Home Department.

The affidavit, that the petitioner is the inventor, is an unnecessary oath. It leads to perjury, and is not any

premises may be very logical where fees do not form the corollary; *e. g.* 'but the Lord Chancellor's officer, the Clerk of the Patents at the Great Seal, receives the Hanaper fees and pays them over.' So that even the formal ceremonial of the old Hanaper's state is dispensed with, the Majesty of the Great Seal is proved by its own officers to consist in receiving fees, and the intellect and labour of the community are to be taxed for keeping up this pretty farce! If this be not unblushing charlatanism, I do not know what is. I believe that upon further investigation the whole family of 'State and Chancery recipes' will be found as unessential to the actual security of an invention, and the ordinary business of life, as is this admirable instance of additional protection given to a patent by its not passing to the Hanaper, in order to pay the Hanaper fees.

"An extension of the patent to the colonies 'is attended with no extra trouble, nor is there any separate document,' only an addition to the prayer of the petition of the words, 'and all your Majesty's plantations and colonies abroad.' For this heavy duty, the copying of eight words—nearly £6 are charged at the Secretary of State's and other offices!!

"The courtly minuet dances performed by the petition, warrants, report, &c. for an Irish patent, between London and Dublin, occupying with their eccentric fantasias nearly six months (even sometimes twelve months,) 'to the imminent danger, and in some instances the utter destruction of the Irish patentee's right,' are strongly and correctly described by Mr. Abbott. He says (p. 51), with the proper feelings of a man intent upon the interests of his employers, 'I have often had occasion to remonstrate on the danger likely to arise from that delay, and I have pressed it in every way I could, but I could never get a patent (Irish) in less than five or six months there'."

safeguard. It is, however, required to be made in almost every country. The affidavit is sometimes made by two or three persons swearing that they are the *joint inventors*, whereas one of them is perhaps only the inventor of the means of raising the money requisite to carry on the business. When the law is enacted that an inventor may assign his invention, so that the assignee may take out the patent in his own name, then it is quite clear that this affidavit would become quite unnecessary.

This petition and notice should then be carried, with a reference of it to the Attorney General, to the office for patents for invention, and not to the private office of the Attorney or Solicitor General. At that office and at that time the deposit of half the amount of the fees should be made. The titles of the intended patents should be inserted in the Gazette, from which they would be published all over the kingdom.

The office for patents for inventions should be remodelled. The Attorney General of the day should be at the head of it, with power to appoint a sufficient number of officers to do the work (*a*), and all questions respecting priority of invention could be decided by him. A large penalty or imprisonment should be awarded to an officer who became an agent for taking out patents. One month should be allowed to enable persons to lay their complaints before the Attorney General, but the *date of the petition* should be made the date of the letters patent.

(a) One of them would most probably be a barrister of scientific attainments, who would decide the law and fact at that early stage with expedition.

The King's Signature, which is now required at two separate times, should be rendered unnecessary. It is quite an idle waste of time that an inventor should go twice to the Secretary of State for the sign manual of his Majesty. In former times, when letters patent related to grants of land, and to monopolies from which the king was to derive a profit either directly or indirectly, it might have been prudent, but at the present time it is a custom worse than useless.

The signet and the *privy seal* may be passed over, and the instrument might be carried at once from the office of patents to the Lord High Chancellor, for the great seal.

As to Ireland and Scotland; when the letters patent have been first taken out in England and passed the great seal, then the office for patents for inventions in England, upon receipt of half the amount of fees for Scotland and Ireland, should communicate *direct* to the offices in Scotland and Ireland, that the letters patent had passed the great seal, and thereupon letters patent in those countries should be made out for them, without any further trouble on the part of the inventor.

The same time (a month) should be allowed to persons in Ireland to go before the Irish Attorney General, or in Scotland to go before the Lord Advocate: and the titles should for that purpose be published in the Dublin and Edinburgh government papers.

The Specification (*a*).—Many alterations might be

(*a*) See p. 141.

made in the manner of framing the specification: but the principal improvement would arise from permitting a model to be deposited in some public building, and enacting that all the immaterial parts in the description might be altered by the judges.

When the patent has once passed the great seal, it cannot be altered; but if a clerical error should creep into the enrolment of the specification, then the Court will interfere on motion, and order the enrolment to be amended (*a*).

The time allowed for making and enrolling the specification should in all cases be the same. Six months is a period much too long. It enables parties to commit many frauds, and might be reduced to one month for each kingdom, and two months for the United Kingdom of Great Britain and Ireland.

The acknowledgment of the specification is required to be made in person. No injury could arise from its being done by a power of attorney in cases in which the parties happened to be abroad, or unwell.

Some provision should also be made for those cases in which the party becomes very ill, or dies between the date of the patent and the acknowledgment of the specification. His representative might have the power to put in the specification. If it were imperfect it would be open to any person to repeal it.

The Caveat.—This instrument, which has (in its present form) illegally crept into the system, is the grand source of all the frauds which torment real

(*a*) In re Redmund, 5 Russ. Rep. 44.

real inventors. It is the means by which dealers in patents (possessed of money, but deficient in brains,) rob the poor inventors. It is impossible to describe the system of fraud and vexation which has arisen from the permission to enter caveats. If all the cases which have come to the knowledge of professional men were set forth, this little book would, on the principle that "the greater the truth the greater the libel," (*a*) contain many libels. There is but one remedy—the system must be abolished altogether.

When a title appears in the Gazette, all parties must take notice of it, and apply to the Attorney General at the Patent Office, within one month, for redress of any supposed injury.

The Acts of Parliament to increase the benefits to

(*a*) The following anecdotes are quoted from the London Journal of Arts and Sciences, for June 1829. "A writer says, "an inventor has within a few days informed me, that in support of an invention which was recently announced in your Journal, he had to appear by his solicitor to no less than eighteen oppositions, at an expense of nearly 100*l.* to himself. Upon eighteen attendances, fees to Mr. Attorney General, at 3*l.* 10*s.* each, amount to 63*l.* for the inventor; and eighteen at 3*l.* 5*s.* each, are 58*l.* 10*s.* for the contrary side, besides their other expenses; consequently upon this single affair, Messrs the Attorney and Solicitor General, who divide the fees, received one hundred and twenty-one pounds and ten shillings.

"Connected with the subject of opposition and hearings before Mr. Attorney General, a curious piece of information has been lately given me. I am told that a gentleman connected with the office undertakes, upon payment of 10*l.* by the inventor, to carry him through all hearings and oppositions. If this be so, and the proposal was generally understood and acted upon, by inventors, a subtraction from their pockets to the amount of 1200*l.* to 1500*l.* per annum would be effected for this article of service; an undoubtedly better to pay ten pounds to a certainty, than to run the chance of paying sixty to one hundred pounds."

patents, would be so rare under better laws, that the present rules respecting them need not be altered, except that harsh rule that no assignee of a patent right shall have it extended for his benefit, and that the application must be made only within two years of the expiration of the patent right (*a*).

Chap. VI.

Of the Construction of Letters Patent (*b*).

Some cases have come before the Court respecting the kind of construction to be put upon instruments made to protect inventions. It is provided in the letters patent (*c*) that they shall be taken, construed, and adjudged in the most favourable and beneficial sense, for the best advantage of the patentee and his assigns, as well in all the courts of record as elsewhere, notwithstanding the not full and certain describing the nature and quality of the invention, or of the materials thereto conducing and belonging. Yet the judges (*d*) *in former times* did not hesitate to put the most unfavourable construction on all the words which the inventor used in the title to his patent, and in his specification.

It is worthy of observation that the tide has turned

(*a*) Standing order of House of Lord, 28th March 1808. See Davies on Statutes, Vol I. p. 58.

(*b*) See post Book the Practical Treatise. See Appendix, p. 60.

(*c*) See post Book the Practical Treatise.

in favour of patentees, and that the judges *of the present day* make every reasonable intendment in favour of the patentee. It would be well if the Courts of Law had the power to correct all unintentional errors and matters of form. And in a new act of parliament it should be expressly enacted, that the construction most in favour of the patentee should be always put upon the words in the description of the invention, lest other judges should arise who might think that patents for inventions are odious monopolies, and return back to the old method of rigid construction.

The Construction of Acts of Parliament passed to enlarge Patent Rights(*a*).—It was formerly held that a judge could not look into the act of parliament for any explanation of the contents of the patent or specification. In a late case(*b*) that doctrine was confirmed. It may be useful to state the facts at length, for there were two patents in it.

By letters patent of the date of the 20th April, 1801, reciting, amongst other things, that one Gamble had by his petition represented to the King, that he was in possession of a machine for making paper in single sheets without seam or joining, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length, the method of making which machine had been communicated to him by a certain foreigner with whom he was connected, and that he conceived the same would be of great public utility, and that the same was new in the kingdom, and had not been practised therein by any other person whomsoever, to

(*a*) See p. 138 of the Practical Treatise.
(*b*) Bloxam v. Elsee, 6 B. & C. 171.

the best of his knowledge or belief—his late Majesty granted to Gamble, his executors, administrators, and assigns, the sole privilege "of making, using, exercising, and vending the said invention, for fourteen years."

By other letters patent of the 7th June, 1801, reciting, amongst other things, that Gamble had, by his petition, represented to the King, that he, in consequence of a further communication made to him by a certain foreigner residing abroad, with whom he was connected, was in the possession of certain improvements on and additions to a machine for making paper in single sheets, without seam or joinings, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length, being the machine for which he had obtained the letters patent bearing date the 20th April, 1801; that such improvements and additions would not only make the said machine more perfect and complete, but by far more useful to the public than it was in its then present state; that the same so improved was new in this kingdom, and had not, with such additions and improvements, been practised therein by any person, to the best of his (Gamble's) knowledge or belief—his late Majesty did, by the last mentioned letters patent, grant to Gamble, his executors, administrators, and assigns, the sole privilege of making, using, exercising, and vending his said invention, for the term of fourteen years from the date of the last mentioned letters patent.

On the 7th January, 1804, Gamble assigned all his interest in these two patents to H. Fourdrinier and S. Fourdrinier, the bankrupts.

By an Act of Parliament passed in 1807, *reciting that* H. Fourdrinier and S. Fourdrinier and Gamble had made, used, and continued to make use of the said improved machine in a very extensive trade, in part whereof H. Fourdrinier and S. Fourdinier and Gamble were jointly concerned as copartners, and that they had been put to great expense, &c., it was enacted, that the sole privilege, right, and authority of making, using and vending the said improved machine within the United Kingdom of Great Britain and Ireland, and in his late Majesty's colonies and plantations abroad, should, from and after the passing of that act, be, and the same was thereby declared to be vested in H.Fourdrinier, S. Fourdrinier, and Gamble, their executors, administrators, and assigns, for and during the term of fifteen years from thenceforth next ensuing, being an addition of seven years, or thereabouts, to the term granted by the said letters patent.

