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THE LAW

OF

PATENTS AND REGISTRATION

OF

INVENTION AND DESIGN IN MANUFACTURE,

WITH

Statutes, Forms, and Rules.

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PREFACE.

An attempt is here made to advance the theory of a subject of jurisprudence which presents some very peculiar and some rather subtle features. "The whole of the Patent Law," says the present Master of the Rolls (Evidence, House of Lords Committee, 1851), "is exceedingly difficult, particularly in practice. Nobody I have ever yet known has been able to arrive at a satisfactory definition, precisely to ascertain in any case what is a new and what is a useful invention. The cases at law (which are very numerous) give a sort of rough definition of the matter, but the judges have found themselves totally at a loss to do more than decide in each individual case." Of these cases a selection is here given (with some preference to recent decisions, and including some which are not in the standard reporters), and used, not so much for authoritative precept, which, indeed, they often do not furnish, as for illustration of the principles. These, though few and simple, occur in combinations infinitely varied by the special facts, and it seemed expedient to

condense the account of such general doctrines, which are applicable to almost every case.

As to legal processes, common to this and other legal subjects, and possessing a literature of their own, this treatise does not assume to inform the special practitioner, except as to the peculiarities of this particular right.

One word on Patent Law Amendment, for which some persons seem disposed to substitute Abolition, forgetting that there is an *instinct* of property, the developments of which it is the business of law to regulate — not to suppress. There are some notorious evils, some vexatious formalities, and ill-adjusted fees — if they were removed (and the work of excision in reform is easy), the system would right itself. The success of Constructive Legislation is more doubtful, and superfluous Statute Law always mischievous.

2, Pump Court, Temple.
September, 1851.

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[*Those printed in italics are repealed.*]

A.D.	COMMON LAW.	PREROGATIVE.	PATENT.	INVENTIONS.
1439	Statute	18 Hen. 6, c. 1	Form of grant	Inventions.
1535	Ditto	27 Hen. 8, c. 11	Ditto	Ditto.
1624	Ditto	21 Jac. 1, c. 3	Patents	Ditto.
1712	Practice	Attorney-General	Specification	Ditto.
1787	Ditto	*27 Geo. 3, c. 38*	*Copyright*	*Calico designs.*
1789	Ditto	*29 Geo. 3, c. 19*	*Continued*	*Ditto.*
1794	Ditto	*34 Geo. 3, c. 23*	*Made perpetual*	*Ditto.*
1798	Ditto	38 Geo. 3, c. 71	Copyright	Sculpture.
1814	Ditto	54 Geo. 3, c. 56	Ditto	Ditto.
1835	Ditto	5 & 6 Will. 4, c. 83	Patent	Invention.
1835	Rules	Attorney-General and Privy Council	Practice of	Ditto.
1839	Statute	2 & 3 Vict. c. 67	Amends last act	Ditto.
1839	Ditto	*2 Vict. c. 13*	Copyright	*Design, wool, &c.*
1839	Ditto	*2 Vict. c. 17*	Ditto	*Design.*
1842	Ditto	5 & 6 Vict. c. 100	Ditto	Ornamental design.
1843	Ditto	6 & 7 Vict. c. 65	Copyright	Useful design.
1844	Ditto	7 & 8 Vict. c. 69	Amends 5 & 6 Will. 4.	nvention.
1849	Ditto	12 & 13 Vict. c. 109	Petty bag	Ditto.
1850	Rules	Attorney-General	Deposit	Ditto.
1850	Statute	13 & 14 Vict. c. 104	Provisional	Design, sculpture.
1851	Ditto	14 Vict. c. 8	Provisional	Invention.

ADDENDA.

Page 33, line 5.—After December 31 this part of the practice will be modified by the 14 & 15 Vict. c. 82, and the rules to be issued under it.

Page 163.—The fee at the Great Seal is 48*l.* 17*s.*

Page 168.—The second form of claim is now repudiated by the office.

INTRODUCTION.

THERE is a subject of legal right which, not being referrible to particular places or particular things, is often called incorporeal, immaterial, metaphysical, or intellectual property. It, however, really consists in a material quality, viz., in the resemblance between certain individual substances or articles, which is isolated into a concrete form, becoming an independent dominion, overruling the right to the substantial thing, and which, after being once actually constituted, may exist (Lord Mansfield, 4 Burr. 2397) in a suspended state, though no actual copy of it be extant. It has a physical fact for its basis; it is not incapable of possession, but its possession is of a subtle and imponderable nature; "it may be stolen through a window, and carried off by the eye." The epithet of "intangible" is correct; it may even be acquired by description; and absolute secrecy is essential to the Author's possession. Accident may lay bare his privacy; violence may invade it; fraud may induce him to relax; but (subject to the difficulty of proving the exclusive occupation) common law and common equity, based on common justice, will endeavour to assist him; and an inventor, without territorial or moveable possession, without a share in the mine or the warehouse, exercises a right over every ton of metal that is smelted, and taxes every article in the factory or shop.

In referring, however, to common law, it must not be supposed that this class of rights is recognised by ancient

jurisprudence; common law is the expansive element of justice, and its development in this direction requires a little exposition. Worldly superiority, in the early stage of society, results from personal skill; a right to his eye and his arm is all the archer requires; so much of it, however, as is the product of cultivation, is attainable by his competitors, and they would make it worth his while to give them lessons in the art; he would become a professed teacher, and in this again would rely on his peculiar skill. But if men are equally good manipulators in general, the knowledge of some special contrivance may turn the scale, as Ulysses, by warming and greasing a bow, could bend one of unusual power. This would be so easily communicated, that any single person who learnt it might pass it on to all the world, and the inventor rapidly sink to the common level of society. He might sell the copies, however, of the recipe, as long as he could pretend that his preparation alone was genuine; that no one but himself could perform the requisite incantations. Observe, that as long as this can be maintained (and it cannot be long), the public are hampered with superfluity, and the inventor's ingenuity is wasted on devices for concealment. The next expedient is a moral engine; the inventor may bind his customer to secrecy, to use the secret himself, and forbear from any other use of it, as the purchaser of a ticket for a theatre is bound not to forge a copy. Every such contract the law is bound to enforce; but from the obstacles which occur, it is far preferable for the State to enter once for all into a contract with the inventor, who, obtaining in this way some security of remuneration, though only for a portion of his natural right, would become an inventor by trade, while the recurrence of such transactions, committed in the first instance on the part

of the public to ministerial discretion, would lead to a general legal enactment; and this leads to the consideration of the terms of the bargain. Now the pains and labour of the inventor do not directly enter into the calculation, which, as in all other cases of price, turns on supply and demand. The Patent cause has probably been injured by putting forward the ground of benevolence instead of that of right, and liberality to a man of genius of reward for his exertions, instead of payment for an article he has supplied. If the sole supply be in the hands of an individual, he would rightfully be entitled to the perpetual ownership of the article: in so far as an artist or a poet impresses his own individuality on the words, or forms, or colours, he may withhold that manuscript or model from all the world, and for ever. But there are fields of discovery which any well equipped traveller may explore, in which all inventors have a potential right, and then it is obviously a fit office for the State to divide and allot the new province for cultivation: they are here in a position to treat on terms with the first inventor; if he reject them, they fall back on the chance of the next comer—a chance, indeed, they can estimate but very imperfectly. As before said, a premium is fixed—it may not induce one man to make the requisite effort to complete an invention, but it may another. Watt, for instance, spent half a lifetime, and a princely fortune, on an invention which might have been done, perhaps, by accident, without the stimulus of any patent at all; but suppose this had occurred only ten years after, who can say what had been the fate of this country put back ten years in manufacture. It is difficult even to approximate to any measure of the period under discussion. Coke suggests that fourteen years (in a patent) was selected as the time in which others might (by seven

years' apprenticeship and seven years' practice as journeymen) acquire the invention; but it was probably arbitrary; what is more certain is, that a fixed term is too long for petty inventions, and too short for great ones. Some artificial products and works are actually disused and laid aside in a few years; matters of fashion, for instance, and many departments of literature.

It is sometimes urged that such rights are, during their terms, unlimited monopolies. Monopolies they of course are, and so is every shilling in a man's pocket; but the notion of cxórbitant profits under a patent or copyright is absurd, not to speak of smuggling, which, at a high profit, is irrepressible; or of downright legal hostility, at which even a stout patent trembles. An invention can only supplant its predecessor by a very moderate charge, and by the same means avoid encouragement to rival ingenuity to go round it. With reference to litigation, the patent has, besides the danger of technical flaws in the mode of acquiring the right to make head against the current of thought, which leads the public to make light of *accomplished* difficulties, to argue that what is obvious *à posteriori*, must have been easy *à priori*. Columbus's egg ought to be suspended over the jury-box at a patent trial. The same difficulty affects patent legislation, when illustrated by individual instances. A noble debater could see no merit in the centrifugal sugar refiner. The idea was familiar to every housemaid who ever trundled a mop, and it was easy to put the idea into a hundred shapes. Lord Grey did not perceive that the familiarity of the elements showed the originality of the person who made the combination: who first saw in the old housemaid's mop a mode of sifting sugar; and as to the ease of putting it in shape, it is only easy in the same way as was Hamlet's rule for playing the flute. Those who will not be argued

into a belief of the pains of invention, ought in justice to try the experiment themselves. Again, in all doubtful and difficult points, the risk is the inventor's; if he fail, the public does not deal with him; but not a bit the less retains his fees. No cure, no pay, is the maxim in one case, and, no money returned, in the other. (In the United States, indeed, a portion of the fee is returned.) Legal miscarriage is fatal to the whole; piracy, before the completion of the patent, irreparable; and all this rigour to save the purchaser that little fraction of the cost of the article which repays the most intellectual of the workmen employed about it; which adds to the cost of wear and tear of machinery, a little for the waste of the brain that contrived it. The cost of a design in calico has been stated in evidence as the 1-352nd of the retail price, and to show how much the manufacturer's path is smoothed by the pioneer, Mr. Babbage (Economy of Manufacture) says, that he reckons a first machine to cost five times as much as a second.

Sometimes the value of the invention is recognised, but not the merit of the possessor, who, it is said, has but come dexterously in to add the last link to the chain, while the *savans*, who made all the discoveries he employs, go unrewarded. As to this, the public require practical results; a powerful galvanic apparatus may be useless for want of a connecting wire; the public see that the battery, as it stands, is useless, they have no means whatever of knowing how little it wants to complete it. If the constructor does know, and neglects it, the field is open to what the law calls "special occupation;" but, as before said, he probably does *not* know how to *apply* his discovery, or shrinks from the labour of completing it. Inexperienced persons, Mr. Babbage remarks, have little idea of the patient industry required in the pursuit of invention. An opponent of patents, at the recent committee,

spoke of an inventor "stereotyping his one idea;" and such mental concentration as this implies is not easy, nor yet agreeable. Take the case of effecting consumption of smoke: practically, no plan has succeeded; yet the thing ought to be easy, for most fires, at certain states of burning, do not emit any smoke. To eliminate this case, and make it constant, is all that is wanted, and has been wanting so long. Science pursued for science's sake, may be worthy of some kind of public patronage, but it is not usually met with in company with the science of art.

Property in general is deemed beneficial, not only with a view to reward the original acquisition of the subject-matter for society, the discovery of new tracts, and the reclamation of old but waste ones, but also in reference to the order of society, and the cultivation of its territory, by avoiding wasteful competition, and assigning every plot of ground its steward. Patents certainly *are* not upheld on this ground, though it is not so certain that they might not be.

In concluding the view of the legal, or at least legislative part of the subject, it may be recollected that there is a *jus naturale* to fall back upon. No man ever stole an idea; no man ever disturbed a continued possession of an idea without a *feeling* of shame, whatever he might *say* to the contrary. The opponents of the Ornamental Designs Act justified piracy, but all disclaimed practising it themselves. Among scientific and literary men, analogous cases occur to the patent ones, the evidence being matter of dispute, but never the moral principles; and among respectable tradesmen there is often a "comity" which supplies the place of positive law.

INVENTIONS AND DESIGNS.

The most important distinction we have to notice is that of the *principle*, as opposed to the *form*. A roof, for

instance, may be framed on the principle of an arch or a truss, but there are modifications of these forms, depending on the substance they are made out of; if carpentry, acute angles will abound; if cast-iron, the angles will close up with curves; the pitch of the roof will vary with the climate, the mechanical structure being essentially the same. A picture must be translated into lines for engraving, into small squares for worsted work, and so of different sub-varieties of engraving, and of weaving tapestry, &c. In the above cases, the physical form of the thing, *i. e.*, its shape and configuration, varies; but this does not always accompany a variation of the *logical* "form," which may consist in a substitution of material; as, india rubber for gutta percha; or of movement, as a cylinder for the block in printing, or indeed of any contrivance for another; thus, in *Galloway* v. *Cochrane*, (printed case), of a narrow vent for a weighted valve, both being intended to impede the escape of steam. By contemplating a variety of operations or constructions, more or less similar in respect of what is common to all, we get their principle, and the different modifications under which a primary idea can exist, or be carried out, are its form.