By the *sixth section* it was enacted, that *every objection* which might have been made to the validity of the said letters patent, and to the sufficiency of the specifications enrolled as aforesaid, should be of the like force and effect in law in any action or suit brought by virtue of that act, as such objections respectively would have been if that act had not been passed, and if also the specifications to be enrolled, as required by that act, had been enrolled, instead of the former specifications respectively, except only as to the extension of the said privileges for the further term of years thereby granted.

Lord Tenterden in his judgment made the following observations: " I think it may be admitted that by subsequent improvements and discoveries, a machine was

obtained capable of making paper of width varying within certain limits, though probably not extending to more than half the width mentioned in the patent. The specification enrolled under the act of parliament appears sufficiently to describe such a machine, and a mode of adjusting it to different degrees of width within the limits of its own breadth. The first specification is evidently confined to one width only. Then can the last specification be taken to furnish an answer to the objection? Now, supposing the act of parliament so far substitutes the last specification in the place and stead of the former specification, as to remove all formal objections to them, to which the latter is not open, still it cannot so far operate retrospectively as to enable the patentee to say that he possessed in 1801, or had then discovered or invented a machine which it appears that he did not possess, and had not invented or discovered until a much later date. If the first machine had been capable of working at different degrees of width, *though clumsily and imperfectly*, the latter machine would have been an improvement of it; but as the first, whether considered as existing actually or in theory, was wholly incapable of this, the latter machine does not in this respect furnish an improvement of anything previously existing, but an addition of some new matter not existing or known at the date of the first patent, and which nevertheless is therein represented as existing or known, and which cannot but be considered an important part of the representation then made, and of the consideration of the grant. If the first grant was void, the subsequent grants by the patent and by the statute must fall to the ground, as having nothing to support

them. I think myself compelled therefore to yield to this objection."

When the Court of King's Bench took time to consider of their judgment, in the last reported case, *Hullett* v. *Hague*(*a*), *Lord Tenterden* said—" I cannot forbear saying that I think that *a great deal too much critical acumen* has been applied to the construction of patents, as if the object was to defeat and not to sustain them."

Chap. VII.

Of the Property in an Invention.

There has not been many decisions which illustrate the nature of the property that an inventor has acquired in his patent (*b*).

Number of Persons interested (*c*).—Many questions have arisen in practice respecting the power of granting *licences* (*d*), which will never be satisfactorily settled until some legislative enactments have been made to regulate them.

It would be foreign to the purpose in a legal treatise, to speculate upon the probable opinion of the courts of law upon the questions—whether a patentee can grant licences to companies consisting of more than five persons—whether the licences can be

(*a*) 1 Barn. & Ad. 377. In the year 1831.
(*b*) See page 150 of the Practical Treatise.
(*c*) See ibid. p. 161. (*d*) See ibid. p. 169.

granted for particular districts, and whether licences can be regranted by persons to whom the patentees have made licences.

Bankruptcy (*a*).—It was observed that the letters patent would pass to the assignees of a bankrupt. A doubt was raised in the late case of *Bloxam* and another (assignees of Fourdrinic) v. *Elsee* (*b*), whether the assignment was not void if the creditors exceeded five in number. An act of parliament had been passed for enlarging the term granted to the patentee for the enjoyment of the patent by the assignees of the patent granted to Mr. Gamble. It was enacted, that in case the power, privilege, or authority, granted by the letters patent, should at any time become vested in or in trust for more than the number of five persons or their representatives, at any one time, *otherwise* than by devise or succession (reckoning executors and administrators as and for the single persons they represent as to such interest as they are or shall be entitled to in right of such their testators or testator), then and in every of the said cases, all liberties, privileges and advantages vested in the patentees, their executors, administrators, and assigns, should cease, determine, and become void.

The parties who were interested in the patent under the act of parliament became bankrupt, and creditors exceeding five in number proved under the commission. The Court held that the clause applied only to an assignment by act of the party, and not to an assignment by operation of law, and consequently

(*a*) See page 165 of the Practical Treatise.
(*b*) 6 Barn. & Cress. 169. At nisi prius, 1 Car. & P. 558.

that the interest of the assignees of the bankrupt in the patent had not ceased.

By the seventh section of the act of parliament (*a*), it was provided, that H. Fourdrinier, S. Fourdrinier, and J. Gamble, their executors, &c. or any person or persons who should at any time during the said term of fifteen years have or claim any right, title, or interest in law or equity in or to the power, privilege, or authority of the sole making, using, and vending the said improved machine, should make any transfer or assignment of the said liberty or privilege thereby vested in H. Fourdrinier, S. Fourdrinier, and J. Gamble, their executors, &c. or any share or shares of the benefit or profits thereof, or should declare any trusts thereof to or for any number of persons exceeding the number of five, or should divide the benefit of the liberty or privileges thereby vested in H. F., S. F., and J. G., their executors, administrators and assigns, into any number of shares exceeding the number of five, or should do or procure to be done any act whatsoever, during such time as such person or persons should have any right or title either in law or equity, which should be contrary to the true intent and meaning of an act of the 6 Geo. I. c. 18. s. 18; or in case the said power, privilege or authority should at any time become vested in or in trust for more than the number of five persons or their representatives at any one time, or otherwise than by devise or succession, (reckoning executors and administrators as and for the single persons they represent as to such interest as they are or shall be entitled to in right of such their testators or testator,) then and in every of

(*a*) See page 169 of Practical Treatise; and ante, p. 54.

the said cases, all liberties and advantages whatsoever thereby vested in H. F., S. F., and J. Gamble, their executors, administrators, and assigns, should utterly cease, determine, and become void, any thing therein contained to the contrary thereof notwithstanding.

On the 8th of Nov. 1810, a commission issued, under which the Fourdriniers were declared bankrupts, and the plaintiffs were duly chosen assignees, and more than twenty creditors having proved under the commission, it was objected that the property in the patent having become vested in the assignees of the bankrupt in trust for more than five creditors, the interest of the patentees, by the seventh section of the act of parliament, had ceased and determined. The Lord Chief Justice was of opinion that an assignment under a commission of bankrupt was not within the meaning of the act of parliament, and he overruled the objection.

After a motion made to the Court, the *Lord Chief Justice Abbott* said, "Looking at the act of parliament and looking at the usual clause in letters patent, and finding that in each of them there is a reference to the statute 6 Geo. I. c. 18, and construing the whole clause either in the letters patent or in the act of parliament, with reference to that which appears to my mind to be plainly and manifestly its object, it is my opinion that the whole clause is *confined to assignments by acts of the party*, and does not apply to any assignment or transfer by operation of law, and, consequently, that it will not apply to an assignment under a commission of bankrupt. Under the ship register acts there are peculiar clauses requiring every assignment to be notified in a particular

manner, as clear and minute as words can be, without any exception of bankruptcy, or any thing of that kind, and yet it has been held, that the assignees of a bankrupt take the interest in a ship, though there is no registration of the conveyance. Upon that point I think there should be no rule, but some of the other points are well deserving of consideration, and as to them the defendant may take a rule."

Mr. *Justice Bayley*.—"I have no doubt upon the construction of this clause. I disclaim all right in the Court to introduce or exclude words from this clause, but I think we are bound to construe the words which the clause contains, and that is all which I desire to do. The words in this clause are, 'In case the power, privilege, or authority shall at any time become vested in or in trust for more than the number of five persons or their representatives, at any one time, otherwise than by devise or succession (reckoning executors and administrators as and for the single persons they represent).' There are not only the words 'the number of five persons,' but there are the words 'or their representatives;' and those words, 'or their representatives,' are entitled to have some meaning, and the words 'otherwise than by devise or succession' will apply to the words 'or their representatives' as well as 'the number of five persons.' Now the question in my mind is, what does the act mean by 'their representatives?' If the assignees of a bankrupt are the representatives of a bankrupt, this patent is not vested in them, otherwise than this act of parliament says it may be vested; it was vested in the Fourdriniers, the bankrupts, if they did not exceed the number of five: the bankruptcy, by a statutable

transfer, has made the assignees of the bankrupt the representatives of the bankrupt, and that is the construction which, in my opinion, these words are entitled to receive."

Mr. *Justice Holroyd*.—"I think that in this case the assignees of the bankrupt are to be considered as the representatives of the bankrupt, and that they had his property as his representatives, and not as the representatives of the creditors. It is true, they take the property for the purpose of selling and disposing of it; and it is true, that the proceeds from the sale they may hold in trust for the creditors, but they are the representatives of the bankrupt in relation to this property. They hold it *subject to the power of converting it into money*, and then that money they will hold *in trust*. It appears to me that, under the act of parliament, it is not void, though the creditors may amount to more than five."

Mortgage and Lien.—From the reasoning in the cases of *Cartwright* v. *Amatt* (*a*) and *Bloxam* v. *Elsee* (*b*) it would seem that the mortgage of a patent to more than five persons would be valid, for neither their interest as creditors of the patentee, nor their character as trustees to the patentee, until they were repaid, would cause a forfeiture, because creditors are not entitled to *any proportion of the patent right* as such, but only to the amount of their debts.

In 1812 a case (*c*) came before the Lord Chancellor, of a bankrupt having a patent for an invention, who,

(*a*) 2 Bos. & Pul. 43.

(*b*) 2 Ante, p. 52.

(*c*) Evans's Statutes, vol. iv. p. 67, n. Ex parte Granger.

after having mortgaged the right, continued in the *notorious use* of the invention until his bankruptcy. The Lord Chancellor was induced to think that the right passed to the assignees under the statute, but directed a case for the Court of King's Bench, which was never argued.

A Trust of a Patent (*a*).—It has been shown that the invention may be communicated by a foreigner residing abroad, and that a patent may become the subject of a trust for the benefit of British subjects; but it was doubted in the case of *Bloxam* v. *Elsee* (*b*), at Nisi Prius, whether a patent could properly be taken out by a British subject on a secret trust, to be held for the benefit of the real inventor, who was an alien enemy at the time, although it was stated in the patent that the patentee had received the invention from a certain foreigner; and the point has not been solemnly decided.

Observations.—The decision that the creditors of a bankrupt may be interested in a patent, although they exceed five in number, is very important; but an improvement might be made in the law, by permitting an assignment of the letters patent to be made to any number of persons. It is for the benefit of the public that the invention should be largely used, and there is not any force in the observation that a great company may make a monopoly of it.

(*a*) See page 168 of Practical Treatise.
(*b*) 1 Carr. & P. 558.

Chap. VIII.

Of the Infringement of a Patent, and the Remedies for that Injury.

What amounts to an Infringement (*a*)?—It is a very difficult question, and by some persons (*b*) it has been thought that it is a matter beyond the comprehension of the ordinary tribunals; and they have recommended that a Court of Commissioners should be formed. A little reflection would convince any unprejudiced mind that the same judges and juries who decide causes arising from matters connected with every relation of life, and involving every exertion of men to enrich themselves, might well decide the

(*a*) See p. 173 of the Practical Treatise.

(*b*) See a letter in the London Journal of Arts, in which a writer thus expresses himself:—"How and where can the exact line be drawn of what is and is not a new invention, and of what is and is not an infringement? What rule—what law—can be laid down to define its exact demarcation, not subject to various interpretations? In my humble opinion *none*—I think it impossible; but that some professional men, from their situation in life, endowments by nature, their turn of mind and studies, their education, and from a variety of other circumstances, are far better able to sit in judgment upon these delicate points than the multitude at large, undiscriminate juries, and even the judges of the land, I firmly believe to be the case. I therefore beg leave to submit to your consideration that a properly constituted court, composed of the kind of men before described, should *judge patent causes subject to appeals to other courts*, where the setting forth the grounds of their decisions would throw such strong light upon the merits of the points at issue, as would best enable ordinary judges to get clear conceptions of the cases before them."

question, whether a person had infringed a patent. The judges possess, as a part of their education, a knowledge of the first principles of every science, and it would be as reasonable to say, that physicians and surgeons should try all cases which require a knowledge of medicine or surgery to be understood, as that mechanics and chemists should try the validity of claims for patents. In both cases it is more reasonable that physicians, surgeons, mechanics and chemists should be witnesses.

The answers to the questions, whether patents are for the same or different things, or whether one patent is an infringement upon another, may be drawn from many circumstances: as the concurring or contradictory evidence of persons worthy of credit well acquainted with the matter. But the use made of a supposed invention by the public is the best criterion, whether it is an improvement or not.

In *Webster* v. *Uther* (*a*) the Lord Chief Justice observed, "I believe I told the jury that it was the smallest matter for which I ever knew a patent taken." The invention was called an improvement on the patent percussion gun lock, and consisted in the *addition of a bolt* sliding or moving in a groove, by which the roller magazine was then fixed, that had formerly been fastened by a screw and washer; the defendant's lock had a spring in the bolt.

The jury (upon the evidence *of sportsmen* that the lock with a sliding bolt was more readily used in the field, particularly in wet weather, than the screw and washer,) found that the alteration was a material and

(*a*) MSS. Easter Term, 1824, before Lord Tenterden

useful improvement; and upon evidence *by mechanics* that a spring in a bolt was the same thing as a bolt sliding in a groove, they found that the defendant had infringed the patent of the plaintiff. The Court would not grant a new trial.

It was contended in that case, *Webster* v. *Uther*, that the question, whether the thing was a proper subject for a patent, was one of law and not of fact for the jury. And in *Barton* v. *Hall* (*a*), which was an action for an infringement of *Barton's* patent for improvements in metallic pistons for steam engines, the judge directed a nonsuit, taking on himself to decide that the pistons, which were alleged to be infringements, were not the same invention as that described in the specification of the plaintiff.

In *Jones* v. *Pearce* (*b*) the jury asked the judge whether it was a necessary part of the infringement that the defendant should have sold or used the carriage wheels which he had made. Mr. *Justice Patteson* said, the evidence is, that the defendant, who was an ironmonger, had *made* two wheels, one of which was put on a gig and the other was seen near it; and he told the witness that he had made them on a new principle. Now one of the counts of the declaration is for making; and if he did actually make the wheels, the act of making them would be a sufficient infringement of the patent; for the terms of the patent are, "without leave or licence *made*, &c."

The Pleadings. *Vesan* (*c*). In *Brunton* v. *White* (*d*)

(*a*) MSS. 11th July, 1837, before Lord Wynford.

(*b*) MSS. ante p. [illegible].

(*c*) See p. 117 of the Practice of Patents.

(*d*) 7 D. & R. [illegible].

the venue was laid in London. A motion was made to change the venue to Lancashire. The Court refused, on the ground that there was not any precedent for such a motion.

This rule of law requires to be altered, because it is very expensive to both the litigating parties that they should be obliged to try their cause in the county of Middlesex, when every one of the witnesses (perhaps) live in Gloucestershire. Both parties ought to have the option.

The Plea (*a*) is the general issue. It would be a rule much to the advantage of patentees if a notice of the objections upon which the defendant relies was delivered with the plea. It would save a great amount of the expenses.

The Evidence —In the case of *Lewis* v. *Davis* *b* the patent put in evidence referred in its title to another patent. The plaintiffs claimed a patent for "improvements in a machine for which J. Lewis took out a patent in 1815." It was contended, that the specification to the patent of 1815 ought to be put in evidence. *Lord Tenterden* held that it was necessary to give both the specifications in evidence, and observed, "When the parties applied to the crown in the year 1818, they might have applied for a patent for their invention, without reference to any thing that had gone before. Now that they have not done; on the contrary, they profess to have improved a machine already known. That machine may be used by any one after fourteen years from the earlier patent, but any new matter which is included in the present patent is not

(*a*) See p. 161 of the Practical Treatise. (*b*) 1 Car. & P. 304.

open to every body till fourteen years from a later period. It is therefore material to show what are the improvements contained in the plaintiff's patent. Now I cannot say what are improvements upon a given thing, without knowing what that thing was before; for aught I know all the things mentioned in the plaintiff's specification may have been included in the former specification. Sometimes the fact of infringement must be presumed from the acts of the party, as where he sells the same article, and will not show his factory (*a*)."

A new Trial at Law (*b*).—On the motion for a new trial, in *Lewis* v. *Marling* (*c*), affidavits were produced as to the knowledge of that whereof the plaintiffs claimed to be inventors before the patent was granted. *Lord Tenterden* said, it is contrary to the practice to grant a rule in such a case on affidavits. If the facts disclosed in them are sufficient to vitiate the patent, it may be repealed by *scire facias*.

Costs (*d*).—The costs of an action for the infringement of a patent are guided by the rules respecting other actions in the case. It is often necessary for the parties to make many expensive *experiments* in order to give evidence for or against a patent. The costs of those experiments do not fall on the losing party. In the case of *Seeum* v. *Oline* (*e*), the Court (after hearing arguments) directed that the Prothonotary should re-

(*a*) Hall v. Gervas and Boot, MSS. December 1822, in K.B.

(*b*) See page 182 of the Practical Treatise.

(*c*) 10 Barn. & Cres. 25.

(*d*) See page 183 of the Practical Treatise.

(*e*) 3 Brod. & Bing. 72.

view his taxation, on the ground that no allowance ought to be made for the expense of experiments, nor for the time of scientific witnesses, unless they were medical men.

Remedy in Equity.

The proceedings in equity are so very expensive, that if they could be dispensed with, a great saving in time and money would arise to patentees. The inventor by taking proceedings in two courts (law and equity), is much distracted. If a power were given to the common law courts in which actions have been commenced, to restrain the infringer *on a motion* in term, or summons in vacation, made by the patentee, the remedy would be quick in its operation, less expensive, and quite as efficient as an injunction issued from a court of equity.

It seldom happens that the Court of Chancery grants a perpetual injunction, but the parties are directed to try the question by a *feigned issue*, or the patentee is, after much delay and expense, left to his choice of bringing an action at law or not, as he may be advised.

The only good that can arise from courts of equity meddling in the patents for inventions, is obtained from the account which the infringer is directed to keep. It could be kept in a common law court quite as well.

The practical use of the jurisdiction of the Court of Chancery over patents for inventions, was well illustrated when *Forsyth's patent* (*a*) (for giving fire

(*a*) MSS. heard July 1816.

to artillery and all kinds of fire arms) was before that Court. Forsyth's invention was obtained for the application of percussion powder for priming artillery and fire arms, by introducing it into a hollow cylinder communicating with the touch-hole, and inserting a movable plug or stopper into the cylinder, so as to inclose the powder between the bottom of the cylinder and the end of the plug. By striking a blow on the plug the powder became ignited and the piece fired off. The Lord Chancellor *had doubts* as to the novelty of the invention, and he decreed, that the patentee might bring an action at law; and, having succeeded, might move for an injunction. In other words, he found no protection in equity, but brought an action at law, *Forsyth* v. *Reviere*(*a*), by which his patent was supported.

Chap. IX.

Of Letters Patent when void, and the Manner of having them cancelled (*b*).

It was observed, that until the patent is actually cancelled, the patentee may go on against different parties, maintaining legal proceedings upon it. The public can find protection only in a *scire facias* to repeal the patent. That course is very vexatious and attended with great expense. After one trial at law, decided against the patent, there ought to be a power

(*a*) See page 55 of the Practical Treatise. (*b*) Ibid. p. 189.

in the common law court to direct that the patent be cancelled.

What renders a Patent void (*a*).—The words of the statute of James, "so as also they be not contrary to the law nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient"—might be repealed, for they are inoperative, but alarm inventors.

Proceedings by Scire Facias to repeal a Patent (*b*).

The process by which patents are declared to be void requires much alteration. It ought to be considered *as an action* brought by one of the public against the patentee for obtaining an improper patent, and if he fails in establishing the invalidity of the patent, he ought to be mulct in the costs (*c*).

The expense of obtaining a *scire facias* is great, and there is much delay. By a legislative enactment it might be much improved. The writ cannot be entirely superseded, because there should always remain in the crown a strong power immediately applicable for repealing its own improvident grants.

The manner in which patentees may torment each other by writs of *scire facias*, may be thus illustrated.

Hadden obtained a patent in 1818, for an improvement in preparing, spinning, and roving wool, which was done by applying heat to the fibres of wool during the operation of spinning, and it was effected by insert-

(*a*) See p. 190 of the Practical Treatise.
(*b*) Ibid. p. 196.
(*c*) Ibid. p. 200.

ing hot iron heaters into hollow rollers, between which the slivers of wool passed. Lister obtained a patent for the same object in 1823, and effected the purpose by applying steam within the hollow rollers, and causing the slivers previously to pass through water to soften them.

Then, Hadden, thinking himself aggrieved by the patent of Lister, sued out a writ of *scire facias* to repeal it(*a*), on the ground that the process used by Lister was the same as his own. Lister returned the compliment by suing out another writ against the patent of Hadden, on the ground that the invention was not new. *They both* (in the same day) *succeeded;* Hadden in proving that Lister had infringed his neighbour's patent; and Lister in proving that neither of them ought to have had a patent.

Another instance occurred (*b*). Daniell had a patent in 1819 for improvements in dressing woollen cloth. They were thus effected. After the surface of the cloth had been properly dressed, and the nap on the surface laid very smooth, the piece was rolled up very smoothly and evenly in a close and compact roll: which piece being immersed in hot water, the fibres of the wool became softened, and acquired a tendency to retain the same direction; and thus the effect of the dressing was rendered permanent. Fussell obtained a patent in 1824 for an improved method of heating woollen cloth for the purpose of giving a lustre in dressing—this process was the same as Daniell's,

(*a*) *The King* v. *Lister*, and *The K* v. *Hadden*, tried January, 1826, in the King's Bench.