Every form yields up to study and investigation its principle, but speculative principles are not always reducible to practical form; a multitude of conditions present themselves, and few ideas succeed in accomplishing them throughout. It seems easy for any one who has taste to design a hundred shapes for a decanter, but some would be too squat to be seen on a crowded table, others too tall for safety; the form must be suited for filling and pouring from, be capable of formation by the glass-blower, and of finish by the polisher's wheel; must exhibit the points of beauty which suit a transparent material, and

comply with many points of fashion and association; alter any of the conditions, and the whole must be re-cast. So in the superior kinds of machinery, every member is as specially calculated for its peculiar office as the bone which enables the geologist to pronounce on the whole organization of an extinct race. It was said in *Crossley v. Beverly* (cited Webs. P. C. 146), that there might be innumerable forms of an invention, but, in fact, beyond a limit which is soon reached, variation would make the principle not worth employing; and there is always one best form which supersedes its rivals in the race of competition; deviation from this is injurious in an increasing ratio.

The determination of this breadth of principle becomes highly difficult, as the variations exhibit original features of their own. Thus, in Barber's patent (31 Newton Lord. Journ. 434), the claim was to press hosiery between hollow boxes filled with hot water; this was held not to cover a subsequent invention of revolving rollers for the same purpose, heated in the same manner. The continuous action of the latter is certainly far more ingenious than the successive application of the old surfaces: it is the difference between the printing press and the printing machine. But pressing with hot iron was old; this would throw the weight of the former patent upon the heating by water; and this was employed by the defendant, though in a novel form of apparatus. The principle, according to the nature of the subject, may inhere in a certain form, or even in the precise angle at which, for instance, paving stones are arranged, or at which a diamond will cut glass; it may consist in definite chemic proportions, or exhibit itself according to the substances raised, in whatever proportions; but always it must be referred to a practical standard. Thus, in Heath's patent (10 M. & W. 684), the claim was for an applica-

tion of carburet of manganese, which, as chemists well know, is a combination of manganese and carbon; but in practice, a substance and its separate elements are by means known equivalents; and the use of the latter was held to be a distinct process.

The most serious condition is commercial merit, the cost at which the article can be produced, or the work executed; and this often resolves itself into the state of contemporary art. Printing depends in a high degree on paper making; the latter on woven rags, and so on; there is a peculiarity about this condition, that it is a human limit, not a law of nature. What is impossible at one period may be valuable a century after; and, though forgotten, the record of the prior inventor may be recoverable, and, if quite identical, frustrate a subsequent claim by an independent inventor, as patent law recognises no extinction by disuse.

Only it must be observed, that form and principle, like genus and species, are relative terms. An art includes various styles or orders; a style various patterns (see Tennant on Copyright), varieties, and sub-varieties. Each of these may derive from a main stem, adding a quantum of originality. An oscillating engine is a form of steam engine in general, but it has *its* principle in reference to which particular forms may exist. At the present day, most of the valuable patents are obviously special improvements, on more general inventions; and such sub-inventions have been considered as evidence of the value of the parent stock. The relation between such prior and posterior inventions is divisible into improvements or modifications of *one* predecessor; and combination, founded on parts, or the whole of *several*. The legal competency of each of these for patent right was questioned, the former on Coke's authority, before Lord Mansfield (Webs. P. C.

51), the latter before Lord Eldon (Webs. P. C. 237); but both objections were set aside. There are few inventions, in fact, not referrible to some wider class which is modified, or some elements which are brought together.

As the conception of a principle, and its reduction to practice, are distinct operations, and therefore may, in respect of a single invention, be the work of two individuals, it becomes important to determine which of them is to be deemed, or both together, the inventor; or, in other words, what constitutes the entire act of inventing; at what point does speculation, or experiment, or both, become invention? It seems clear that the idea must be sufficiently definite to be communicated to a workman, engineer, &c., of average capacity, who, *from the communication*, can repeat the operation, or reproduce the result; and, as he may thus employ others to work off the *details of his principle*, so may he to furnish him with the materials for it. He may consult men of science as to all the existing stores of art, the means it possesses of effecting what he has in view, or even to frame new combinations, or try new experiments in his service (*Minter* v. *Wells*, Webs. P. C. 132; *Bloxam* v. *Elsee*, 1 C. & P. 567), so long as he only commits to them the elements or portions of the problem, or the execution of his instructions; not so, if he merely proposed to them an end to accomplish as they best might, or if, starting with his own plan, he relinquished it for theirs. The point to look for is the moment when, in the effect of accident or experiment, a principle is recognised; this is a ruling element in an invention, on which the details are moulded, and the fate and fortunes of which the details follow.

The classes of subjects of invention which are known to our law (premising only that it protects neither what is immoral in its very nature, as a libel, or, what is frau-

dulent towards the purchaser, as a book under a false pretence of authorship, or an American patent for making skeins of cotton *look* larger,—such a defect, however, not existing in law till it is proved) are as follow:—First, what may be termed phonetic arts, literature, music, lectures, the drama; these do not fall within our present plan. Secondly, æsthetic art, whether pure, as sculpture and engraving, or mixed, like the arts of decoration and ornament, and which approximate, or form a frontier towards the third class, the arts of utility, often sharing with the latter the merit of the same article of manufacture, till it is not easy to say whether the useful or ornamental qualities preponderate.

The useful inventions are either chemic, including the employment of new substances or materials, or mechanic, consisting in novel action or form; in the former, shape is regarded in the aggregate mass or surface; in the latter, the form is analyzed and identified. In the latter, the repetition of the model is numeric, as a gross of pins; in a woven fabric, the repetition is quantitative, the units being unheeded; and in a chemical compound they are unattainable. Some particular inventions have been deprived of the usual privileges upon a notion of "public policy." "God forbid," it was said (*Sagre* v. *Moore*, 1 E. 361), "that sea charts should not be corrected;" (*i. e.*, pirated but improved.) Now God forbid the loss of life by bad geography, or for want of good medicine; but then the patient or the parish must pay the druggist who supplies it. The argument of the interest of the public was repudiated in *Arkwright* v. *Nightingale* (Webs. P. C. 61.) Public honesty is public policy; a contract has been made with the inventor; the judge and jury are to see it executed.

There is a subject of law which, from its commercial

nature, and the nature of breach it is liable to, may conveniently be appended to patents and copyright, the mark, namely, affixed by tradesmen and others to the goods made or sold by them. The essential difference is, that the right is only negative. A. has no right to his mark in itself, but he may prevent B. from using it in that capacity. B. may use what mark he pleases, except any mark that then and there denotes A.

CHAP. I.

SUBJECT-MATTER.

THE legal *competency*, it may be premised, is not always an identical topic with the *policy* of taking a patent; an idea may promise to assume hereafter, by cultivation, a more valuable shape, or supply a demand which is not at present extensive; subject in such case to the risk of anticipation, it may be laid by for a time. Again, for some inventions (say artillery) the Government may be the sole purchaser; indeed, in any case when the art can be wholly taken up by some particular person or set of persons, the inventor's object will be to negotiate with them, and not the public. Suppose a mode of working black lead, of which there was or is only one mine in England, or where a single establishment, by the magnitude of its operation, can distance all competition. The value of the original lessens, when, as in a marine engine, special adaptation is required to every vessel that is built: it is high; when, as in a pin or nail, myriads of exact copies are wanted, or a chemical process is repeated on each grain of any quantity of material—thus Neilson's and Howard's patents were enormously profitable. Some inventions progress so slowly that the term runs out while they are in their minority; though, indeed, the chance of prolongation is to be included in the estimate.

Of course a patent is needless where the invention can be kept a secret, or even where some secret superiority is supposed by the buyer, and protected by a trade-mark. The question between a patent and registration we have elsewhere discussed; the relative cost of those procedures will be found in the Appendix. What reputation the

Great Seal may confer on an article, is for the proprietor to decide: the French Government is very zealous in disclaiming any such guarantee of merit.

Next, as to the qualifications for a patent which have been authorized, or seem likely to be, such questions are usually viewed in two modes, or are divided into two classes—having reference to intrinsic merit, as constituting a manufacture, and to relative merit, as being new and not already appropriated by other patentees, or by the public.

Sect. 1.—Utility.

The subject of a patent is always in theory *an* invention, though the high cost leads very often to the grouping several different ones (coming, of course, within one broad title), as pen holders, pencils, seals, and inkstands, under "Instruments for writing and marking." And the power of disclaimer has removed the main check on this—namely, that any one failure used to avoid the whole—any such defective member may now be amputated: it is, however, possible that the law officers will control this licence. This is not altogether like the case, where two integral inventions are at the same time a new whole—a new grate and a new chimney, forming together a new stove. And it is always very material to distinguish the parts of an invention, in this sense, from the parts or details which are employed to effect the invention, and are not in themselves subjects of right; they are no part of the principle of the patent, and should be distinguishable in the terms of the specification.

The subject-matter is essentially a manufacture; the division of invention into chemical and mechanical—product and mode of production, &c., are immaterial. Chemical invention is in some degree different from mechanical—it lies mostly in assiduous experiment; the latter may be drawn on paper, or even calculated before trial. The *result* of an invention may be new, as new

woven fabric, or there may be a new *means* of producing an old article at less price; the latter has the advantage of being at once appreciated by the public, however unwelcome to the existing trade, whose machinery it supplants, or at all events depreciates. The latter class of invention is posterior in date, it only occurs when the demand for the article has become extensive. The word "manufacture," taken with the words "working" or "making," includes both classes (*Morgan* v. *Seaward*, 2 M. & W. 544; *R.* v. *Wheeler*, 2 B. & Ald. 349), and it will be noticed that the act says, "which others shall not *use*," *i.e.* shall not follow or practice ("I do never use it," *Merchant of Venice*, viz., lending money), the others meaning "traders," not the public, who "use" the thing made.

This general doctrine which has been broadly laid down (*Crane* v. *Price*, Webs. P. C. 409), is narrowed by some recent cases which, admitting the competency of a new *machine* for an old purpose, reject a new *process* for a similar end. Now the common law (*Crane* v. *Price*) speaks of engine and device, and also of trade, art, and trafique; and the word "art" can hardly mean a new product, or a new apparatus: (*Boulton* v. *Bull*, 2 H. Bl. 492.) The statute was not meant to restrict the common law on this point, it was worded to "preclude nice refinements, and be for the benefit of trade" (*Boulton* v. *Bull*, 2 H. Bl. 482; *R.* v. *Arkwright*, Webs. P. C. 71.) Lord Eldon (*Hill* v. *Thompson*, Webs. P. C. 237), and L. C. J. Tindal (Webs. P. C. 409), evidently bear out the admissibility of a new process; but in *Dobb* v. *Penn* (3 Ex. 427), it was said that Crane's patent is only supportable on the ground of a new iron produced. This indeed suggests a mode of escape, for a new process rarely gives *exactly* the old result, or employs *exactly* the same apparatus; but it is absurd to be driven to such distinction, when a broad individuality lies before you. If abstract theory is to be employed, any process may be reduced to a machine or substance—the process of causing effervescence, for instance, might be

referred to the substance consisting of acid and alkali at the point of mutual action, and Crane's patent was the substance of certain fuel and of hot air, which, by coinciding, formed an apparatus capable of smelting. It may be remarked, that music, which lies in motion, an æsthetic *process*, is as much matter of copyright as drawing or sculpture; and the tune is the music, not the symbols of notation. This point is intimately connected with the maxim, that a new application of an old thing, or a double use, as it is sometimes called, is no invention—a mere abstract proposition, right or wrong, as it is employed; for it is easy to describe any patent as an "application" of known elements, &c., it is generally stated, with such illustrations, as making a teapot of silver instead of earthenware (*Walker* v. *Congreve*, 29 Rep. Art., 2nd series), the inventive merit of which is wholly a question of fact. If a wheel is used upon common roads (*Losh* v. *Hague*, Webs. P. C. 207), and then railroads are invented, it requires no invention to transfer the wheel to the latter, always supposing no special difficulty arises to be overcome. Any ingenuity in so adapting it, or in altering the form of a teapot to suit it for a new material, is an invention in manufacturing, and a subject for a patent. Coke's objection (3 Inst. 181) to patenting an addition (which would include an improvement) is exploded, save in the sense that you must not add to and then claim the whole. Illustrations of the quantum of invention will be found in Mackintosh's patent (2 Carpm. Rep. P. C. 188); Newall's (26 Newton Lond. Journ., C. S. 52); Brunton's (4 B. & Ald. 550), which affords a negative and positive instance); Howard's patent (Carpm. Rep. P. C. 241), which was scarcely disputed, was for boiling sugar by a process already employed for boiling liquids.

Lord Abinger's amusing illustrations (*Losh* v. *Hague*, Webs. P. C. 207) must be taken cautiously. No doubt there could not be an invention in cutting paper with

scissors after seeing them used to cut cloth; a surgeon would as surely become an inventor, by applying them in his operations, adding a knob at the point, to prevent their penetrating adjacent parts; but the presence of any such new implement or apparatus, or part of one, seems not always necessary (*Hall* v. *Boot*, Webs. P. C. 100), when of the question was, whether singing with gas flame, instead oil flame, was an invention, though the court seem to have relied on some (small) difference in the mechanism. But the change of process may be material, and the change in the apparatus trivial. The illustration of eating peas with a spoon (Webs. P. C. 208), instead of soup with a spoon, fails, because eating peas is not a manufacture; but it seems by no means certain that there was *no* ingenuity in the transfer of idea, and *quality* of ingenuity is not stipulated for by the patent (*Soames' patent*, Webs. P. C. 734), nor indeed are there any means of—any golden scales for, weighing it. The least thing (*Edwards* v. *Da Costa*, Repertory of P. I., No. 681) may make the difference between failure and success. In Soames' patent (Webs. P. C. 734) the change was trifling, but it was a step in the manufacture; in the latter case, a small alteration changed theory into fact, and a unit of invention may be multiplied by any amount of commercial value. Besides, "the simplicity of an invention, so far from being an objection to it, may constitute its great excellence and value. Indeed, to produce a great result by very simple means, is not unfrequently the peculiar characteristic of the very highest class of mind" (*Justice Story*); and see *Galloway* v. *Bleaden*, Webs. P. C. 525.