(*b*) *The King* v. *Fussell*, and *The K* *Daniell*, tried July, 1827, before Lord Tenterden.

except that he submitted the roller to steam instead of hot water. Daniell saw, with justice, the repeal of Fussell's patent, on the ground that it was the same as his own, and Fussell had the satisfaction of proving that many years before the date of Daniell's patent, a person had used a similar method. And thus they both succeeded in destroying each other's patents.

The Evidence (*a*).—The case of *Rex* v. *Hadden* (*b*) illustrates the practice of giving evidence on a *scire facias*. A witness was called to prove that the invention was not new, because he had made a similar machine for the same object. A drawing, not made by the witness, of the machine, as constructed by him, was put into his hands, and he was asked whether his machine agreed with that drawing. It was objected that inasmuch as the drawing was not made by the witness, he could not be allowed to answer that question, but that he was bound to describe the machine. Mr. *Justice Bayley* observed,—"I think that the witness may look at the drawing, and you may ask him whether he has such a recollection of the machine he made as to be able to say that that is a correct drawing of it."

(*a*) See page 199 of the Practical Treatise.

(*b*) 2 Car. & Paine, 184.

Chap. X.

Foreign Laws respecting Inventions (*a*).

In this chapter will be found the laws of those countries respecting inventions, in which British subjects are accustomed to secure the privilege of using their inventions.

The same analysis will be given (as nearly as possible) as that which was made of the British law.

The American Law.

The laws of America are contained in two acts of congress. An act passed 21st February, 1793, (repealing an act passed 10th April, 1790,) and an act passed 17th April, 1800.

The Inventor (*b*).—Any *citizen* who has invented any new and useful art, machine, manufacture, or composition of matter; or any new and useful *improvement* not known or used (*c*) before the application, may have letters patent granted to him, his heirs, administrators and assigns, for a term not exceeding *fourteen* years, for the exclusive right of making, constructing, using, and vending the invention.

(*a*) See the Appendix to the Parliamentary Report, dated 12th June, 1829.

(*b*) See ante, chap. ii.

(*c*) See the American case of Pennock v Dialogue, 2 Peters' Reports, p. 1; ante, p. 13.

If an inventor die, a patent may be taken out by his legal representative.

Letters patent are given to all *aliens* who have resided two years in America, if the invention has not been published in any foreign country.

The Manufacture (*a*).—The subject of the patent must be some new *art*, *machine*, *manufacture*, or *composition of matter*.

If any person discover an *improvement* in the principle of any machine, or in the process of any composition of matter, for which a patent has been granted, he may have a patent for the improvement, but he is not at liberty to make, use, or vend the original discovery, and the first inventor is not at liberty to use the improvement (*b*).

It was further declared, that simply changing the form or the proportions of any machine, or composition of matter, in any degree, is not to be deemed a discovery.

The Specification (*c*).—A schedule is appended to the letters patent. It is a written description of the invention, and the manner of using, or the process of compounding the same, in such full, clear, and exact terms as to distinguish the same from all other things before known, and to enable any person skilled in the art or science of which it is a branch, or with which

(*a*) See ante, chap. iii.

(*b*) See p. 41 of the Practical Treatise. This enactment appears at first sight unnecessary, but it was wisely introduced, because in England, in *Bircot's case*, the Court decided that an addition could not support a patent.

(*c*) See ante, chap. iv.

it is most nearly connected, to make, compound, and use the same.

And in the case of any machine, the inventor must fully explain the principle, and the several modes in which he has contemplated the application of that principle or character, by which it may be distinguished from other inventions; and he must accompany the whole with *drawings* and written references, where the nature of the case admits of drawings, or with *specimens of the ingredients* and of *the composition* of the matter, sufficient in quantity for the purpose of experiment, where the invention is a composition of matter.

He must also deliver *a model* of his machine, if the Secretary of State should deem such model to be necessary.

The Practice of obtaining the Letters Patent (*a*).—The inventor begins by paying thirty dollars into the *treasury*, and taking two receipts.

At the *Secretary of State's Office* he deposits one of those receipts and presents a *petition*, praying that a patent may be granted for his invention, of which it contains *a short description* (title).

He also makes an *affidavit* or affirmation, that he verily believes that he is the true inventor, and if he is an alien, then he swears that the same has not, to his best knowledge and belief, been before known or used in that or any foreign country, and that he has resided more than two years last past in America. The Secretary causes letters patent to be made out,

(*a*) See ante, chap. v.

bearing test by the President; which are then taken to the Attorney General to be examined, who must *within fifteen days* certify whether they are conformable to law, and return them to the Secretary, who causes the seal of the United States to be fixed, and records them in a book kept for that purpose. They are then delivered to the patentee or his order.

The description (specification) must be signed by the inventor, and attested by two witnesses, and filed in the office of the Secretary.

Caveat (*a*).—In case of *interfering applications* from two persons, the same are submitted to the *arbitration* of three persons, one of whom is chosen by each of the applicants, and the third by the Secretary of State. If there are more than two applicants, and they do not agree among themselves as to two of the persons, then the Secretary appoints all the three arbitrators. Their award is final.

The Acts of the State (*b*).—The Congress of the United States will sometimes interfere to relieve parties. Mr. Brown, the inventor of the Gas Vacuum Engine, had an act of Congress (*c*) passed in his favour, enabling him to have letters patent, although he (being an alien) had not resided two years in America, and his invention had been published in a foreign country (England).

The Construction of Letters Patent (*d*).—It appears

(*a*) See p. 144 of the Practical Treatise.
(*b*) Id. p. 148.
(*c*) The act is a specimen of legislative *brevity*.
(*d*) See ante, chap. vi.

from the reports of the decisions in the Supreme Court at Washington, that the Judges incline to put a liberal construction on letters patent.

Of the Property in an Invention (*a*).—The inventor, his executor or administrator, may assign the title and interest in the invention at any time: and the assignees may pass it to other persons to any degree. The assignments must be recorded.

Legal Proceedings for an Infringement (*b*).—If any one infringe the patent, he may be sued by the patentee or his assigns for three times the actual damage sustained.

The defendant may plead the general issue and give any special matter (of which notice shall have been given in writing to the plaintiff or his attorney *thirty days* before the trial) in evidence—as that the specification does not contain the whole truth, or that it contains more than is necessary to produce the effect, for the purpose of deceiving the public—that it was not original, but had been in use—or that the patentee had surreptitiously obtained a patent for the discovery of another person; in either of which cases judgment is to be given for the defendant, and the patent declared to be void.

A certified copy of the specification, from the Secretary of State's office, is made competent evidence in all courts touching the patent right. For all copies of papers, the person obtaining them must pay 20 cents for every sheet of 100 words, and two dollars for every copy of a drawing.

(*a*) See ante, chap. vii.

(*b*) See ante, chap. viii.

Cancelling void Patents (*a*).—A motion may be made before the Judges of the district court, that the patent was obtained surreptitiously, or upon false suggestion, *within three years* after the issuing of the said patent, but *not afterwards*, who may (for sufficient cause shown) give judgment for the patentee, or for the repeal of the patent, with costs to either party.

The Spanish Law.

The present laws in force in Spain are given in a decree of King Ferdinand VII. dated the 27th March, 1826.

The Inventor (*b*).—Any person, of whatever condition *or country*, who proposes to establish any new invention, may have a *Royal Patent of Privilege*, without previous examination of the novelty or utility of the object; but without the concession of the grant being considered in any way as a recognition of the novelty or utility of the invention.

The Manufacture (*c*).—The subject of a patent may be any *machine*, *apparatus*, *instrument*, or a *mechanical* or *chemical process* or *operation*, which may be wholly or in part new, or which may not have been established in the same manner and form in the kingdom.

If the subject has not been practised in Spain, nor in any foreign country, then the privilege will be given by a *Patent of Invention*, but if it have been practised abroad, then the party will have a *Patent of Introduction*...

(*a*) Sec. [illegible] (*c*) Sec. [illegible] chap. [illegible]

(*b*) Sec. [illegible]

The Specification (*a*).—When the petition for a patent is presented it must be accompanied with a *plan* or *model*, and a description or explanation of the invention, specifying what is the peculiar mechanism or process which is presented therein, as not having been hitherto practised; the whole being stated with the greatest precision and clearness, so that there may be at any time no doubt as to the identity of the invention, and of that peculiarity which is represented as hitherto unpractised in that form.

The Practice of obtaining the Patent (*b*).—The inventor must draw up a *memorial* (petition) and deliver it to the Intendant of the province in which he resides, or to the *Intendant of Madrid*.

The petition is addressed to the King, and shortly describes the object of the privilege, whether it is the invention of the petitioner or whether it is brought from a foreign country, and also of the *time* for which the privilege is sought. Not more than one invention can be introduced into the same representation.

The plan or model must be delivered in a box or packet closed and sealed, as well as the plans, descriptions, and papers of explanation.

The Intendant indorses the box or packet and remits it to the Secretary of State, who forwards it to the *Supreme Council of State*, who open the box or packet, and grant or refuse a patent.

Before the patent is issued, the inventor produces

(*a*) Sect. 4, ch. IX. (*b*) Sect. 5, ch. V.

the receipt of the Intendant that he has paid the following duties:—

	Reals Vellon.
For a privilege of 5 years	1000
——————— 10 years	3000
——————— 15 years	6000
For a privilege of introduction or importation .	3000

and, in addition, 80 reals are paid for the costs of issuing the royal patent.

The documents sealed up in the boxes or packets are remitted to the Royal Conservatory of Arts, and they are not opened except in case of litigation, and by virtue of the official order of a competent judge.

The titles of the grants are published in the Gazette.

A register is kept at the Royal Conservatory of Arts, expressing the dates, the names and residences of the parties interested, the object of the privilege, and the term of its duration; which register is open for inspection.

The Property in an Invention (*a*).—The possessor of the privilege has the exclusive property in that part of his subject which he has declared to be new, from the day of presentation of his petition to the Intendant: but the duration of the *privilege* is reckoned from the date of the patent.

The right may be transferred, given, sold or exchanged, or left by will, like any other *personal* property.

The *transfer* must be by a *public* deed, stating whether it is for the use of the invention in the whole or

only in a part of the kingdom; whether it is absolute or with a reservation of part; whether it is with the power of again transferring; and whether any transfer has already been made to any person of a part of it. It must be presented to the Intendant to be *registered* within thirty days after its execution.

Legal Proceedings (*a*).—The possessor of a privilege obtained under any title whatever may cite all persons usurping his right before an Intendant, from whom an appeal lies to the Council of State. The offender may be condemned to the confiscation of all the machines, apparatus, utensils, and works of art made by him; and to the payment (as a fine) of three times the value of the same, for the benefit of the possessor of the privilege.

When void and how cancelled (*b*).—The patent is declared to be void—

1. When the time is elapsed.
2. When the party does not apply for it within three months from the time he presented his petition.
3. When the patent has not been put in force for a year and a day after the date thereof.
4. When the patentee abandons his right by not using it for a year and a day.
5. When the subject has been used in any part of the kingdom, or described in printed books, or in engravings, pictures, models, plans or descriptions, contained in the *Royal Conservatory of Arts*; or when the subject has been used in a foreign country and the

(*a*) See ante, ch. viii. (*b*) See ante, ch. ix.

patentee has presented it as new and of his own invention.

When the time of the grant has expired, the *Council of State* declare the cessation; but in all other cases of cessation the competent judge proceeds at the suit of any party to try the fact, and then the sealed boxes or packets are opened, and the facts published in the *Gazette*.

The Austrian Law.

The Inventor (*a*).—The privilege is granted to a native or foreigner; and he may also take out a privilege in a foreign country.

The Manufacture (*b*).—All new discoveries, inventions, and improvements, in every branch of industry, are entitled to an exclusive privilege in the Austrian monarchy. The following enumeration of subjects for patents is given to prevent disputes:

1. Every new finding out of a process in industry, which, although practised in former times, has been since entirely lost, or which, although still practised in foreign countries, is unknown in the monarchy, shall be held a discovery.

2. Every production of a new object by new means, or of a new object by means already known, or the production of an object already known, by means different from those which have hitherto been used for that object, shall be held an invention.

3. Every addition of a preparation, arrangement, or method of working to a process, already known or

(*a*) See article ii. (*b*) See article iii.

privileged, by which more complete *success* or greater economy shall be attained in the result of that process, or in its mode of operation and application, shall be held to be an improvement.

4. Every discovery, invention, improvement, or change, shall be held as new, if it is not known in the monarchy, either in practice or by a description of it contained in a work publicly printed. But the novelty of a discovery, invention, or improvement, shall not be called in question, on account of its being described in a work publicly printed, unless that description is so accurate and clear that any person acquainted with the subject can, by means of that description, manufacture the object, or practise the process, for which the privilege has been granted.

The Specification (a).— The inventor must send in, at the same time that he presents his petition, a sealed parcel containing an accurate description of his discovery, invention, or improvement, in which the following qualifications are required:

1. The description must be written in the German language, or in the language used for business in the province from which the petition is presented.

2. It must be drawn up so clearly that every person who understands the subject may be able to manufacture the object, by means of the description, without being obliged to engage any further inventions, additions, or improvements.

3. That which is new, and which consequently constitutes the object of the privilege, must be accurately distinguished and set forth in the description.

(a) See note, p.

4. The discovery, invention, or improvement must be clearly and distinctly described, and without any ambiguities that can mislead, or that are contrary to the object stated.

5. Nothing must be kept secret, either in the materials or the method of execution; therefore more expensive means, or means not producing an entirely similar effect, must not be described; nor must any manipulations which are essential to the success of the operation be concealed. If it is practicable, *drawings* and *models* are to be added, for the better understanding of the description; but these are not strictly required, if the object can be made sufficiently clear by the description alone, according to the requisites stated.

Practice of obtaining Privilege (*a*).—A petition is first presented to the *direction of the circle* in which the inventor resides, wherein he must state the substance of his invention, the number of years for which he desires to obtain the privilege, and with it a full description of the invention sealed up. He must at the same time deposit one-half of the duty payable for the patent. The direction of the circle will give a receipt for the petition, the money, and the description; and within three days forward the money and documents (with the seal unbroken) to the government of the province, who will not inquire into the novelty or utility of the invention, but will report within eight days to the Imperial Government whether it is hurtful in any public view, or contrary to the laws of the

(*a*) See ante, ch. v.

country, and send the papers to the Imperial Board of Commerce. A representation is made by that board, upon which the patent is made out and delivered to the inventor.

The duties upon privileges are to be paid in proportion to the time granted for their duration. For each of the first five years the tax is ten florins convention money, for the 6th year fifteen florins, with an increase of five florins upon each year, making for the 15th year the sum of 60 florins, and for the whole of the longest term 425 florins convention money. One half of the duty for the whole term is paid on the receipt of the petition, and the other half is paid at the beginning of each year, in as many yearly rates as the years for which the privilege was taken, under pain of its being annulled. Except the above tax, the patentee has not any fees or expenses to pay, but the patent deeds (three in number) are granted *ex officio*, like all other decrees.

The Chief Registrar of the Imperial Board of Commerce is bound to *register* all the grants of privileges, and all *transfers* of them.

The Property in an Invention (*a*).—The *priority* of the invention takes effect from the hour and day of the receipt of the petition. Although the *term* of the privilege commences from the date of the patent, yet the inventor is protected from the time of the receipt of his petition.

The patentee has the exclusive privilege over the whole monarchy. He may take such partners as he may choose, in order to increase the profits of his in-

(*a*) See ante, ch. vii.

vention to any scale; he may dispose of the privilege, bequeath it, let it out, or assign it away at pleasure.

But a patent for an improvement gives only a property in the improvement itself.

To give encouragement for the trial of *experiments*, one who has originally taken a privilege for a less term than fifteen years, may, before the expiration of that privilege, obtain a prolongation thereof to a term of fifteen years, on condition of paying for the prolongation of the privilege after the usual rate.

Legal Proceedings(a).—Infringements are visited with a penalty of 100 ducats in specie, of which one half goes to the patentee, and the other half to the poor of the place where the judgment is given, besides the confiscation of the objects imitated.

When a privileged person believes himself to be aggrieved, he can require the judge of the place to put a stop to the further imitation of the object of his privilege, and also require the immediate seizure of the articles so imitated, whether they are in the possession of the imitator himself or of a third person; or whether they have been brought in from foreign countries.

The questions of infringement of compensation or damages — of the application of the legal penalty, &c. rest with the ordinary judges.

When void, and how cancelled(b).—The privilege becomes void,

1. If the accurate description of the discovery, invention, or improvement, for which the privilege was

(a) See ante, ch. viii. (b) See ante, ch. ix.

petitioned, is wanting in the requisites of a new manufacture above stated, or in only one of those requisites.

2. If any one proves legally, that the privileged discovery, invention, or improvement, could not be considered new in the monarchy, previous to the date of the official certificate.

3. If the possessor of a privilege in force for a discovery, invention, or improvement, proves that the privilege subsequently granted is identically the same as his own discovery, invention, or improvement, which was regularly described and privileged at an earlier date.

4. If the privileged person has not began to practise his discovery, invention, or improvement, within the term of one year from the delivery of his privilege whether he is a native or foreigner.

5. If he discontinues that practice for the space of a year, during the term of the privilege, without showing sufficient grounds for the same.

6. If the second half of the tax is not paid in the above stated annual rates.

The questions, whether the privilege ought to be annulled on public grounds, or because it has been neglected, or the possessor has not fulfilled the conditions of the grant, are decided by the political authorities, with the reservation of appeal to the higher authorities.

The Belgian Law.

Laws were promulgated by the King of the Netherlands on the 25th January, 1817, which have some peculiarities about them.

The Inventor (*a*).—Patents are granted to those who, in the kingdom, make an invention, and also to those who first introduce or practise in the kingdom an invention made in foreign parts.

The Manufacture (*b*).—The subject of a patent may be an invention or essential improvement in any branch of arts or manufactures, domestic or *foreign*, provided it has not been put in operation or exercised by another person in the kingdom before the grant of the patent. But changes of form, or of proportions, or ornaments, are not to be considered as improvements.

The possession of the improvement does not give any right to the original manufacturer, nor the ownership of the manufacture any power over the improvement.

The Specification (*c*).—The inventor must send with his petition a sealed packet containing an exact and detailed description, signed by himself, of the object or the secret for which the patent is solicited, together with the necessary plans and drawings.

If he *fraudulently* omit in the description to mention any part of his secret, or shall state it falsely, or if the object has been already described in any work printed or published, then the patent becomes void.

The Practice of obtaining the Patent (*d*).—A petition to the King must be deposited with the *Recorder of the States* of the province, containing the object of the invention in general terms, with the name and place

(*a*) See ante, chap. ii. (*b*) Ibid. chap. iii. (*c*) Ibid. chap. iv.
(*d*) Ibid. chap. v.

of residence of the inventor, as well as the time for which he wishes to obtain a patent, and the time for which the same object may have received a *protection in a foreign* country.

The specification or description of the invention, signed by himself and sealed up, must accompany the petition; which is not to be published until the expiration of the term of the patent; and not even then if th government, for important reasons, should think it necessary to defer the publication.

The Recorder of the States makes an indorsement on the sealed packet, and sends it, within ten days, to the Commissary General of Instruction of Arts and Sciences; who presents the same to the King with his opinion thereon, and his majesty either grants or refuses the patent.

When the King thinks fit to refuse the grant, or to refer it to the opinion either of the Royal Institute of the Netherlands, or of the Royal Academy of Sciences and Literature of Brussels, a notice thereof is given to the petitioner.

The patent for an invention contains the description of the invention, but it does not guarantee the priority of the invention; and a patent of importation contains a further clause, that the objects mentioned therein shall be manufactured in the kingdom.

If a party wish for a patent for an improvement or for a prolongation of a term, he must apply to the Commissary General, who will obtain the King's signature to it.

A Register is kept at the office of the Commissary General of all the patents granted, and of the transfers

and assignments thereof; and he who takes a patent by right of succession must register his name before he attempts to use the invention; and notice of all patents are given in the official journals.

The Duties to be paid for patents are regulated according to the duration of the patent or the importance of the invention, in the following manner:

	Francs.
For a patent for five years	150
ten . . .	300 to 400

according to the importance of the invention or improvement.

	Francs.
For a patent for fifteen years. . .	600 to 750
For the transfer, or for the acquisition by right of succession of a patent	9

The Minister of Finance keeps a separate account of the taxes paid by those who obtain patents for inventions, and remits the same to the Commissary General, who proposes to the King the best manner in which the money can be employed *in rewards* for the encouragement of the arts, and of the national manufactures.

The Commissary General forwards the patents to the Governor of the Province in which the petitioner resides, stating to him the sums to be paid for the grant, who remits the same to the inventor when he shows that he has paid the duty.

When a patent is declared to be void, the duty paid for the patent is refunded in proportion to the time which the patent has to run.

The Property in them (*a*).—Patents are granted for five, ten, or fifteen years; and they may be prolonged from five or ten, to fifteen years.. But patents for the introduction or application of inventions or improvements made in foreign countries, and for which inventors have obtained patents in those countries, are not granted for a longer time than that during which the *exclusive right in such foreign countries* for those objects shall last; and they contain an express clause that the objects shall be manufactured in the kingdom.