The addition of the last link (*Cornish* v. *Keene*, Webs. P.C. 508) may decide the right to the whole chain; but there must have been some difficulty to overcome, or why did previous inventors not complete their work, and anything short of an entire circuit is to the public utterly unavailing. There was a beautiful idea for preventing the corrosion of copper sheathing; the galvanic agency, instead of ranging the

whole surface of the ship's bottom, was to be allured to certain points of zinc. Scientifically, this was excellent; but, by keeping the copper free of its poisonous coating, it made a lodgment for barnacles, &c., creating an inconvenience which led to the entire disuse of the plan. A very valuable patent was afterwards obtained by slightly changing the terms of the problem and a modification of the principle, allowing a slight film of verdigris only to deter the shellfish: (24 Newton Lond. Journ., C. S. 300.)

One of the old cases (*R.* v. *Wheeler*, 2 B. & Ald. 350) held the new employment of a higher temperature to be abstractedly capable of being a patentable invention, and it will be obvious that the result of such an alteration could not be foreseen. This case is maintained and illustrated by two recent and well-considered decisions, which may be regarded as accurate exponents of the question as to amount of invention; and also (as to the first of them), on the capability of a process to be patented. In *Steiner* v. *Heald* (2 C. & K. 1022; and 17 L. T. 131) it appeared that a substance called "garancine" had been extracted from madder; it was notorious that madder, which was still used in a crude state, was not wholly used up in dyeing; that the refuse contained some of this extract, or garancine. The patent was simply for using to this spent madder the same process which extracted the garancine from the fresh root. It was held, after much argument, a question of fact whether this were a manufacture. The case had not the advantage of prior efforts failing to discover it, or of the general process having been long known, and not so applied; but there seems to have been only the uncertainty that the madder passing through the dye-vat, might not have acquired new properties, so that it was not certain *à priori* that the ordinary process would succeed.

In the electric telegraph case (20 L. J., 123, C. B.), one claim was for the use of intermediate stations and electric circuits, the feasibility of which an electrician would hardly have doubted, but which, till experimentally

verified, was not in the possession of the public. The case exhibits a wholesome aversion to the argument, that "any body might have seen that"; "I always thought so."

We have spoken of an invention as something not previously in actual existence; it is essential that the inventor, however, be actually possessed of it; and the question of no manufacture often leads to that of utility, as meaning something solid, an *embodied* principle: (*Jape* v. *Pratt*, Webs. P. C. 150; *Morgan* v. *Seaward*, Webs. P. C. 185; *The Household Co.* v. *Neilson*, Webs. P. C. 683.) A scientific truth, a discovery is not even an attempt at a manufacture, and a theory of art must be realized before it becomes a marketable commodity.

Utility, again, may be a quality of the result; the statute says, any *manner* of new manufacture; this, though probably a mere expletive, has perhaps helped a liberal construction of the word, which has been expanded to almost as wide a range as the term "invention," or the common law expressions antecedent to the act, "device," "art," &c.; thus, architectural and engineering work, as a railway or an arch, is deemed a manufacture. The rules on this head have been said to be negative; ornament is excluded apparently, but not anything (pigment, &c.) used to produce it; there seems, however, to have been in one case a patent for a book of designs: (*Gibbs* v. *Cole*, 3 P. Wil. 255.) Financial schemes and arrangements are also inadmissible. Such discoveries as the Overland Route, and the mode of finding the longitude, though instances of applied science, cannot conveniently be worked into patents.

It is hardly necessary to cite authority that a negative result, as preventing fire (*Hartley*, Webs. P. C. 55), or dispensing with part of a machine or superfluous operation (*Russell* v. *Cowley*, Webs. P. C. 466), may be useful. The objections of Coke to a patent which throws labouring men out of work, refer to a part of the statute which is practically laid aside; and it will be understood that commercial value is the test of utility; new processes, and the use of

machinery, often produces an article somewhat inferior, but at a saleable price.

The invention must be transferable, communicable to others, and capable of general practice. A medical prescription, for instance, depends for its success on the judgment of him who employs it, though in so far as it has specific properties, it seems as well suited to patent right as a surgical instrument. Lord Abinger's (Webs. P. C. 208) illustration of eating peas with a spoon fails on this point, however novel; it could not at any time have been a manufacture. If used to cram poultry, the case might be different. His Lordship's suggested application of a bellows to dust picture frames, is a private or domestic art; if, indeed, it would clean off an old picture, it might be a manufacture. Picture cleaning is a profession: a fortune might be made by a secure method of it.

The degree of utility, like the amount of invention, is immaterial; any degree is sufficient (unless otherwise alleged by the specification) (*Morgan* v. *Seaward*, Webs. P. C. 172, 186); or an effect in certain cases only: (*Haworth* v. *Hardcastle*, 1 Bing. N. C. 189.) This observation, however, applies to the ordinary or original patent, the degree of merit being entered upon by the Privy Council on application for extension.

It may be remarked, in conclusion, that a patent generally encloses some actual manufacture; the contest usually is, whether it were a *new* manufacture, and afterwards as to the *extent* of territory it circumscribes.

Sect. 2.—Novelty.

Want of novelty is, perhaps, the most frequently fatal defect to which a patent is subject; it is a stubborn fact, while the specification, the other point of assault, admits of being favoured and explained. It affects primarily invention generally, and it also affects the extent of its limit. Is it new at all, and how far is it new? Assuming

the existence of an invention, an art or substance, different and superior to its known predecessor, then was (at the period of the patent) the inventor not only the sole possessor of the patent, but the first possessor? It is obvious that this question is closely related to that of the nature of an invention (see last chapter); the subject-matter, in one case, being viewed absolutely, and in the other relatively, to what existed before it.

At the outset, it may be distinguished from preceding inventions, on which it improves, defines, or modifies, or which it employs as elements for combination; it may have an originality of its own, though dependent for its practical existence on the principle of others. A steam engine may be the main stem; a peculiar cylinder, though a mode of working the main idea, has its own essence and principle, and may be carried out by other satellite inventions—a particular kind of stuffing-box, for instance.

The next point is, whether the supposed pre-invention were actually in a patentable state, or merely a theory, or at least an experiment. The point is one of much nicety (*Cornish* v. *Keane*, Webs. P. C. 519) as to the recognition of a complete result; an idea might be for a long time just on the verge of accomplishment, but not actually done (*Bentley* v. *Fleming*, 1 C. & K. 587); a scheme, however zealously followed, must not (*Carpenter* v. *Smith*, 9 M. & W. 300) stand in the way of a perfected invention (*Morgan* v. *Seaward*, Webs. P. C. 188); but if the effect be actually produced, though unintentionally, and be known to be attained, but neglected merely because it is not deemed worth practice, the invention is deemed entire (*Hare* & *Harford*, Webs. P. C. 291.) (The particular case appears open to comment as a fair illustration of the rule.)

The neglect of an invention is evidence, more or less effective, of ignorance of the practicability; the sale of articles on the new plan without precaution of secrecy, indicates a discontinuance of the pursuit (see *Morgan* v. *Seaward*, Webs. P. C. 195); or at least a relinquishment

of the form of the idea in the specimens so sold; even an adherence to the use of a thing is insufficient, though the intentional replacement or repetition of it would show a consciousness of its merit: (see *Househill Co.* v. *Neilson*, Webs. P. C. 692, 704.) But neglect of the most complete invention is accounted for by commercial difficulties which might then have existed,—deficient supply of the raw material, or disinclination on the part of purchaser or of the trade: (*Bentley* v. *Fleming*, 1 C. & K. 587.) The actual existence of a copy, specimen, or model, is the most unexceptionable kind of evidence of antiquity; but a description may be sufficient, if clear and correct, as in a treatise (*R.* v. *Arkwright*, Dav. P. C. 129; *Hill* v. *Thompson*, 8 Taunt. 382; *Soames' patent*, Webs. P. C. 733), or a prior specification: (*Cornish* v. *Keene*, 3 Bing.N. C. 570.) Publication gives the means of knowledge to the public, and they cannot be deprived of the right. A specification is held public, though it is notorious that the rolls of those documents are a depth that cannot practically be sounded, and that the most anxious scrutiny only affords comparative security: (Evid. Ho. Lords, 1851.) A registration, apart from exercise of the right, seems not to be publication (*Wigram* v. *Brown*, 1851, Pollock, C. B.); at least till the expiry of the term when it may be inspected by the public. The publicity of a printed book is not absolute. A foreign book in a private library is not so; a single copy in the British Museum, probably, would be: (*Re Heurteloup*, Webs. P. C. 553.) It has been suggested that it is difficult to induce inventors to inquire adequately into the records of the past, but no diligence of theirs can exhaust the subject; something must be left to rest on the superficial probability that no one else had done the thing previously, or, which is the practical point, that no trace of such prior trial is extant. There is in aid of this the right of confirmation, which, however, has not been often employed.

There is a class of cases affecting the quality of the

knowledge afforded to the public by things really in existence: th , the case of *The Household Co.* v. *Neilson* (Webs. P. C. 709) speaks of use in the eye of the public distinguished from *Dollond's case* (2 H. Bl. 470), where the [complete] invention was locked up in a private room. Some wheels, in *Jones* v. *Pearce*, were used in a public road; while, in *Morgan* v. *Seaward* (2 M. & W. 544), the paddles were sent out packed and covered up. A lock (*Carpenter* v. *Smith*) was put on a gate in the high road and considered to be published, but it does not seem clear how far such exposure is affected by the intrinsic difficulty of the article, or what degree of penetration the public are deemed to exercise. Some stress seems laid (*Bentley* v. *Fleming*, 1 C. & K. 587) on the complexity of a machine, and the brief opportunity certain persons had of seeing as they passed by it. As to the case of *Carpenter* v. *Smith* (3 M. & W. 300), one would say a lock was not very intelligible, at least without the opportunity of detaching it. In *Wood* v. *Zimmer* (1 Holt. 78), a broad rule is laid down that no line could be drawn between matters obvious and such as almost baffle analysis: there a chemical *product* had been openly sold. But is it certain that the public thereby require possession of the mode of making it? Surely such an artificial product is as much sealed from the public as a new mineral. The successful analysis of it would certainly require much inventive sagacity. The party retaining the secret could have no claim on the public, who deal with an invention only on the footing of the first communication of the secret to the world. In a recent case (*Hancock* v. *Somervill*, Newton Lond. Journ. No. 236), a sample of vulcanized india-rubber had been brought to this country and shown to various persons; the means of producing it were subsequently invented (by a party who had seen the specimen), and it was left to the jury whether the sample of the result published the process. It need hardly be stated, that in chemistry, even when the elements are ascertained, the mode in which they are combined is debateable.

Whether as to the article or the process, publication might occur unintentionally, and exposure to sale would be equivalent to selling, so that the sale were for exportation would be immaterial: (*Morgan* v. *Seaward*, 2 M. & W. 544; *Carpenter* v. *Smith*, 9 M. & W. 300.) As to confidential exhibition (see *Bentley* v. *Fleming*, 1 C. & K. 587), and as to confidential sale (*Morgan* v. *Seaward*), the limit of such confidence would be a question of fact. But actual publication by the fraud of the confidee would be as fatal as intentional "dedication" to the public. The whole question of novelty is of a highly circumstantial nature, and depends on the combined effect of the facts. Thus it is doubtful whether the prominent features in *Bentley* v. *Fleming* were confidence, experiment, the complexity of the machine, or the incompleteness of the previous model.

As to general rules of novelty, it must extend to the United Kingdom. *Brown and Annandale* (Webs. P. C. 433) is explicit on this, whatever be the fairness of the principle announced, and as to including also the colonies, which, however, has been questioned in the recent committee on patents.

As to time, it seems from the same case that the law knows of no re-invention of anything, however entirely abandoned—recognising no merit in discovery by research, or any acquirement by re-occupation, after any length of vacancy. Some remarks towards the latter part of the case, however, may be thought to throw a doubt over the point.

CHAP. II.

INVENTION NOT PATENTED.

THE author's right to his device is perpetual and absolute, even when embodied in a drawing, &c.: a creditor has only a lien on it: (*Hesse* v. *Stevenson*, 3 Bos. & P. 565.) By the common operation of trust and confidence this possession may be extended to what is communicated to others (*Smith and Dickinson*, 3 B. & P. 630), so far at least as the party could pay a penalty, and as to restraining the use by the party of what he was bound to abstain from (*Yovatt*); and even publication of the fact of the existence of a thing amounts to an improper use (*Prince Albert's case*, 13 Jur. 109); but disclosure of a secret will not be restrained (*Williams* v. *Williams*, 3 Mer. 157; *Canham* v. *Jones*, 2 V. & B. 218); there being no means of ascertaining that the owner's knowledge was exclusive (see *Introduction.*) In *Newberry* v. *James* (2 Mer. 449) there was the additional feature that the secret had (or ought to have) been disclosed under a patent. Apart from the question of secrecy there may be a contract as to a specific invention (*Yovatt* v. *Winyard*, and *Williams* v. *Williams*, 1 Jac. & W. 394), just as a man may tie himself up from any trade in common use. The damage so sustained might be affected by an intention to patent (*Smith* v. *Dickinson*); and patent in an incomplete state (*Anderson* v. *Warner*, Pat. Jour. No. 195) is a matter definite enough for a subject of injunction.