The patentee may by himself or his *agents* make and sell the invention, or he may cause them to be made and sold by others, whom he shall authorise so to do. He may *assign* his right either wholly or in part with the king's authority. The patent follows, as a matter of course, the law of succession to personal property: but it cannot be enjoyed by any one until he has registered his right to it.

Legal Proceedings (*b*).—A patentee may cite a person before the courts of law who infringes his exclusive right, in order to obtain *the confiscation*, for his own advantage, of the objects which have been made but not sold, and *for the price* of those already sold; and also for *damages* for the wrong done to him.

When void, and how cancelled (*c*).—The patent is void if the specification is not given as above stated. It also becomes void if the patentee *does not use* his invention within the space of two years from the date of his patent, unless there have been strong reasons for that delay; of which reasons *the government* is the

(*a*) See ante, chap. vii. (*b*) Ibid. chap. viii. (*c*) Ibid. chap. ix.

judge. A patentee invalidates his grant if he *subsequently* obtains a patent for the same invention in a foreign country.

If it should appear that the invention is, in its nature or in its application, dangerous to the security of the kingdom or its inhabitants, it may be ordered to be cancelled.

At the expiration of the patent, or after it has been declared to be void, the Commissary General of Instruction makes public the discoveries and inventions which have been protected and concealed, unless it be deemed advisable not to do so, for political or commercial reasons, and then he reports to the King, who decides as he thinks fit.

The French Law.

The laws respecting patents for inventions granted in France, were passed on the 7th January, 1791; the 26th May, 1791; the 8th October, 1798; the 27th September, 1800, the 25th November, 1806; the 25th January, 1807; and the 13th August, 1810.

The Inventor (*a*).—The National Assembly stated in their decree, that *every new idea*, whereof the manifestation or the developement may become useful to society, *belongs originally to him who has conceived it*, and that it would be to attack the rights of man in their essence, not to regard a discovery in industry as the property of the author.

Patents are granted for five, ten, or fifteen years, according to the choice of the inventor, for any disco-

(*a*) See ante, chap. ii.

very or new invention in all kinds of industry. The terms of five years and ten years may be extended by a subsequent patent, but the term of fifteen years can only be prolonged by a decree of the legislative body.

Whoever brings into France a *foreign discovery* becomes the inventor of it, and may have a patent for one of the terms of years above mentioned.

The Manufacture (*a*).—Every discovery or invention in all kinds of industry, and the means of *adding* to any fabrication whatsoever a new degree of perfection, is regarded as an invention. But discoveries already pointed out and described in works printed and published, cannot be the subject of patents.

A petition for a patent will not be received if it contain *more than one* principal object, with the details that may relate to it.

If an inventor wishes to make any change in the object stated in his first petition, he is permitted to do it; and any improvement of a manufacture may be the subject of a patent.

The Specification (*b*).—The patent is forfeited if the inventor conceal his real means of execution; or if he uses any secret means which were not detailed in his description of the invention. That description must be an exact account of the principles and the means and processes which constitute the discovery, and must be accompanied with such plans, sections, drawings, and models, which may be required to explain it.

When the Legislature decrees that the description of the invention shall be kept a secret, three Com-

(*a*) See ante, chap. iii. (*b*) See ante, chap. iv.

missioners are appointed to examine the *correctness of the description*, after a view of the means and processes, without the author ceasing on that account to be responsible for the correctness of the specification.

The Practice of obtaining the Patent (*a*).—An office is established at Paris, under the name of "The Directory of Patents of Inventions." The expenses of the establishment are taken solely from the tax upon patents for inventions; and the surplus of the amount beyond those expenses is distributed in rewards for national industry.

The inventor must apply to the Secretary of the Directory in his department, and there present a petition to the King, declaring in writing if the object that he presents is of a new invention of improvement, or only of importation. He must at that time deposit *in a sealed packet* an exact description of the means which constitute the discovery, together (if necessary) with plans, sections, drawings, and models, in order that the said packet may be opened at the time when the inventor receives his title of his property.

The petitioner must make two copies of the list of papers in the sealed packet. He is entitled to have information given to him of all subjects for which patents have been obtained, in order that he may judge whether he will persist in his demand or not.

On the back of the cover of this packet is written the date of the deposit of the packet, a receipt for the amount of the tax, or an engagement to pay it; and the Directories of Departments must forward the

(*a*) See ante, chap. v.

packets to the Directory of Patents of Inventions during the same week in which they have been presented.

The Directory of Patents, after registering the packet, open the seal, and deliver out a patent containing the description of the invention under their own seal. At the same time a proclamation by the King, relative to the patent, is addressed to all the tribunals and departments in the kingdom.

A prolongation of the term of a patent may be made by the legislature.

A register is kept at the directory of each department, and also at the Directory of Patents for Inventions, of the patents granted and the proclamations issued, and the prolongations made of the terms of any patents, and also of all transfers of the right.

Any citizen may inspect the catalogue of new inventions at the office of the Secretary of his department, and any *resident* citizen is at liberty to examine the specifications of the patents actually in force at the Directory of Patents, unless the *legislature* has decreed that the discovery shall be kept secret.

Commissioners examine the specification, when it is ordered to be concealed; and if they are satisfied with it, they re-seal the packet.

The patentee being at liberty to make changes in the object mentioned in his first petition, he may take out successive patents for those changes, or put them all into one patent.

The duties collected from an inventor may be paid in two sums—one half on presenting his petition, and

the remainder within six months. If the latter sum is not paid within that time, the patent becomes void.

The following scales exhibit the duties to be paid by patentees.

1. A scale of the taxes to be paid to the Directory for inventions.

	Livres.
Tax on a patent for five years . . .	300
Tax on a patent for ten years . . .	800
Tax on a patent for fifteen years . . .	1500
Fee for passing the patent	50
Certificate of improvement, change or addition	24
Tax for the prolongation of a patent . .	600
Registry of a patent of prolongation . .	12
Registry of the conveyance of a patent, wholly or in part	18
For the search and communication of a description	12

2. A scale of the taxes to be paid to the Secretary of the department.

	Livres.
For the attestation of the deposit of a description, or of any improvement, change or addition, and of the papers relating thereto, all costs included	12
For the Registry of the Conveyance of a Patent, wholly or in part, all costs included .	12
For the communication of the catalogue of inventions, and search fees . . .	3

The possessor of a patent for invention must also pay the tax of annual patents levied upon all professions in the useful arts and trades.

The Property in Patents (*a*).—The inventor may have a patent for 5, 10, or 15 years, or for such longer periods as the legislature may grant; and the exercise of the right commences from the date of the certificate of the petition.

It is *personal* property. He may form establishments through the kingdom, and he may authorise other persons to use his means and processes: and he may form any association he chooses for the exercise of his right, under an order from the government to that effect.

He may *transfer* it either wholly or in part.

Legal Proceedings.—The government, in granting a patent, does not guarantee the priority, the merit, or success of the invention.

A patentee may proceed against an infringer before a Judge, who will hear the parties and their witnesses, and judgment will be executed provisionally, notwithstanding any appeal from it.

In a contest between two patentees whose patents are for the same object, if the similarity is declared complete, the patent bearing the earliest date shall alone be valid, but if there is a dissimilarity in some parts, the patent of the latest date may be converted (without any new tax) into a patent for an improvement thereof.

But *the priority* of invention, in case of a dispute between two patentees for the same object, is adjudged for him who first deposited his papers as above stated.

When Patent void and how cancelled (*b*).—The patent

(*a*) See ante, chap. vii.

(*b*) See ante, chap. ix.

becomes void if the inventor be convicted of having, in his description, *concealed his real means of execution*, or of having used in his manufacture *secret means* which were not detailed in his description; and the patent is invalid if the inventor be convicted of having obtained a patent for discoveries already pointed out and described in works printed and published; and also if the inventor shall not in the space of *two years*, reckoning from the date of his patent, have put his discovery in practice, or shall not have given sufficient reasons to justify his inaction.

And also if the inventor, having obtained a patent in France, shall be convicted of having taken one for the same object in any foreign country; and as every person acquiring the right of exercising a discovery secured by a patent is subject to the same regulations as the inventor, if he infringe them, the patent is to be revoked, the discovery published, and the use thereof to be open to the whole kingdom.

When the term has expired or the patent has become void, the Minister for the Interior takes care that it be immediately published.

AN

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TO

THE PRACTICAL TREATISE,

AND ALSO TO

THE SUPPLEMENT.

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LONDON:
C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

A

SECOND SUPPLEMENT

TO

THE TREATISE ON

PATENTS FOR INVENTIONS,

CONTAINING

LORD BROUGHAM'S ACT,

WITH NOTES THEREON:

AND

The Practice

BEFORE

THE PRIVY COUNCIL:

ALSO CONTAINING

ALL THE CASES DECIDED TO THE PRESENT TIME.

By RICHARD GODSON, Esq.

BARRISTER AT LAW.

LONDON:

SAUNDERS AND BENNING, LAW BOOKSELLERS,

43, FLEET STREET.

1835.

LONDON:

C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

TO

THE RIGHT HONOURABLE

LORD BROUGHAM AND VAUX.

MY LORD,

I TAKE the liberty of DEDICATING the following pages to Your Lordship as the best mode in which I can express *my thanks* for the Act of Parliament " to amend the Law touching Letters Patent for Inventions," which you, in the last Session, carried through parliament.

Your Lordship undertook no ordinary task, met as you were by the great difficulties of the subject, surrounded by interested parties with open or secret opposition, and oppressed as you were by the malignity of envious persons, who never cease to misrepresent every exertion you make for the advancement of learning and the amendment of the laws.

It would be presumptuous in me in a Dedication to attempt a panegyric upon Your Lordship's talents and public services; but I may be pardoned for entreating that you will in the next session of parliament exercise your talents, apply

your experience, and exert your influence, to pass another Act, to complete the task which you have so well begun.

Your meritorious exertions on behalf of the inventive genius of the artist have been the subject of severe animadversion and false accusation, but *the Public* are thankful for your services, and the mean attempt has recoiled upon your revilers. I earnestly hope that Your Lordship will in the next session of parliament continue your labours, and bring your knowledge, both legal and scientific, to bear upon this subject.

I am,

My Lord,

Your Lordship's

Obedient Servant,

R. GODSON.

TEMPLE, November, 1835.

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PREFACE.

A SECOND SUPPLEMENT has been preferred to a New Edition, in order that the Purchasers of the *original Treatise*, and of the *Supplement* published in October, 1832, may possess the whole law to the present time at the least possible expense.

SECOND SUPPLEMENT

TO

PATENTS FOR INVENTIONS.

Addendum to Chap. I.