Memoranda of processes used by a workman, and by him entered in a book, belong to the employer (*Makepeace* v. *Jackson*, 4 Taunt. 770); whether he would be the "inventor" of patent law is another matter. A subject-

matter for a patent, or a provisional registration, is a matter for agreement — the inventor undertaking to *endeavour to* obtain a patent; to assist in and execute the specification; and to assign the patent, with usual stipulations. His interest as to an extension is too remote to be worth providing for. Sometimes the purchaser has an option, subject to certain trials, agreeing, of course, not to use or divulge it in case of rejection. Similar agreements are made by a foreigner who is unable to solicit in person with a patent agent or other party who patents the "communication," and who would be deemed a trustee for the party entitled: (*Hutchinson* v. *Teychenne*, Chy. 1850; Pat. Jour. 196.) Much caution will of course be exercised in everything previous to the patent, even apart from dishonesty, and from direct stealing by a stranger. Parties employed about and consulted on a patent easily transfer to themselves the merit; and evidence of real authorship is difficult, while, if laid open to the public, the right is irretrievable. (See chap. 8, sect. 2, for a caution as to patents abroad.)

CHAP. III.

THE INVENTOR.

THE right to a design is vested in the proprietor generally, like property in general; so also of the provisional right under the act of 1851; but patent right is not wholly emancipated from the state of a personal concession. The grant must be to the inventor, whatever obligations he may already have contracted in reference to the privilege to be obtained. Even in extension cases it can hardly be said that the property is deemed wholly transferred; and merit, in the thing severed from its author, is not cordially recognised.

But from the earliest times that merit has been admitted which lies in an importer, who not only brings in his invention a commodity of equal value in utility, but, when travelling was rare, of equal value in exchange, for his pains and cost were as great as the home students, and the obstacles to be overcome as serious. He might be poisoned (*Sir Thomas Lombe*, Webs. P. C. 38) by jealous foreigners, and require as much precaution as the emissaries who brought the art of printing over for Henry the Eighth: (Maugham on Copyright, 45.) The Statute of Monopolies allows inventions, new *within the realm*, and seeing that it did not intend expressly to alter the common law in this respect, it was reasonable to construe this to an approval of importation patents. The national policy of availing ourselves of the prolific powers of our scientific and versatile neighbours is obvious, and the number of importations in fact is considerable; and just as the personal merit of an importer dwindled by the increased intercourse with the foreigners, he, on the other hand,

acquired a vicarious merit as the agent of the real inventor. Such applications for a patent are styled "communications from a foreigner residing abroad." It seems reasonable to say that an Englishman abroad would be equally admissible by agent, and that a foreigner being here should apply in his own name. That an alien is not disqualified seems pretty certain (*Beard* v. *Egerton*, 8 C.B. 165), and he may prosecute a *scire facias* (*R.* v. *Prosser*, 11 Beav. 306), but *quære* (*Bloxam* v. *Elsee*, 1 C. & P. 558) as to a patent in trust for an alien enemy.

Patents are said to be grantable to an executor, and several cases have occurred recently of such a grant to a widow as a "communication from her husband." It is generally said, however, that the patentee (or one of two patentees) alone can execute the specification.

As to persons generally incompetent, there seems no substantial objection to an ecclesiastic's holding the privilege, though he ought to exercise it only by licensing others: (Cartwright was a clergyman.) In *Hardy's case* (13 Jur. 177) the Privy Council would not give the inventor a share of profit, and therefore appointed an annual rent. It may be presumed that a minor might patent on similar terms. A patent to an inventrix, if married, would be subject to the marriage law. Mr. Hindmarsh thinks a corporation incapable; and it is certainly difficult to attribute a conception of an idea to a body without a soul. They might probably import an invention, and do often hold one, or obtain its extension.

As to the positive characteristics of an inventor, the questions raised at patent trials are mostly in reality about the goodness of the invention—the true and first inventorship amounting to the goodness and novelty of the thing. If the patent had been published by another, the patentee is not the first inventor: (*Minter* v. *Wells*, 1 Webs. 132; *Forsyth* v. *Riviere*, Webs. P. C. 97.) If not published, he is the first inventor so far as the law can ascertain; it cannot know satisfactorily what progress might have been

privately made, and ought not to listen to what another expected or intended to offer to the public. Mere laxity in the completion of the idea is exactly the reverse of that forcing process which patents should produce (see Introduction); and a man must not step forward only when a rival is in the field; he should make his claim, if he have one, or he allows others to waste their efforts.

What discretion the law officer exercises on this point is not very clear; there would be a sort of adjustment—sometimes a joint grant. The right at the Great Seal stage is matter of priority in coming there, and without reference even to the date of the first application for the grant, which is all the more necessary as there is nothing to prevent an unlimited delay in the completion of the patent. Of course the complete existence of the invention is inseparable from that of priority.

If ingenuity appear in the result its psychological origin is not inquired into. It may be elaborated by toil and calculation, or be caught at in a lucky accident or sudden flash of thought: (*Liardet* v. *Johnson*, Bull. N. P. 76; *Crane* v. *Price*, Webs. P. C. 411.) Two distinctions exist between the point of first inventorship and that of the subject-matter—the novelty of the invention. 1stly. The party may have invented, but have since given it up to the public. Here the personal question narrows the conditions arising from the thing. 2ndly. The thing may have been new to the public, but not invented by the patentee; or in case of an imported patent by the foreigner, &c., in communication with him. Thus, it is said to be fatal (*Tennant's case*, Dav. P. C. 429), that some one else had "suggested the idea." *Quære*, however, if *suggesting an idea* be the birth of an invention, mere execution of instructions (*Minter* v. *Wells*) is only an auxiliary office, even when (*Bloxam* v. *Elsee*, 1 C. & P. 558) much ingenuity is employed in carrying out a plan. So of the expansion and development of the theory or principle of a machine: (*Mangnall* v. *Benecke*, Newton Lond. Jour.

No. 209.) The exact preponderance of merit between the conception and execution of the idea is difficult to settle; the scientific witness will rely on the first, while a workman employed on a new thing easily fancies himself the actual accomplisher. Perhaps the materialist is the safer side to lean to. The operation is better evidence of the project than the latter of satisfactory possession of a principle. If a practical and speculative mind combine in making an invention, the authorship might lie clearly somewhere between them, but not so as to be easily apportioned. The original electric telegraph patent was the result of such co-operation.

CHAP. IV.

PROCEEDINGS TO OBTAIN A PATENT.

THIS subject may be conveniently arranged under six heads, viz.: 1. The formal procedure to obtain a grant; and, 2. The nature of the instrument generally, its scope and extent. 3. The provisional right under the act of 1851. The other three heads refer to the more special points which call for appropriate adjustment—the title of the invention, the provisional and the final specification. The necessary precedents and lists of fees will be found in the Appendix.

SECT. I.—APPLICATION FOR A PATENT.

The proceeding to obtain a patent has been brought before the public repeatedly; it may be sufficient to repeat the epithet of the president of the Board of Trade, that it was "scandalous." To save trouble it is usually committed to the charge of a patent agent, who is at the same time consulted on the substantial matters touching the patent, and in whom both moral and intellectual confidence must be reposed.

1. Caveats may be entered with the Attorney and Solicitor General (both if either): the fee is small, and renewable at the end of a twelvemonth. No right is acquired by it beyond that of having (by courtesy of the office) notice of any rival invention, which may thus be opposed; but from the vague titles of patents, this guard is liable to be evaded. The intention is particularly to stop any plunder of the inventor by his workmen and others; at least, to stop them from patenting it, for it will not prevent their

throwing it open to the public. It will also allow of opposing a rival invention.

The first step in making application is the petition and declaration, which are left for signature at the Home Office, and in three or four days may be obtained by the party. He takes it to the Attorney or Solicitor-General, having previously endorsed one of those officer's names (at his option) on the petition. Notices are then sent to any parties having caveats in that office, and seven clear days allowed them to enter opposition. To enter opposition a fee must be deposited with the clerk of the law officer, and it then falls to the patentee to obtain a hearing and serve a notice of seven clear days on the party, which may be done by post; this being proved in default of the opponent's appearance entitles to a report. If the party attend, the hearing is separate and private, agents or counsel may be employed and scientific assessors may be called in. If fraud can be substantiated, the law officer will do justice; it has been suggested, also, that he will bind over the pirate not to damage the patentee, but *quære* as to this. If the two inventions clash, some compromise is effected; but see the arguments in the last section. The most usual case, however, is that the two things are distinct. It certainly *has* not been the practice for the law officer, whether on opposition or of his own motion, in opposed or unopposed cases, to exercise any discretion except upon private interests; but a remark of the Attorney-General, in a recent debate, half intimated a disposition to resume a power to look into the merits on public grounds. The petitioner and an opponent, if successful, deposit a provisional outline (see Appendix;) the report is prepared by the clerk either at once, where there is no opposition, or when and if the opposition fail, the report, petition, and declaration are taken to the Home-Office, and thence the warrant may be obtained in about a week, and is taken to the Patent Bill Office; caveats may be entered at this stage, but they are specific, *i. e.*, against proceeding with a par-

ticular patent, there is a larger deposit required, and opposition at this stage seldom occurs; the hearing, if any, is before the law officer; from this office the bill must go to the Home Office for the sign manual, and thence to the Signet Office, the clerk of which transmits it to the Privy Seal. Oppositions at this stage are obsolete, and after a certain amount of delay the applicant obtains the seal bill, which authorizes the Lord Chancellor to make the grant. The bill is taken to the Chancery Patent Office, and here caveats and opposition may be entered; but at this late period of procedure strong ground must be shown. The hearing is on the common law side of the Chancery, and must be conducted by a solicitor. The patentee petitions with affidavits, and the hearing may be private or public, according as the opponent may have any private invention of his own; with reference to the patentee, his interest may be secured by antedating the patent, as if there had been no opposition for the mode of procedure (see *Re Cutler*, 4 Myl. & Cr. 510); and as to costs (see *Re Alcock*, cited 4 Myl. & Cr. 511; *R.* v. *Nickels;* 4 Beav. 563, *Ex parte Fox*, 1 Ves. & Bea. 67.) The patent first arriving at the Great Seal is entitled to precedence in right (*Ex parte Dyer*, Holroyd on Pat. 59), and (stat. 18 Hen. 6) the patent must not be dated before the delivery of the seal bill. Finally the patent is enrolled and delivered to the patentee. The Scotch and Irish patents also commence at the Home Office, and thence through the offices at Dublin and Edinburgh. The Scotch petition is referred to the law officer of that country who reports to the Home Office, and the warrant thence goes to the Director of Chancery and to the keeper of the Great (Scotch) Seal. The Irish petition is referred through the Lord Lieutenant to the Irish law officer; on his report, a draft of a Queen's letter is sent to London, signed there, sealed with the signet and returned to the Lord Lieutenant, who draws up a *fiant* and affixes the Privy Seal; this is forwarded to the clerk of the Crown, to be passed under the (Irish) Great Seal, the

entire period being five or six weeks, the English patent being usually obtained in rather less. There is understood to be little opposition to them, the battle being usually fought on the English patent.

For an account of the offices through which the grant passes, see the Report of Committee on Signet and Privy Seal, 1849.

Sect. 2.—The Letters Patent.

The importance of this verbose document is considerable; but it is enrolled of record, and in the event of loss of the original an "exemplification" or "constat" is obtainable (stat. 13 Eliz. c. 6); even when clearly invalid it can only be cancelled by the Lord Chancellor under the process of *scire facias*. The seals of the three kingdoms are distinct (*Oxford University* v. *Richardson*, 6 V. 689), and the cancelling an English patent would not directly affect one in the other countries. With reference to its authority, it may be remarked that in England it rests on immemorial prerogative, qualified by some old statutes on questions of form (see Appendix), by the Statute of Monopolies and the recent legislation on the subject. The Union places Ireland on the same footing, but the Statute of Monopolies does not extend to Scotland (*The Hosehill Co.* v. *Neilson*, Webs. P.C. 673.) No difference results from this, however, either in the practice of granting the patent or its judicial interpretation. The English patent covers the British Islands, &c., and the Colonies and Possessions abroad; the effect of these last words is not satisfactorily known; it seems that a local Legislature, if any exist, has a right at least to concur in the grant, but subject to the Queen's sanction. The question is affected by the historic position of various colonies, and it is difficult to say whether patents can be granted for India at all. It was intimated in debate that the law officers were indisposed to continue the grant of colonial patent right. The practice of an invention at sea would, of course, be unaffected.

The term is exclusive of the last day (*Ledsam* v. *Russell*, 1 Ho. Lords Cas. 687; 16 M. & W. 633.)

The instrument is always the same except as to the title, date, and locality; special provisions and recitals are, however, sometimes inserted in prolongation patents.

Sect. 3.—Provisionally Registered Inventions.

By the recent act, an invention obtains a qualified protection on the following terms. It must, *after* registration be exposed in the Great Exhibition; the registration including the deposit of a description satisfactory to the Attorney-General's referee. The right is qualified to the sale of the invention, not the using or working it; it is guarded by the penalties of the Designs Acts, and continues for twelve months, before the expiry of which, viz., sometime in 1852, it is possible that patents may be cheapened by the Legislature.

Sect. 4.—Title of an Invention.

The introduction of the deposit paper has materially reduced the interest attached to this point. In 1829 (Evid. Ho. Com., Mr. Farey), a patent agent said it took him two or three days to settle a title. It is still, however, an index to the description, and should inform others who have caveats whether the patent is likely to interest or injure them: (Electric Telegraph, 20 L. J. 123, C. B.) But this inspection the patentee, at all events when applying for his patent, desires to escape, and he avoids definition by stating only the result of his process, "a mode of weaving," &c., or by using general words; thus, a sugar patent escaped the caveats set to watch it by entitling itself "a mode of treating vegetable substances." It is also an object to state the parts of a patent, or the various inventions it covers, so as to look like one invention. Though less rigidly construed now than formerly, yet it must not be substantially departed from: (*Croll* v. *Edge*, 14 Jur. 553.) It may be vague in its definition, but must be true in

what it does say, and if several inventions are included, all must be sustained: (*Morgan* v. *Seaward*, Webs. P. C. 196.) A mode of "*preparing*" malt was held not to correspond to a mode of treating malt after it was made. Ill-expressed titles have proved fatal: (*Bloxam* v. *Elsee*, 1 C. & P. 558; *R.* v. *Metcalf*, 2 Stark. R. 249; *Cochrane* v. *Smethurst*, 1 Stark. R. 105); but the modern cases are more lenient. An improvement in any single detail amounts, or may be called an improvement of the whole or ultimate process: (*Sturtz* v. *Delarue*, 5 Russ. 322; *Mangnall* v. *Benecke*, Newton L. J., No. 209.) Of course the result must not be claimed generally, but by the process in question, "*a* mode of weaving," "improvements in weaving," not to claim weaving by any means. "Improvements," plural, is allowable, though the alteration be single (*Nickel's patent*, 5 Scott, 97), which renders an older and nearly opposite decision (*Bainbidge* v. *Wigley*, 18 Rep. Arts, 127) unimportant. "Improvements in carriages" is valid for improvements in *certain kinds* of carriages: (*Cook* v. *Pearce*, 7 Jur. 499; *Neilson* v. *Harford*, Webs. P. C. 312.) In *Beard* v. *Egerton* (8 C. B. 165), there were no less than three inaccuracies in the title, which however survived. It was "a new or improved method of obtaining the spontaneous reproduction of all the images received on the focus of the camera obscura." 1. "New *or* improved" was objected to at the trial; 2. The reproduction is not spontaneous, but requires washing, &c., to bring it out; and 3. It does not give *all* the images of the camera, but only stationary ones, and only those seen by natural light. These points, indeed, are inconsequential, but not more so than some which, in older cases, were held fatal.

Sect. 5.—Deposit.

This is a modern introduction (see the rule in the Appendix) of a very wholesome character. Some substantial process, definite enough to be committed to writing,

is essential to enable a man to say "I am possessed of an invention." It is not clear at present how it will be made available, whether merely by making it evidence in a subsequent trial, or by requiring the enrolled specification to conform to it. The intelligibility of the deposit required under the recent act is secured by special examiners; but the supervision of all deposits seems to require a responsible officer, as well as the power of disclaimer, which is always intricate, and applies peculiarly to a statement made in the infancy of the invention, the features of which can hardly be accurately delineated by anticipation.

Sect. 6.—Specification.

We may premise, with reference to formal rule, that the period for enrolment is exclusive of the day of the date of the patent: (*Watson* v. *Pears*, 2 Camp. 294.) It may be left at the office (by notice and a fee) up to twelve o'clock at night. If this be exceeded, the invention not having been divulged, fresh letters patent may be applied for; if made public, a private act only can remedy the defect. It is usually deferred to the last day of the period allotted by the proviso, and cannot be left at the office previously, with instructions to enter it there. A second copy of the drawings, if any, is supplied for enrolment; the other copy and the original document, which must be signed by the patentee or one of them, and acknowledged by the rules of the Enrolment Office, are returned to him. It was usually considered prudent to avoid publicity until the end of this period, to prevent the appropriation of anything by any patent still unspecified; this, however, under the deposit system, is less likely to occur.

The specification, though based only on the terms of the letters patent, not on legal authority, and only introduced in the time of Queen Anne, enters more or less directly into all the questions that arise on patents, and it is drawn up by the patentee (with what assistance (see remarks of

Lord Mansfield, cited Webs. P. C. 54) he may obtain) at his own risk, and can be but imperfectly rectified afterwards. It is difficult to speak too strongly of the degree of attention it requires. The proviso requires him to describe and ascertain the nature of his invention, and how it is to be performed, and it is usual to regard this as indicating the two functions of the document—a precise statement, viz. of the thing, in itself; and also in such details and circumstances as shall put it within reach of the public. We shall speak of the material points involved in these duties of the specification, and add some remarks on the form and style in which it should be written to effect them.

(*a*) *Nature of the Invention.*

The terms of the patent contract must be defined and recorded, to prevent unintentional trespass, to punish wilful transgression, and also to show that the bargain made with the inventor was a legal one, the prerogative being neither over exercised or imposed on. A new trade, indeed, in early periods, was matter of notoriety, and the nice boundaries of rival inventions did not then occur. When, however, written statement was introduced, it became necessary to distinguish between the actual thing invented and the accessory explanations. Failing this there would be the danger (*Macfarlane* v. *Price*, 1 Stark. 199; *Carpenter* v. *Smith*, Webs. P. C. 532), first, of supposing everything to be claimed, and on the other hand, of supposing the alteration of any of the details to constitute a new combination. In one case the construction takes in too much to be supported; in the other, too little to cover evasive variation.

The points, indeed of this part of the instrument, are correctness and breadth; to state the essential fact clearly, and to state it comprehensively. In neither respect is any degree of express definition compulsory. Some of the cases (*Gibson* v. *Brand*, Webs. P. C. 629) insist on distinguishing

the new from the old, but it is enough if this can be fairly and reasonably inferred: (*Lukey* v. *Robson*, 2 Jur. 201.) The definition and description may run together through one set of words, and every degree of precision involves the danger of claiming what cannot be maintained, or taking a too small range which cannot afterwards be expanded, and a man must have the spirit of prophecy absolutely to foresee what precise direction the course of development will take (*Crossley* v. *Beverly*, 1 Moo. & Mal. 283); but then, in so far as this is well done, it places the patentee in a more advantageous position. It is here, probably, that professional assistance is most effective; the vivid perception of a man's own affair is somewhat opposed to a general acquaintance with contemporary art, or the elimination of an abstract principle; and by referring the patent to a wrong principle, an invention, actually existing and described in the general portion of the instrument, may be lost (*Kay's patent*, Webs. P. C. 568); too much lies in the expression in the claim of the point so ascertained: the language being condensed is closely considered, less surplusage is allowed, which in illustrating the mode of performance is rather meritorious, and each word is rather deemed to have a meaning: (see *Cutler's patent*, 1 Stark. R. 354.) Still there is no necessity for thus extracting the essence; it may be diffused through the description, gathered from the general tone, and from occasional allusions: (*Mangnall* v. *Bencke*, Newton Lond. Jour., No. 209; *McAlpine* v. *Mangnall*, 3 C. B. 496.) And an obvious imprudence is overlooked, thus (the same case), a description claimed "all mechanical means" of obtaining the result, which was taken for "all similar mechanical means."

Nothing really is gained (or lost) by a verbal generalization, such as that "I do not claim what is old," or as to extent, "I claim all variations of what I have described: this is merely repeating what the law would imply, and so where the claim seems about to define, but

breaks off at the vital point with a "hereinbefore described."

It will be observed that the result attained is not the essence of the claim, and like the general description need not be absolutely proved, thus (*Wallington* v. *Dale*, 1851), where the patentee remarked that his jelly would do for clarifying fermented liquors, this was merely a suggestion; so where (*Haworth* v. *Hardcastle*, 1 Bing. N. C. 182) the utility in effect was alleged as to all cases, and only proved as to some ones.

In *Harmar* v. *Playne* (14 V. 130; 11 East, 101) a patentee incorporated a prior patent of his in the description of a subsequent one, without indicating that one part of the machine was on a different footing to the other. This was allowed, but seems open to question, and *better* avoided.

(*b*) *Mode of Performance.*

Trades were originally taught orally; indeed, it may be questioned whether, in modern art, the invention be really learnt from the specification, and it will hardly be thought that a patentee could, apart from specifying, keep his practice a secret. As it is a substitute for oral teaching, it may be allowed somewhat of oral laxity, at least if honest intention appear; but Arkwright, it seems, meant to say just enough to satisfy the law, which means, to satisfy its letter and evade its spirit. Any such intention, as we have elsewhere said, only coming in aid of the fact of compliance or noncompliance, and the rule (*Neilson's case*, Webs. P. C. 317, 321; *Turner* v. *Winter*, 1 T. R. 602) of giving the best account of the thing to the inventor's knowledge advantageously referred to the proficiency he *ought* to possess. There can be no doubt, however, that some want of frankness on this head is the likeliest source of those shortcomings that cripple this part of the instrument. The best mode must be communicated as to physical and to commercial effect. In *Wood* v. *Zimmer* (1 Holt. 58), an

ingredient was omitted which heightened the intensity of chemical action. In *Savory* v. *Price* (1 R. & M. 1) a troublesome mode stated of making an ingredient which might be bought ready prepared at the first druggist's shop. Similar inconvenience may arise from wanton obscurity of language, (Evid. Ho. Com. 1829) a patentee mentioned "the purest chemical white lead;" nothing under such a name was known in the market; a substance well suited was familiar by the name of "Kremnitz white." In *Crompton* v. *Ibbotson* (Webs. P. C. 83) a certain material was said to be the *best*, the inventor knowing that it was the *only one* available. But even apart from such knowledge, he ought not to mislead the public by intimating what would lead to fruitless trial.

The specification must be defined with reference to the existing state of practice—the ordinary knowledge of those into whose hands it would be placed to work from. It might not be journeymen; in advanced manufacture it would be the foreman or pattern maker, a person expected to possess more or less capacity for taking general instructions. It must be diluted or reduced to that level. It is not expected to teach a ploughman to make a watch: (*Liardet* v. *Johnson*, Bull. N. P. 76.) The "public" to whom the instruction is directed may be a special or comparative public, but not meaning, however, the inventive public who would, on a hint, be able to carry it out. What constitutes a "competent" workman (*Neilson* v. *Harford*, Webs. 314), is a matter of fact, *e. g.* whether it is a matter of common knowledge to find a centre from three points: (*Morgan* v. *Seaward*, Webs. 174.) In this case one of the witnesses had been employed on the calculating engine; it seems questionable whether a *scientific* modeller be an appropriate criterion. The reader of the description must use his ordinary understanding; it is not necessary to mention a crucible in directing fusion, or to insert a part of an apparatus which is always attached (*Crossley* v. *Beverly*, Webs. 110); if such a usual thing were to be *left*

out, that would be matter for mention. He is not to be called on for more than this; he is not to invent (*R.* v. *Arkwright*, Davies P. C. 61), or rather, the rule that no experiment must be required, means no more experiment than is reasonable. It may be accurate enough to say, "expose the plate in the camera from 5 to 30 minutes" *Beard's patent*, 8 C. B. 164), the time varies with locality and temperature,—it must be left to observation. And an error may be obvious and patent on inspection of the drawing (*Newall* v. *Webster*, 26 Newton L. J., C. S.), or the simple perusal of the written description (*Beard* v. *Egerton*), where the bare statement, taken literally, involved a contradiction.

It may be suggested, that a man employing, under the specification, a substance new to his trade might be reasonably required to acquaint himself with its peculiarities, as known in other trades. See a question (*Macfarlane* v. *Price*, 1 Stark. 199) as to an umbrella maker's knowledge of annealing. So the art of photography is not a special occupation—it is open to all the public, but some tact in manipulation, some idea of chemical properties, were fairly to be presumed in those persons who took up the pursuit. Several of the points here alluded, may occur in the same case: (*Derosne* v. *Fairrie*, 5 Tyr. 393; Webs. 158.) Thus, when one of the substances prescribed was shale, and it was *recommended* to remove any sulphur from it; this, as Lord Abinger explained, raises the sufficiency of the instrument under three points of view. The simplest justification would be, that any ordinary chemist knew how to separate it. Or if some shales in the market, containing no sulphur, did not need the operation, this would show an available mode. Or shale, containing sulphur, might do; though not so well as without it. The evidence did not support either construction, and the defect was incurable.

The *kind* of detail required is according to the case. Shape may be important *McNamara* v. *Hulse*, 1 Car. & M.

478), or it may be immaterial (*Neilson's patent*); and so of numerical proportions in chemistry. One good illustration of a principle is sufficient, with more or less indication of the possible variations, as a description of an intermittent operation, and a suggestion for doing it by continuous progressive cylinders; or, if preferable, several modifications may be given abreast.

(c) *The Form of Specification.*

A formal commencement and conclusion is (by usage) generally adopted; beyond this, the style and order depend much on the the taste of the draughtsman, or exigency of the subject. Thus, the object of the invention may be stated; and sometimes a history of prior or allied efforts; also, a preliminary notice of the materials or processes to be spoken of afterwards. The main account often states the apparatus first, and the mode of its operation, followed lastly by the claim.