Introduction.—Of a Patent generally.

The Act of Parliament 5 & 6 Will. 4, c. 83, "to amend the Law touching Letters Patent for Inventions" is divided into seven sections, and the contents of those sections may be arranged to correspond with the chapters in the Practical Treatise on the Law of Patents for Inventions; thus—

1st. *Addendum to Chapter III.*—The mode of proceeding where the patentee is proved not to be the first inventor. (*a*)

2d. *Addendum to Chapter IV.*—Any person having obtained letters patent for any invention may enter a disclaimer of any part of his title or specification, or a memorandum of any alteration therein, which, when filed, is to be deemed part of such specification. (*b*)

3d. *Addendum to Chapter V.*—The mode of proceeding in case of an application for the prolongation of the term of a patent. (*c*)

4th. *Addendum to Chapter VII.*—A penalty is given against a party using the name, &c. of a patentee. (*d*)

(*a*) Sect. 2. (*b*) Sect. 1. (*c*) Sect. 4. (*d*) Sect. 7.

5th. *Addendum to Chapter VIII.*— In an action against a person for infringing a patent, the defendant must give notice of the objections he intends to take at the trial; and the costs are to be taxed with regard to those objections, and not as to the general result of the trial. After a trial or decree the Court may grant a certificate, which, being given in evidence in future actions, will entitle the patentee upon obtaining a verdict to receive treble costs, unless the judge on the second trial otherwise order.(*a*)

Addendum to Chap. III.

Of a New Manufacture, or the Subject of a Patent.(*b*)

It often happened in the course of a trial that the only question discussed, was, whether or not some person besides the patentee had invented the subject of the patent. In the old cases, slight proof of a prior using of the thing invented invalidated the patent, although the patentee was acknowledged to be the first person who had made any beneficial use of it. That law was gradually modified, and in the cases of *Lewis* v. *Marling*, (*c*) and *Jones* v. *Pearce*, (*d*) it was put upon an intelligible basis.

(*a*) Sect. 3, 5, and 6.
(*b*) See Practical Treatise, p. 57; Supplement, p. 6.
(*c*) Supplement, p. 6. (*d*) Ibid. p. 10.

A legislative remedy for the evil of varying decisions upon that point is given in section 2; as follows:—

"That if in any suit or action it shall be proved or specially *found by the verdict of a jury* that any person who shall have obtained letters patent for any invention or supposed invention was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same, or some part thereof, before the date of such letters patent; or if such *patentee or his assigns shall discover* that some other person had, unknown to such patentee, invented or used the same, or some part thereof, before the date of such letters patent, it shall and may be lawful for such patentee or his assigns to petition his Majesty *in Council to confirm* the said letters patent, or to grant new letters-patent, the matter of which petition shall be heard before the judicial committee of the privy council; and such committee upon *examining the said matter*, and being satisfied that such patentee believed himself to be the first and original inventor, and being satisfied *that such invention or part thereof had not been publicly and generally used before the date of such first letters-patent*, may report to his Majesty their opinion that the prayer of such petition ought to be complied with, whereupon his Majesty may, if he think fit, grant such prayer; and the said letters patent shall be available in law and equity to give to such petitioner the sole right of using, making, and vending such invention as against all persons whatsoever, any law, usage, or custom to the contrary thereof notwithstanding: *provided*, that any person opposing such petition shall be entitled to be heard before the said judicial committee: *provided*, also, that

any person, party to any former suit or action touching such first letters-patent, shall be entitled to have notice of such petition before presenting the same."

"*Such committee upon examining the said matter.*"—The rules promulgated by the judicial committee of the privy council are hereafter given. Their decision will have operation from the date of the verdict, which, being special, will not have any judgment pronounced upon it until after the decision of the privy council. A party intending to apply to the privy council should obtain an order of the Court to stay proceedings upon the verdict until the privy council had examined the matter.

"*That such invention or part thereof had not been publicly and generally used before the date of the first letters patent.*"—These are the principal words of the section. The privy council are not to give relief if the subject of the patent has been publicly and generally used. It often happened that a patent was invalidated because some one person, at a part of the kingdom distant from the patentee, had performed the same thing and laid it by, ten, twenty, or thirty years before the date of the patent.

The following case may be added to those in which the Court has decided what is *not the Subject* of a patent:—

A patent was taken out for improvements in making buttons. The specification stated the improvement to consist in the substitution of a flexible material for metal shanks, and it described the mode in which this material might be fixed to the intended button, and

made to project from it in the necessary condition for use, by the help, among other things, of a metal collet or ring with teeth. Neither the construction of the button, nor the application of a flexible shank, was new; the use of the toothed ring, as described in the specification was so, but this was not stated to be the subject matter of the invention; and it appeared by the specification that the effect produced by it might be brought about in other modes, which the plaintiff had also used: the Court held, that the patent was not maintainable, since the invention consisted only in combining two things which were not new, and the use of the toothed ring in forming the flexible shank, though new, was not the object of the invention, but only a mode, among others which were already known, of carrying it into effect.(*a*)

Addendum to Chap. IV.

Of the Specification.(*b*)

It is a technical but unjust rule of law, that if the inventor claims anything in [illegible] *title* to his patent, or in the specification, which is not *new*, or has been before *used*, then the whole patent becomes void. It has also been contended, that every part should be useful as well as new; but that was overruled by the judges in the case of *Lewis* v. *Marling*.(*c*)

(*a*) *Saunders* v. *Aston*, 3 B. & Adol. Rep. 881; and 10 vol. Law Journal, 265. See *Morgan* v. *Seaward*, Repertory of Patent Inventions for November and December, 1835.

(*b*) See Practical Treatise, p. 100; Supplement, p. 27.

(*c*) Supplement, p. 27.

In the 1st section that law has been altered in the following words:—

"Any person who, as grantee, assignee, or otherwise, hath obtained, or who shall hereafter obtain letters patent, for the sole making, exercising, vending, or using of any invention, may, if he think fit, enter with the clerk of the patents of England, Scotland, or Ireland, respectively, as the case may be, (having first obtained the leave of his Majesty's attorney general or solicitor general in case of an English patent, of the lord advocate or solicitor general of Scotland in the case of a Scotch patent, or of his Majesty's attorney general or solicitor general for Ireland in the case of an Irish patent, certified by his fiat and signature,) a *disclaimer of any part of either the title of the invention or of the specification, stating the reason for such disclaimer,* or may, with such leave as aforesaid, enter a memorandum of *any alteration in the said title or specification,* not being such disclaimer or such alteration as shall *extend the exclusive right* granted by the said letters patent; and such disclaimer or memorandum of alteration, being filed by the said clerk of the patents, and enrolled with the specification, shall be deemed and taken to be part of such letters patent or such specification in all Courts whatever: *provided* always, that any person may enter a caveat, *in like manner as caveats are now used to be entered,* against such disclaimer or alteration; which caveat being so entered shall give the party entering the same a right to have notice of the application being heard by the attorney general, or solicitor general, or lord advocate respectively: *provided also,* that no such disclaimer or alteration shall be receivable in evidence in any action or suit (save and except in any proceeding by scire facias)

pending at the time when such disclaimer or alteration was enrolled, but in every such action or suit the original title and specification alone shall be given in evidence, and deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: *provided also*, that it shall be lawful for the attorney general, or solicitor general, or lord advocate, before granting such fiat, to require the party applying for the same to *advertise his disclaimer* or alteration in such manner as to such attorney general, or solicitor general, or lord advocate shall seem right, and shall, if he so require such advertisement, certify in his fiat that the same has been duly made."

"*In like manner as caveats are now used to be entered.*"—This clause is very important and was much wanted. It must be remarked that the *title* as well as the *specification* may be altered. Some persons have thought that this clause is not clearly worded. Any *willing* Attorney General may easily carry it into practice.

The late cases respecting *the Title* and the specification are as follows:—

An invention for giving paper, by the application of a certain composition, such a surface as renders the lines of copper and other plate printing more clear and distinct, may properly be described in the title of a patent as an improvement in copper and other plate printing.(*a*)

A patentee summed up his invention thus: "My

(*a*) *Slurz* v. *De la Rue and others*, 5 Russell's Rep. 322.

invention is the application of a self-adjusting leverage to the back and seat of a chair, whereby the weight on the seat acts as a counterbalance to the pressure against the back of such chair, as above described:" the Court held, that the patent was valid; for without assuming to appropriate the principle of the lever, it claimed the invention of means by which that principle was applied to a chair in a new manner. (*a*)

Another case (*b*) on the same patent is now pending before the Court of King's Bench, in which the *novelty* of the invention is impeached.

In a case for invading plaintiff's patent right to certain machinery for drying calicoes, &c. where the specification, after setting forth the mode in which the cloth was to be extended for the purpose of drying, proceeded to state that it might be taken up again by the same machinery; the jury having found that the invention was new and useful on the whole, but that the machine was not useful in some cases for taking up goods, the Court refused to set aside the verdict for the plaintiff and enter a nonsuit. (*c*)

In another case, one of the ingredients was a white substance, imported from Germany, and which could be purchased at one or two colour shops in London; the only description or denomination given to it in the specification was "the purest and finest chemical white lead;" but there was no article known by that denomination in the trade, or in the shops where white lead is usually sold; and the finest white lead which could be obtained would not answer the

(*a*) *Minter* v. *Wells and another*, 5 Tyrwhitt's Rep. 163.
(*b*) *Minter* v. *Mower*, MS.
(*c*) *Haworth* v. *Hardcastle and others*, 1 Bing. N. C. 182.

purpose: the Court held, that the specification was insufficient. (*a*)

The great accuracy required in the specification is exemplified in the following case:—A patent was granted for an invention of "certain improvements in extracting sugar or syrups from cane juice and other substances containing sugar." The specification stated the invention to consist "in a means of discolouring syrups of every description by means of charcoal produced by the distillation of bituminous schistus, or mixed with animal charcoal, and even of animal charcoal alone." It then stated that the "discolouration" was to be produced by means of a filter made of the charcoal, and that there was "*nothing particular in the carbonization of the bituminous schistus,*" only it is convenient before the carbonization to separate the sulphurets of iron which are mixed with it. The specification said nothing as to any previous operation on the syrup before it was admitted to the filter; but it did state that syrup in a proper state might be obtained by a mixture of sugar and water. In an action for the infringement of the patent, the defendant pleaded that the plaintiff did not by any instrument in writing describe and ascertain the nature of his said invention, and in what manner the same was to be performed; and also that the plaintiff did not cause any such instrument to be enrolled in Chancery: the Court held, that the plaintiff sufficiently specified his invention, upon proof that it was applicable with advantage to the syrup after it had undergone a certain degree of heat, though it failed when applied to the first drawings of the syrup,

(*a*) *Sturz* v. *De la Rue and others*, 5 Russell's Rep. 322.

and that a "discolouration" of such syrup, and of syrup of sugar and water, warranted the title of improvements "in extracting sugar or syrup from cane juice:" the Court held, that it was necessary that the plaintiff should prove bituminous schistus would answer, that the presence of iron in it would not be injurious, and that if it would, it might be removed by means known to persons ordinarily acquainted with the subject; that the schistus might be purchased in a proper state in the market as an article of commerce, or that it might otherwise, without any secret or unknown means, be obtained in a fit state.(*a*)

Qu. Whether an allegation that the patentee has specified, is not supported by proof that he has specified all that he has invented, though the invention be not so large as the title would imply. (*a*)

Addendum to Chap. V.