It is to be "an instrument in writing;" and in chemicals words are often sufficient. Drawings are always efficient in mechanical matters; being, however, appendant to and in aid of the description (*Bloxam* v. *Elsee*, 1 C. & P. 558; *McFarlane* v. *Price*, 1 Stark.. 199; *Newall* v. *Webster*, 26 Newton Lond. Jour. C. S.), they may correct an error in the latter, or rather an ambiguity (*Bloxam* v. *Elsee*); and are usually referred to in the description by letters, in the allotting which to the different parts some ingenuity and neatness may be shown; and it is a pity that sketches cannot be inserted in the text. The principle might advantageously be elucidated by a diagram of its own, or the characteristic features distinguished from the details by colour, &c. The action of parts should be made as prominent as possible, by arrows or other symbols.

For brevity sake (the cost in a mechanical patent being often considerable), and, indeed, to avoid error, which probably often (*Beard's patent*, 1 C. B. 165) has occurred through prolixity, an interpretation clause is judicious. If wrong

at all, however, an error in such definition causes infinite mischief; and, with or without such general explanation, one set of expressions should be adhered to (elegance of style being here of the least possible value.) Thus the interchange of "mode" and "method" leads to objection (*Newall, supra*); while in (*Neilson's patent*, 8 M. & W. 806), a defective expression may be rectified by a reference to other places in which it occurs.

Abstract expressions, which, by the patent cases, have acquired a *quasi* legal sense, *method*, *principle*, *form*, &c., should be used circumspectly; and the same may be said of general words, which, if indefinite, are construed and limited by the antecedents (*Young* v. *Quincy*, 29 Newton Lond. Jour. 446); but if a class is stated, it is not narrowed by the insertion of an example: thus, alkalies, and borax in particular; asserts that all alkalies will do: (*Stevens* v. *Keating*, 2 Ex. 772.)

It is well to avoid (as in legal documents) the chance of mispunctuation, or ill emphasis. "A new mode of giving signals, by electric currents," &c., might be read as "a new mode of giving signals, viz., by electric currents," &c. The word "or" (see *Elliott* v. *Turner*, Webs. 224) has led to as much mischief, perhaps, as any in the dictionary.

The subject of the grant being supposed to be *an* invention, is described in its entirety; and afterwards the claims stated as deductions from a general fact. In some of the electric telegraph patents, separate points were enumerated, and then their combinations, and these re-combined.

It need hardly be stated, that the proviso for specifying must be complied with as to all the invention which the title seems to include, or (turning the rule in another direction) the description must show that all the alleged invention actually existed (*McAlpine* v. *Mangnall*, 3 C. B. 496), and *Croll* v. *Edge* (14 Jur. 553), where the title had been tampered with in reciting, and it was *legally* doubtful if the specification belonged to that patent. The effect of

the alteration here was to exceed the province of the patent; Felton's (3 C. & P.) specification failed by falling short of it; but in either case *the* invention is not truly ascertained.

All improvements, however, should be inserted up to the period allowed to specify (*Jones* v. *Pearce*, Webs. 124); *Crossley* v. *Beverly*, 3 C. & K. 513); and, accordingly, it is usually put off till too late for deliberate revision. An earlier execution might suggest ameliorations in practice, and it might be reasonable to test it by setting a man to work from it, and at least reading it to him, and taking his remarks.

For further illustration of the whole subject, see a specification (*Turner* v. *Winter*, 1 T. R. 602), which, as, according to Mr. Godson, it exhibits every fault that could well occur, might serve as a text for a treatise on "How draw a bad specification."

CHAP. V.

AMENDMENT AND EXTENSION OF PATENTS.

The hardships which may be rectified under sections 1, 2, and 4 of Lord Brougham's Act, and some amendments of it, were previously remediable only by Parliamentary interposition. A list of applications to the Legislature will be found in Webster's Patent Cases (Vol. I.)

The equity afforded by this act to the inventor applies partly to the case of an originally hard bargain, as, where fourteen years was notoriously too little, but yet all that could be got; and partly to a bargain turning out a hard one subsequently. So, again, it corrects some errors which might have been avoided, and some which no care on the patentee's part could have prevented.

We shall notice, the principle of operation under this statute; the practice, which is either before the Privy Council or the law officers of the Crown; and, lastly, the common law amendment, independent of the act.

Sect. 1.—Confirmation.

This portion of the act (sect. 2) has been but little brought into operation; the essential points seem to be that prior existence is rendered innoxious; if not public and general, and, if not known to the inventor, it is, in fact, a liberal construction of the novelty of the old law, for, in the case thus described, the public really get a new possession, as they got a new world from Columbus, though obscure navigators had preceded him. The condition of ignorance on the patentee's part must amount to improbability that he should have known it. He can

hardly be expected to deny what he alleged at the time of obtaining the grant. (Compare the chapter on Inventors, p. 27.)

The public and general use here intended is probably not that of the ordinary patent law (p. 22), but actual popular use—*notoricty*—as was said in *Wells case* (1 Webs. 554.) The provisoes secure the rights of others in practical possession of the subject (*Re Card*, 12 Jur. 507), and *à fortiori* if under a patent (*Wells.*) Total abandonment at the date of the patent, therefore, seems the necessary qualification. The act cannot (Pow, 5 E. F. Moo. 65) be used to relieve a patent in one kingdom vitiated by prior use in another; nor (*Lamenaude*, P. C. 1850) to an indiscreet publication just before the patent; even, probably, if such disclosure were by hostility or fraud. It seems (*Re Stead*, 1846, Priv. C.) that the patent must be void; there must be no other remedy, as by disclaimer, for instance (*Wells*); though the word "confirm" seems rather to point to securing what might be unsafe.

However, as the jurisdiction was pointedly said to be discretionary, the case cited may not be rigidly followed. Lord Wynford (*Westrupp's*, 1 Webs. P. C. 554) seems to have misconceived the section or confused it with the disclaiming section. The only successful application seems (*Heurteloup*, 1 Webs. P. C. 553) to have been as to a publication merely by a foreign work in the British Museum.

The privilege is bestowed on the patentee or his assigns; it is meant, probably, to accompany and be confined to the legal right to the patent.

Sect. 2.—Extension.

This section (4), though employed effectively and in numerous cases, is not easily developed to a system of principles. A general view of the whole circumstances is taken (*Re Galloway*, 1 Webs. P. C. 774; *Re Jones*, 1 Webs. 577), and the only rule explicitly laid down, is that there must be a strong case. It opens, in fact, that

question of an estimate of value which the old statute got rid of by a procrustean term of fourteen years, and commits to it an administrative tribunal, unchecked and unassisted by other terms than that "upon hearing and inquiring of the whole matter," the committee "*may* report." There was, however, the peculiar circumstance that one of the most active members of the tribunal has been the noble Lord who has the credit of its legislative creation as a Patent Court. Its *fiat* is an act of favour the committee have more than once said, and therefore liable to be affected, to some slight extent, by the vehemence of the petition. The trade or rival patents sometimes appear to oppose, and this judicialises the proceeding, which is often hard fought; but the Court's jealousy for the public interest pretty well supplies the place of this, and it has been thought that the unopposed cases fare worst. By degrees a kind of comparative estimate assists the discretion of the court. "In A. B.'s case we gave seven years; yours is weaker, take five;" thus, in the propeller cases five or six analogous patents were all placed on an equal footing.

The subject-matter here differs from that already treated, in being viewed in respect of quantity of merit, not of whether any merit at all; this is presumed to exist in the old patent; and if primary validity be wanting, is by no means supplied: the *old* privilege is *extended;* it may be good for anything or good for nothing; and the evidence includes matters of commercial statistics which do not occur in the ordinary patent trials.

The Satellite Act (7 & 8 Vict. c. 69) may be in some degree an authoritative exponent of the former, when it speaks of the inventor's expenses not being reimbursed by the original term, and, again, of "non-remuneration" for expense and labour in perfecting the invention. This is so far a wrong principle as it looks towards the prime cost of the article supplied to the public instead of its market value. The reported cases dwell sometimes on the inventor's merit, and sometimes on that of the invention.

As to the first, an importer has less merit (*Soames'*, Webs. P. C. 729) supposing no special sacrifice of personal exertion; he has only the lower order of merit exhibited by an assignee. Pecuniary investment has the same merit whether made by the inventor or another, and falls better under our second head; yet commercial skill or enterprise, which a new trade gives so much scope for, is a personal quality (*In re Woodcroft*, Webs. P. C. 724; *Galloway*, 10 Jur. 363; *Muntz*, Priv. C. 1846; *Simister*, 4 Moo. 164; Webs. 721); but it must be judicious enterprize; auxiliary to a valuable invention, so that we are brought again to the merit of the thing. An assignee, again, is liable to be told "you have drawn your lot and must abide the result;" this has occurred with several joint stock cases, where each man losing little there is no *argumentum ad misericordiam*, which has certainly aided some inventors: (*Downton*, Webs. 565.) Sympathy with perseverance against ridicule and prejudice or more substantial hostility strikes, and incendiarism, for instance (*Russell*, Webs. P. C. 473; *Roberts*, Webs. P. C. 571) seems more legitimate, to say nothing of a just amount of legal pugnacity, the want of which has been noticed (*Simister.*) The intellectual merit of the inventor, his skill and ingenuity, refer less really to his general capacity as a man of science than in the matter discussed, the particular product of his skill, to which we proceed, remarking, however, that though it was said to be reasonable for an assignee to represent all the merit (*Whitehouse*, Webs. 473), especially when, as in *Bodmer* (Newt. L. J. No. 210) he has suffered severely after dealing liberally with the inventor. Yet the inventor's concurrence is advantageous, and there is usually a willingness to secure him a slice of the concession by a fixed sum or annuity: (*Hardy*, 13 Jur. 177; *Whitehouse*, *supra.*) A patentee or assignee is qualified to apply, and both together, or several such parties: (7 & 8 Vict. c. 59, s. 5.)

Sect. 2.—Merit of the Thing.

The invention must be, *first*, original, or there is nothing for the public to acquire: it must be, *secondly*, practically useful, or it is not worth their acquiring; and, *thirdly*, the bargain must have been a hard one to the patentee, or he has no claim for an extension.

First.—Originality may be present in any appreciable amount; a link in the chain will do; a step (*Soames*, Webs. 729), it need not be a stride. But the scientific beauty of a mathematical principle for instance, breathed into a mechanic construction (*Woodcroft*, 10 Jur. 363); the harmonious subordination of complete machinery, the combination of remote ideas, or production of unexpected results, can hardly fail to win a full hearing for the practical merits, even if it were not admitted as an element in the determination. Lord Brougham, indeed, had no gold scales to weigh merit (*Woodcroft, supra*); but he might, therefore, allow the more liberally for it (and see *Galloway*, Webs. 725): such points would certainly sway a Parliamentary estimate, for which the Privy Council is a substitute.

Secondly.—Still public utility must predominate, and will be found so to do (*Derosne's patent*, E. F. Moo. 416); not being, however, exclusively measured by a commercial standard, but by its beneficial tendency in advancing, for instance, the arts of beauty, and diffusing refined taste by the multiplication of copies (*Baxter*, 13 Jur. 393), in the preservation of human life from railway accidents (*Hardy*), by infrangible axles, or from shipwreck by a lighthouse (*Mitchell*, 30 Newton Lond. Jour. C. S.), the only successful solution, it was stated, of the problem of stability in the sea-sand. Again, the national defences may be concerned, as in the inferiority of a screw to a paddle-wheel; the former being, from its position, as much out of, as the other is in, harm's way.

Improvements, if consequential on the main invention, are an argument in favour of a patent (*Galloway*, Webs.

725); and so the assistance it may render to collateral arts; thus (*Perkins*, 1845, Priv. C.) an invention of hot-water pipes for warming would have been impracticable but for an invention (*Russell's*) (also an extended patent), of drawing iron tubes, of suitable length, though such application were nowise contemplated at the date of the latter.

But a more weighty fact is the extent of employment, the number of copies in circulation, or the continued practice of the operation, the number of hands occupied about it (*Wright*, Webs. 576; *Simister*, Webs. 721), and its relative success. Has it displaced its predecessors? Non-use, indeed, might be accounted; the invention might have come into the world a little before its time, before the public were ready for it, and while it wanted long cultivation to make it ready for them. An inventor was asked for evidence (*Pinkus*, 12 Jur. 233), that it was *likely* to be used. How far commercial apathy (*Wright*) or ill-luck (*Patterson*, 13 Jur. 593) may affect this question (in addition to suggesting non-utility) is doubtful; the inventor may be poor, and the capitalist restive. Indulgence has been shown (*Southworth*, Webs. 486; *Hardy*, 13 Jur. 177); but it may be noticed that, in most countries, disuse, or even delay in using, is fatal, *ipso facto*. The patentee, at his outset, has something which "he believes will be of great utility," but which can hardly be so if he cannot, and others may not, put it in execution.

A high price obtained for an article is evidence of superiority in public estimation, and litigation is evidence of value in the eyes of the infringers; but, compared with the same article as previously produced, low price is a merit, and also low profit, as indicating liberal dealing by the patentee with the purchasers; and such low profit may explain the absence of litigation.

We may remark that as the patent (the whole) is extended, anything positively invalid will first be disclaimed, but it is immaterial that the merit of certain parts is predominant.

Secondly.—The grand point, however, is one of figures, the "remuneration" of the act, which measures the term of the extension, and to which the other matters are preparatory. The evidence on this point (see the next section) is carefully got up, and minutely (perhaps suspiciously) examined. The data however are often defective; inventors are often poor book-keepers, and made no provision fourteen years before for an extension On the points to which attention should be directed, we may remark—1. Though low profit may indicate little utility, and though "due remuneration" must be such as is due to the merit, yet large profits may indicate the closeness of the monopoly, and *vice versa* (*Re Erard*, Webs. 557; *Dornton*, Webs. 565; *Quarrill*, Webs. 740); so that the profit, in *proportion*, must be looked to thus: profit of 14,000*l.* (*Pattinson*, 1847) and 70,000*l.* (*Muntz*, Priv. C. 1846), were argued to be small fractions of what the public gained by the invention. 2. A salary for management, whether to the inventor or not, may be deducted or allowed (*Mitchell*), especially where subordinate parts of the invention require ingenuity and science to carry them out, which is, as it were, the completion of the inventing process. 3. Licences facilitate the calculation, when the holder of the patent works it, it is desirable to separate the royalty, or an assumed royalty, from the manufacturer (*Galloway*, Webs. 724); more often, however, it is taken together in the lump: (*Muntz*, Priv. C. 1846.) 4. Exportation profit is calculated (*Hardy*, 13 Jur. 177); though not really due to the patent protection, as well as the collateral advantages of preference in the market, trade, reputation, &c. (*Muntz.*) where the patentee had guaranteed his invention to a very large extent. (Strictly speaking, the guarantee for using good material will secure its own reward; but should be distinguished from insuring the experiment.) 5. Plant and machinery, &c. have been probably at first experimental in character, and are proportionately depreciated. 6. The cost of experiments of the procuring the patent or

patents (sometimes 500*l.*, with a costly specification), and the subsequent litigation (*Whitehouse*, Webs. 473), are items in the account. Besides the proportional profits, the actual sum is looked at; 70,000*l.*, under almost any circumstances, and with any amount of utility, is due remuneration, if not more than due: (*Muntz.*)—the committee did not grudge that, but they would not help the patentee to more. *Roberts's patent* (Webs. 573), a triumph of mechanism, and vigorously pushed into notice, had cleared 27,000*l.*; the petition refused. *Hardy's patent* (13 Jur. 177), 23,000*l.* had been made in the last four years, after being, till then, unsuccessful; it was observed, in extending it, that there was no precedent case for such liberality. The profit of the term (four years) granted seems to have been estimated by the committee at 10,000*l.*, for they secured 5,000*l.* to the inventor as an equivalent for a half-share. This suggests the point of the peculiar force in argument, of an apparent *growth* of an invention in heightening its merit, for an extension while lessening the term granted; contrasting the stationary exercise of an invention which, in fourteen years, has reached its full stature, with one, the extent of which keeps still on the increase; which, it may also be presumed, by its longer period of gestation, involved the larger cost at first, and the less chance of speedy remuneration: (compare the argument, that the finest books, those most in advance of the age, are liable, by a fixed term of copyright, to obtain least advantage.) A patent should give a man a share, by time, of his own discovery, but the share ought not to be taken out of the period when it is unproductive; and this very period very commonly covers a good half of the ordinary term. The same fact, however, justifies the chariness of the extension; from three to six years are given, but then they are years of harvest. The fourteen years' extension (7 & 8 Vict. c. 69), is unusual; one recorded case was for steam engine (*Earl of Dundonald*, not reported); another for a peculiar light-house (*Mitchell*, Priv. C. 1847), adapted for special emergencies) and unlikely frequently to be put in execution.

The extension is subject to occasional encumbrance provisions, as already mentioned, for the inventor from an assignee; conditions as to the prices to the public (*Hardy*); gratuitous licence to the Royal Navy. The injustice of this last was argued, but in vain: (*Smith's patent*, Rep. Pat. Inv., No. 684.) Conditions are laid down as to licences (*Southworth*), and might be apparently (*Barter*, 13 Jur. 393) in favour of apprentices; the former having embarked capital; the latter may be said to have embarked skill.

Sect. 3.—Disclaimer or Alteration.

This section (1) applies to *partial* defects in the details of the invention, or in the instrument connected with it; and which previously, if essential, were fatal violations of the entirety of the contract. If *part were invalidated*, all perished: the fictitious unity of the invention already alluded to, bound, like Mezentius, the dead to the living. The subject includes the question of—what may be corrected, who may correct, and the result of (intended) correction.

(*a*) *Subject-Matter.*

Here again the act, with all its verbiage, gives the scantiest information: and it can only be urged, that the generality of expression indicates that a broad equitable power was conferred to relieve accident and hardship.

A few legal decisions have occurred by the judges; the rest rests in the practice (not published) of the Crown law officers. The act, allowing disclaimer or alteration of any part of the title or specification, restricts the power only to its not extending the right; you may repair or pull down, but not add another story. Even this repair might be pushed to an abusive extent: the error intended is that of a man meaning to be accurate, and taking fair pains to succeed therein; otherwise he might defer the vital parts of his specification for years, or, insert on speculation a dozen inventions, and afterwards throw the eleven blanks overboard. Anything dependent, any variation, may

properly be disclaimed, as an &c., or "other substances;" it being found subsequently that no other one will do. So a disclaimer in substance might probably be made, by an alteration of the word for one narrowed and defined. "Coke" for "fuel" would be a disclaimer of wood, coal, &c. But a verbal disclaimer may be illegal, by extending in reality; thus, omitting "stone" from "stone coal," you widen the claim. A common use of disclaimer is to a patent for a certain process, "and the apparatus, &c., therein employed;" the latter being discarded, the main principle remains.

In the descriptive part of the specification, mere errors may be rectified, verbal ambiguities cleared up, and omissions of detail rectified; thus, in (*Edwards's patent*, Rep. Pat., No. 680) a mode of pulping potatoes had not mentioned the peeling them: a matter, indeed, which was almost implied. The scope of the word "alteration" has been a good deal canvassed: disclaimer *or* alteration should mean, that it was something other than a leaving out, especially as it occurred in one part of the section, "such disclaimer, or such alteration." It has been suggested that the word "alteration" might be the joining the ends made by taking out a disclaimer, and so regulating the sentence: and again, it might mean, amend your letters patent, and make the specification accord; disclaim part of the first, and alter the second. Notwithstanding a remark in (*Rubery* v. *Burr*, 2 Carpm. P. C.), and a reported refusal of Sir F. Thesiger, A.-G., to allow an alteration (*Bynner's patent*, see 9 Q. B. 529), it seems understood that amelioration of the description does not extend the right; but this would be qualified when the claim is diffused through the description.

A frequent and probably legitimate use of the privilege is, at *the period of specifying*, to disclaim part of the title which is then already found inexpedient to retain. The amendment of the provisional specification has hardly come into operation; it would probably take place, together with and on similar principles to that given by statute.

As to form, it may vary with the convenience of the case. The specification may be re-written, underlining the omissions and alterations, or these separately stated, referring to the parts where they occur; with, if necessary, a copy of the instrument, as it is left by the amendments. The title of *Mill's patent* (Repert. Pat. Inv., No. 685) was, *inter alia*, for instruments for marking and writing, expression referring to seals and to pens. The former were omitted from the specification, leaving the title unaltered; and it was held that the pens might do duty as marking instruments, in default of the seals, which had, at the time of patenting, led to the use of that word. It was also suggested, that a repudiation of anything by the specification, would be disclaimer of anything in the title; this, however, must suppose the execution of the instrument as a disclaimer. The act requires a statement of the reason for a disclaimer, but not (probably omitting it by neglect) as to the alteration. It is not necessary (*Rubery* v. *Burrs*, 2 Carpm. P. C.), but safe and usual to insert it, and it may be as vague as a recital, or as a preamble to an act. A second disclaimer, viz., of another part, is obviously within the principle of the act, and occurred in *Rubery's patent*, but *quære* whether a disclaimer could be re-disclaimed: would not the disclaimed portion have become immediately public property; and would not the second disclaimer offend, by extending the right of the relatively original patent, in which the first disclaimer, for purposes of title, is incorporated? As, moreover, a disclaimer once entered is not likely to be removed (*infra*), it need hardly be remarked that any alteration requires both mature consideration as to the facts which give rise to it, and vigilance as to its effects on the original documents.

(*b*) *The Party disclaiming.*

Any person who *obtains* a patent "as grantee, assignee, or otherwise," is the party to disclaim: meaning (*Russell* v. *Ledsam*, 1 Ho. Lords Cas. 687, reversing *Spilsbury* v. *Clough*, 2 Q. B. 466) any owner, whether patentee or not.

The act 7 & 8 Vict. gives the right to an assignee, or to assignees of the whole—or to the assignee or assignees of part, with the patentee; intending evidently the concurrence of the proprietary of the patent, if more than one person. But *quære*, whether the patentee, after assignment, be entitled; observing that the 7 & 8 Vict. is only permissive, not repealing anything.

Any one prejudicially affected (a licence, for instance) may oppose; and parties who have infringed may obtain conditions of safety (*Morgan's patent*, Webs. 186; *Rubery's patent*, 2 Carpm. P. C.), at all events, as to the past. In another case, acquiescence for three years was held to destroy the right of disclaimer, on the supposed entry of the trade into the use of the patent. More usually, however, the law officer allows the alteration, which is at the risk of the party, while there is, on the other hand, no appeal from his refusal.

(c) *Effect of Disclaimer.*

The instrument is to be valid and effectual in "favour" of the parties entitled (7 & 8 Vict.); but the word "favour" is probably unmeaning, it presumes that the parties care for their own interest; not that the instrument would not, in the other case, operate against them.

A disclaimer extending the right, or aiming at something impracticable, would simply be null, unless it should create a new defect; or except in so far as it *points out* a flaw, or supposed flaw, and leaves it unrectified.

As to normal and duly executed disclaimers, a question has arisen as to the period to which its operation refers. The act (5 & 6 Will. 4, s. 83), makes it part of the original patent—except as to pending actions—except as to *scire facias*. In *Perry* v. *Skinner* (2 M. & W. 471), it was said that the act should read, "be deemed and taken *from thenceforth*:" (query, "thenceforth" without the from) so that the patent remains invalid against previous acts of trespass (of course, as to what was undisclaimed, it could hardly

answer to use a right of action on the dropped part,) on the ground that you must not make a wrong by *relation* of what was then *legally*, it not morally, right. This doctrine has been, however, very deliberately overruled (*R.* v. *Mill*, 1 Pract. Rep. C. P. 695); it probably relies on the argument that if pending actions, *à fortiori* pending causes of action are excluded; and the reply is, such parties have facilities for opposition, and, moreover, that with regard to pending actions, there are costs to be thought of. Both arguments seem questionable. The infringers might know nothing at all of the patent, and then the getting notice of an intended disclaimer is a chance, though, if proceedings were pending, it would be insisted on by the law officer. And, as to costs, why should not such opposition at the Attorney-General's secure them. It is said that the opposition before the Attorney-General is expressly for such infringers, but there are other parties who might be contemplated by the act, licencees, equitable owners, &c. Besides, a party might be allowed to abstain from opposing the disclaimer, and rely on defeating its effects. The insertion of "henceforth" is said (*R.* v. *Mill*) to make the proviso as to pending suits insensible. But does not *Perry* v. *Skinner* mean that "henceforth" was the *meaning* of the proviso; that the act may be so read if you like to leave the proviso out. Some "relation" is necessary to make good the patent; the main exception provides (on the principles of jurisprudence) for past wrongs; and, surely, for all wrongs, sued or unsued; and then comes the sub-exception of the *scire facias*, which is a matter of title, not of remedy. See also *Stocker and Warner* (1 C. B. 148), which relies on the distinction between matters of title, and the rest. (There is, it may be remarked, a difficulty (*R.* v. *Mill*) about costs in *scire facias*—the proceed[illegible]s well founded—it becomes defective on the disclaimer-[illegible] the party who undertook to act as public prosecut[illegible] liable to costs. His bond, however, as to defendant's costs, would hardly be put in suit, and he might make

what bargain he could at opposing the allowance of the disclaimer.)

A disclaimer, to be evidence in a pending *scire facias*, need not be specially pleaded (*R.* v. *Mill*); it is not part of the record, but of the fact, being incorporated with the specification.

Sect. 4.—Procedure in Privy Council.

Proceedings for extension and confirmation take place before the Judicial Committee of the Privy Council, being conduct according to their general practice, except as to the special statutes and the rules issued thereupon; and see some remarks in the first case before them: (*Wells' patent*, Webs. 554.)

In extensions, the first point for attention is the period for application. It will be observed by the rules that the times of sittings are very limited, and there is an application required previous to the hearing, which is subject also to interruptions and postponements. An application six months before expiry (2 & 3 Vict. c. 67) secures the petitioner from unavoidable delay. A later application might perhaps be indulged and expedited (but see *Re Faulkner*, Newton Lond. Jour., No. 212); but as you anticipate by more than six months, you lose the evidence which we have said is so material, of the last part of the patent history. One case at eighteen months previous (*Mackintosh*, Webs. 739), was refused expressly on that ground.

Notices are prescribed in extensions by the statute; in confirmations (in nearly identical terms) by the rules, and there is little to add to them. It is doubtful if licencees be entitled to notice, in one case (*Heurteloup*, Webs. 553.) Notice (by post) was ordered to a rival on the continent. Where the patentee had no English residence or place of business (*Derosne*, 4 E. F. Moo. 416), notice was substituted at places of the licencee's business. In confirmation, prior infringers should have notice. No

special notice is required to the Admiralty (*Smith's patent*, Rep. Pat. Inv., No. 684) or Government who may have used the invention.

The petition (see precedent; which contains an outline of the case, and which may pray for fourteen years, though any less term be granted), with copies of the notices and advertisements, are left at the Privy Council Office, a reference being obtained, of a day to apply to the committee. This application is by counsel as to notice of it (see rules), and caveats may be entered up to and on the day of application. Nothing has hitherto turned on the notice of objections.