Of the Practice of obtaining Letters Patent. (*b*)

By the 21 Jac 1, c. 19, the King is restricted in making grants of letters patent to fourteen years duration. The legislature sometimes interfered to prolong that term, but the patentee was put to great expense.

In the 4th section it is now enacted, "that if any person who now hath or shall hereafter obtain

(*a*) *Derosne* v. *Fairie and others*, 1 The New Term Rep. Exch. 1835, p. 109. See also 5 Tyrwhitt's Rep. 393.

(*b*) See the Practical Treatise, p. 137; Supplement, p. 40.

any letters patent as aforesaid shall *advertise* in the *London Gazette* three times, and in three *London* papers, and three times in some country paper, published, in the town where or near to which he carried on any manufacture of any thing made according to his specification, or near to or in which he resides, in case he carried on no such manufacture, or published in the county where he carries on such manufacture or where he lives, in case there shall not be any paper published in such town, that he intends to apply to his Majesty in Council *for a prolongation of his term* of sole using and vending his invention, and shall petition his Majesty in Council to that effect, it shall be lawful for any person to enter a *caveat at the Council Office*; and if his Majesty shall refer the consideration of such petition to the judicial committee of the privy council, and notice shall first be by him given to any person or persons who shall have entered such caveat, the petitioner shall be *heard by his counsel and witnesses* to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses; whereupon, and upon hearing and inquiring of the whole matter, the judicial committee may report to his Majesty that a further extension of the term in the said letters patent should be granted, *not exceeding seven years*; and his Majesty is hereby authorized and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary in anywise notwithstanding: *provided*, that no such extension shall be granted if the application by petition shall not be made and *prosecuted with effect* before the expiration of the term originally granted in such letters patent."

To carry this very important section into practice, the Judicial Committee of the Privy Council have promulgated the following rules:—

"*Rules to be observed in Proceedings before the Judicial Committee of the Privy Council under the Act of the 5 & 6 Will. IV., intituled 'An Act to Amend the Law touching Letters Patent for Inventions.' Cap.* 83.

I.—"A party intending to apply by petition under section 2 of the said Act, shall give public notice by advertising in the London Gazette three times, and in three London papers, and three times in some country paper, published in the town where or near to which he carries on any manufacture of any thing made according to his specification, or near to or in which he resides, in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to petition his Majesty under the said section, and shall in such advertisements state the object of such petition, and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition, (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette,) and that on or before such day notice must be given of any opposition intended to be made to the petition; and any person intending to oppose the said application, shall lodge notice to that effect at the Council Office on or before such day so named in the said advertisements; and having lodged such notice, shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

II.—" A party intending to apply by petition under section 4 of the said Act, shall, in the advertisements directed to be published by the said section, give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition, (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette,) and that on or before such day caveats must be entered; and any person intending to enter a caveat, shall enter the same at the Council Office on or before such day so named in the said advertisements; and, having entered such caveat, shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

III.—" Petitions under sections 2 and 4 of the said Act, must be presented within one week from the insertion of the last of the advertisements required to be published in the London Gazette.

IV.—" All petitions must be accompanied with affidavits of advertisements, having been inserted according to the provisions of sect. 4 of the said Act, and the 1st and 2d of these Rules; and the matters in such affidavits may be disputed by the parties opposing, upon the hearing of the petitions.

V.—" All persons entering caveats under section 4 of the said Act, and all parties to any former suit or action touching letters patent, in respect of which petitions shall have been presented under section 2 of the said Act, and all persons lodging notices of opposition under the 1st of these Rules, shall respectively be entitled to be served with copies of petitions presented under the said sections; and no application to fix a time

for hearing, shall be made without affidavit of such service.

VI.—" All parties served with petitions shall lodge at the Council Office, within a fortnight after such service, notice of the grounds of their objections to the granting of the prayers of such petitions.

VII.—" Parties may have copies of all papers, lodged in respect of any application under the said Act, at their own expense.

VIII.—" The master of the high Court of Chancery, or other officer to whom it may be referred to tax the costs incurred in the matter of any petition presented under the said Act, shall allow or disallow, in his discretion, all payments made to persons of science or skill examined as witnesses to matters of opinion chiefly.

" Council Office, Whitehall,
18th November, 1835."

Addendum to Chap. VII.

Of the Property in an Invention. (*a*)

For the protection of patentees, the New Act gives a penalty of £50 against a party using the name, &c. of a patentee. In other respects the law is not altered.

In the 7th section it is enacted, " That if any person shall write, paint, or print, or mould, cast, or

(*a*) See the Practical Treatise, p. 160; Supplement, p. 56.

carve, or engrave or stamp, upon any thing made, used, or sold by him, for the sole making or selling of which he hath not or shall not have obtained letters patent, the name, or any imitation of the name, of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without leave in writing of such patentee or his assigns, or if any person shall upon such thing, not having been purchased from the patentee or some person who purchased it from or under such patentee, or not having had the license or consent in writing of such patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word 'Patent,' the words 'Letters Patent,' or the words 'By the King's Patent,' or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall in any other manner imitate or counterfeit the stamp or mark, or other device of the patentee, he shall for every such offence be liable to a penalty of £50, to be recovered by action of debt, bill, plaint, process or information in any of his Majesty's courts of record at Westminster or in Ireland, or in the Court of Session in Scotland, one-half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same: provided always, that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping, or in any way marking the word 'Patent' upon any thing made, for the sole making or vending of which a patent before obtained shall have expired.'

It is to be regretted that this clause did not give a penalty to be paid by all persons who mark the word

"Patent" on articles which they know never were the subject of a patent. In the courts of equity a manufacturer was always restrained from using the letters and figures which a patentee was in the habit of using. (*a*)

Respecting the Property in a Patent the following case has been decided.

The declaration in covenant alleged a deed, by which the plaintiff granted to the defendant a license to use certain looms. In that deed it was recited that the plaintiff had invented certain improvements, &c. in power looms, and had obtained letters patent, and caused a specification to be inrolled:—the Court held that the defendant was estopped from pleading, that the plaintiff was not the inventor; that it was not a new invention; and that no specification had been inrolled. (*b*)

Addendum to Chap. VIII.

Of the Infringement of a Patent, and the Remedies for that Injury. (*c*)

When a patentee felt himself aggrieved, and brought an action on his patent against an infringer, he was kept in great doubt and anxiety as to the defence which would be made. It continually occurred that the in-

(*a*) *Ransome* v. *Bentall*, Law Journal, vol. xii. page 161.
(*b*) *Bowman* v. *Taylor and another*, Law Journal, vol. xiii. p. 58.
(*c*) See the Practical Treatise, p. 173; Supplement, p. 63.

genuity of counsel suggested objections, which, if known before hand to the patentee, would have been removed by evidence.

The New Rules for pleas in actions in some measure gave a remedy, by requiring the defendant to plead all his defences. It was held, by several judges at chambers, that the defendant might plead in general words that the specification was insufficient, and then make any objection to its validity; without putting the patentee on his guard against the objections.

For remedy thereof it is, by the 5th section, enacted, " That in any action brought against any person for infringing any letters patent, the defendant, on pleading thereto, shall give to the plaintiff, and in any scire facias to repeal such letters patent, the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action, and no objection shall be allowed to be made in behalf of such defendant or plaintiff respectively at such trial, unless he prove the objections stated in such notice: provided always, that it shall and may be lawful for any judge at chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant respectively to show cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections on such terms as to such judge shall seem fit."

On the subject of costs a great improvement is made, by section 6 it is enacted, " That in any action brought for infringing the right granted by any letters patent, in taxing the costs thereof regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the judge before whom the

same shall be had, and the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections, as well as the counts in the declaration, and without regard to the general result of the trial."

Although a patentee was defeated in an action which proved his patent to be invalid, still he might continue to bring actions at law; and, on the other hand, although he had supported his patent, and proved its validity at a very great expense, yet the infringers might go on and put him to a continual outlay, which in some cases has caused his ruin.

A very important improvement is introduced in these words. By section 3 it is enacted, "That if any action at law, or any suit in equity, for an account, shall be brought in respect of any alleged infringement of such letters patent heretofore or hereafter granted, or any scire facias to repeal such letters patent, and if a verdict shall pass for the patentee or his assigns, or if a final decree or decretal order shall be made for him or them, upon the merits of the suit, it shall be lawful for the judge, before whom such action shall be tried, to certify on the record, or the judge who shall make such decree or order, to give a certificate under his hand, that the validity of the patent came in question before him, which record or certificate being given in evidence in any other suit or action whatever touching such patent, if a verdict shall pass, or decree or decretal order be made, in favour of such patentee or his assigns, he or they shall receive treble costs in such suit or action, to be taxed at *three times the taxed costs*, unless the judge making such second or other decree or order,

or trying such second or other action, shall certify that he ought not to have such treble costs."

This is some check to a profusion of actions. At the present moment a patentee has brought nearly forty actions on a patent which is likely to be declared void.

The following cases have been decided respecting the remedies for an infringement of a patent.

Pending a rule nisi for a new trial, in an action for invasion of plaintiff's patent right, defendant sued out a sci. fa. to try the same right. The Court refused to postpone the proceeding on the rule for the new trial, until a decision should have been obtained on the scire facias.(*a*)

Although a patent has expired, the Court will grant an injunction to restrain the sale of articles manufactured in fraud of that patent previous to its expiration.(*b*)

On an application for an injunction to restrain the infringement of a patent, the party must swear, that, at the time of making the application, he believes that, at the date of the patent, the invention was new, or had not been previously known or used in this kingdom.(*c*)

The specification of an invention being in doubtful terms, a demurrer to a bill for the infringement of a patent, ordered to stand over till an action should have been brought to try the validity of the patent.(*d*)

(*a*) *Haworth* v. *Hardcastle*, 10 Bing. Rep. 551.

(*b*) *Crossley* v. *The Derby Gas Light Company*, Law Journal, vol. xiii. p. 25.

(*c*) *Sturz* v. *De La Rue and others*, 5 Russell's Rep. 322.

(*d*) *Kay* v. *Marshal*, Law Journal, vol. xiii. p. 258.

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