The petitioner is heard first; he and each opposing interest may appear by two counsel or in their own person (*Earl of Dundonald*, not reported, who was also examined); in an opposed case (*Pinkus*, 12 Jur. 233) the inconvenience of the want of counsel was felt: (see also *Baxter* as to opposition in person.) To what extent private parties can urge general objections to the patent is doubtful, whether they may urge injury to a particular trade they would hardly get costs, as (*Downton*, Webs. 567), the Attorney-General (or his proxy) watches on behalf of the general public, and also of the Government; thus, in one of the propeller cases, the committee thought the assent of the solicitor for the Admiralty immaterial. The law officer having spoken at the close of the opposition, the petitioner replies, parties withdraw, and, on being called in again, unless any special terms require to be first settled (*Hardy*, 13 Jur. 177), or a postponement to obtain better evidence, an indulgence reluctantly allowed (*Perkins*, not reported), judgment is pronounced at more or less length, and with or without the grounds of decision, accompanied by panegyric or condolence.

The scientific parts of the evidence resembles that of patent action, specific minute accounts are desired (*Baxter*, 13 Jur. 593; *Quarrill*, Webs. P. C. 740; *Swainson*, Webs. P. C. 559), and the balances of each

year (*Roberts*, Webs. P. C. 573); besides a balance sheet, the waste book and original memoranda are inquired for: the bookkeeeper of the latter being called, and the accountant employed to draw up the former, and the latter witness asked if he considered the wastebook, &c., genuine. The patentee is sometimes examined (even before the new Evidence Act) (*Whylock*, Priv. C. 1846; *Mitchell*, Priv. C. 1847.) He must also, in confirmation, prove his ignorance as required by the act. *Quære*, as to this point, when the patentee is dead: (see *Wells*, Webs. 554.)

As to the matters for evidence, due proof is required of the notices and advertisements, and legal proof of the title of the petitioner: (*Galloway*, Webs. 725.) Slight evidence suffices of the validity of the patent. If clearly void it would be rejected (*Kay*, 3 Moo. P. C. C. 24); if dubious or contested a wrong decision against the petition would be irreparable. The novelty and inventorship, and the specification which is produced, the nature and value of the invention are followed by the financial points, or, in a case of confirmation, by whatever may be alleged in petition.

Costs are taxed by the clerk of the council, being given sometimes to a petitioner (*Downton*, *Derosne*) and against him, though the Attorney-General is present for the public (*Downton*) to encourage the public to oppose; so, where a petition was dropped (*Macintosh*) costs were given to an opponent. Evidence is not received (*Wells*) after the conclusion of a case.

The committee's report (that is, if any be granted) goes at the first opportunity to the general Privy Council, whose report is delivered to the petitioner. He is then to complete the patent in the usual manner, the Privy Council executing the function of the law officer at the original patent.

The extending letters patent are a new instrument; and a confirmation seems to be so in practice, though the terms of the act are to confirm *or* grant new letters patent.

Whatever be the date of sealing, the right conferred in extension ends within fourteen years from the expiry of the original; but any period between that and the new patent is included: (*Ledsam* v. *Russell*, 1 Ho. Lords Cas. 687.) The instrument varies little from the old form, unless a payment is secured to an inventor, when provisoes and recitals to such effect are introduced: (*Russell, Hardy.*) In the former case a deed also was executed, making a threefold security.

Sect. 5.—Proceeding in Disclaiming.

The forms are prescribed by the original act, and not altered by the subsequent ones: (see Appendix.) Caveats may be entered up till the time of the report. The petition, declaration, and specification go to the law officer, as in the application for a patent. If either law officer have been concerned in proceedings on the patent, he refers it to the other; if both are so situated, it is referred by them elsewhere: (see rule and precedents, for the advertisements and as to power of opposition.) Notice is given of the hearing to opponents (by post), and such notice proved, if requisite, at the hearing, which may be by counsel, agent, &c., and the parties confronted.

Leave being granted, the instrument has to be placed on record in connexion with those affected by it, viz., the patent and specification; and this proceeding, it seems, may be, if there be any motive, indefinitely delayed. The practice is to prepare (*Edward & Da Costa*, Rep. Pat., No. 680), the disclaimer in duplicate. 1. A copy on paper for the proceeding, before the law officer, and which receives from him a certificate of a fiat. 2. This granted, a parchment duplicate is made to receive the *fiat*. Both being signed, and the latter acknowledged by the patentee, the former is entered and filed with the patent, the latter enrolled (as with the specification) in the Enrolment-office (stat. 12 & 13 Vict. c. 109, s. 15), due marginal reference being made to the original documents.

Sect. 6.—General Power of Amendment.

The amendment at common law includes two kinds of operation:—1. When an original authority is copied incorrectly, the error may be rectified (by leave of the officer in charge) at any period afterwards: (*Redmund*, and other cases, 5 Russ. 44; Webs. 641.)

2. But defective execution of the instrument itself presents more difficulty. Equal authority is requisite to that originally employed. Thus, for a defect altered in letters patent, the Great Seal is applied (a *cold* seal.) In fact, it is a new letters patent, the bill or warrant being first obtained out of Chancery, and all the previous stages rectified: (*Nickels*, Webs. 656, and the cases cited there.) It was an expensive proceeding to rectify a trivial mistake (the word *re*covering for covering) and no retrospective effect was permitted as to infringement, though the error was clerical, and not affecting the moral merits. Moreover, the validity of the altered patent is doubtful, for (stat. 18 Hen. 6, c. 1) it could not be dated before the receipt of the altered bill, when the invention was no longer a *new* invention.

The disclaimer would be corrected, probably, by the Master of the Rolls under the law officer's fiat.

The Master of the Rolls has altered errors in the specification, when obviously clerical (*Sharp*, and cases cited there, Webs. 641): wire, for fire; increase, for inverse, &c.: relying on an indorsement, as evidence in the event of a question arising. Mr. Hindmarsh, on general principles, objects to the power so assumed.

Considering the liberal construction applied to patent documents, it would often be needless to alter an obvious mistake; and the statutory provisions above noticed render the means of the present section less exclusively available.

CHAP. VI.

THE RIGHT AND ITS ENJOYMENT.

This, it may be observed, is exercised over the special article only on the occasion of so applying the invention and impressing its character on it, and subject to its control any rights in the material substance continue. The inventor could not prevent the parts of his machinery from seizure by his creditors, he could only prevent their employment in a particular way.

An importation of an article, even from a sister kingdom, under a patent there, infringes on the right; but practically, this requires the invention to be recognisable in the result; some article, not a particular mode of preparing, which is protected. And an importation for private use cannot be taken cognizance of (*Oxford University* v. *Richards*, 6 V. 689) even though afterwards sold along with such party's general effects. So of a use for private amusement, or science: (*Jones* v. *Pearce*, Webs. 125.)

It is important to notice, that there are dependent patents, where a sub-improvement, though exclusive, is subject to the control of the right to the main stem (*Ex parte Fox*, 1 V. B. 67; *Crane* v. *Price*, Webs. 412), the superior patent cannot violate them, though it is only available by its leave. It is obviously, however, worth while for the original to come to terms with a sub-invention which developes and improves it.

The right is incorporeal. Lord Eldon (*Ex parte Granger*, Evans Stat. Bank. p. 67) doubted whether the transfer of the letters patent were decisive of the right, when the assignor ceased to practice the art; but this

would be accounted more easily, by supposing an implied licence. It has been said, in reference to sub-grants, that there can be no estates, no sub-infeudation of a patent (Sweet's Jarman's Conveyancing, vol. 7); but *quære*, as to the sense in which a patent is personalty. Real property, which was that common territory regulated by the State, has come to mean property subject to a particular kind of descent. In the latter sense, patents are without it, by the express terms of this grant. But they are analogous to it, as being a portion of the public domain of invention; of that which naturally is open to the world to discover, and the instrument itself was long employed for grants of land, or territorial privilege.

A patent is clearly an assignable thing: transferable voluntarily, or by act of law (*Ducreyier* v. *Fellow*, 10 B. & C. 829; *Hess* v. *Stevenson*, 3 B. & P. 565; *Bloxam* v. *Elsee*, 6 B. & C. 169), and is disposed of by sale, for an annuity, or by mortgage. If it become the property of several persons, it is common to put it in trust, thus facilitating arrangements for sharing the profits, or exercising portions of the right, and without constituting a partnership. Primarily, each owner might use every part to an unlimited extent, both in person and by his licencees; but the patent may be severed in reference to use locally or for particular districts: the parties covenanting to keep within those limits, and to share in proceedings against infringers for disclaiming, obtaining confirmation, or extension, according to their respective interests; all such functions in the other case being exercised, and more commodiously, by the trustee. The mere joint enjoyment of the privilege would not amount to a partnership; and in a recent case the inventor managed the patent business, receiving a salary "*equal to*" a share of the profit, with a declaration of non-partnership: he was held not a partner.

The proviso against a transfer to more than twelve persons (arising out of the Bubble Act, and limited formerly to five persons) is evaded by a licence, however ample

(*Protheroe* v. *May*, 5 M. & W. 675), which retains a nominal right of revocation. Such a licence, however, (Jarman's Conveyancing, by Sweet, vol. 7) is suggested to be virtually a trust, which is expressly named and included in the proviso. A mortgage also escapes it (*McAlpine* v. *Mangnall*, 15 L. J. 298. C. P.), and an assignment for creditors (*Bloxam* v. *Elsee*, *supra*), who probably (like the executors mentioned in the proviso) only *represent* the patentee. When a company work a patent, they usually apply for an act of Parliament, which is seldom opposed. Any form effects a conveyance: as a declaration of transfer on a future event operated on its occurrence: (*Cartwright* v. *Amatt*, 2 B. & P. 43.) Personalty carries no warrant, which is seen in copyright: (*Coburn* v. ———, 1851), whence, and for estoppel, the recitals and covenants usually employed: (see Appendix.)

In a case of fraud in the sale of a patent, by exaggerating its value (*Hall* v. *Hicks*, 2 Y. & Coll. 46, 472), the point arose whether the various owners participated in the effect not being parties to the deception.

A few remarks may be appended, on the mode of exercising the invention. Should this be much modified in practice, and parts are found unserviceable, these may be disclaimed; but if there be material addition or alteration, the expediency of patenting the improvement must be considered. *Heath's patent* (10 M. & W. 681) was for adding a compound substance to iron in a melted state; a beneficial effect resulted, but some practical inconvenience in the mode of working this plan, made it barely worth pursuing. Some years after, it was found that using the elements of the compound effected as good a result, without some of the demerits of the old plan, of which it was decidedly but a modification: there was strong evidence, in fact, that the elements did combine of themselves before they acted on the iron. If the patentee had not provided for such a variation, it

could the public infer it as self-evident, *à priori*. The new plan was not patented, but left to the protection of the old patent, and lost; it is obvious that a new patent would have a longer term of enjoyment if the sub-invention were referred to: on the old plan, part of the fourteen years had run out. The case will be distinguished from improvements of detail, which more usually occur, keeping within the patent, and subject to it, whether themselves patented or not.

A note-book of any scientific matters connected with the patent, including the history of the discovery, the opinion of contemporaries, &c., might be serviceable with a view to evidence for infringement or prolongation; and memorandums might be added of patents likely to prove hostile.

The inventor is more frequently neither wealthy nor a man of business, and wealth and enterprise are almost always needed, to such an extent sometimes as to amount to a risk better suited to a body of shareholders than an individual. This plan is somewhat hampered by the proviso previously alluded to, and an impression exists that a company is not so favourably dealt with by the Privy Council in extension cases as a single assignee.

Conflict between patentees are often difficult and protracted; the result is thought to depend on the amount of legal ability pressed into the service, and the oyster simile has often been realised in such cases. The five or six propeller patentees, after much litigation, effected an amicable coalescence, and avoided a similar fate. So, again, exorbitant royalties, or patent profits, would (if, indeed, they have any existence out of the brains of patent law opponents) be impolitic, not only in reducing sale, but in encouraging evasion and litigation, and rival expedients in invention. That fictitious inventions are patented to make a profit of litigation, or a black mail, by the threat of it (see Evid. Ho. of Com., of Mr. Ricardo, 1851), is not easy to believe. A patentee has no more facility for attacking a defective patent than any other member of the public; and as to

oppression of the trade generally, the patentee's game is an uphill one; he has to make and maintain a right, and, usually, against a superior force of capital.

The compulsory supply of the Government, on their terms, seems unfair; but only one case (*Ex parte Pering*, 4 A. & E. 949) has occurred under the proviso; which, it seems, does not apply to a *use* by the dockyards themselves; this would, therefore, be an infringement (*Walker* v. *Congreve*, Carpm. Rep. I. 356); but the Government in that case, or if a use by their own contractors were stopped, could resort to the proviso. Some conversation occurred in a Privy Council case as to screw propellers, but there a sum was paid to the inventor, which he allowed to be adequate.

Licenses.

This is an advantageous mode of remuneration to an inventor, who benefits in proportion to the development of the manufacture, without incurring the attendant risks. The term is usually co-extensive with the patent; a few days are sometimes reserved at the end, when it is apprehended that it may amount to an assignment. The application of the art to different purposes may be granted to different persons; but a more usual division is to licence (exclusively) for local districts. The distinction as to exclusiveness is material; without it, the licence only removes a prohibition; but with it confers a right. The latter may, in most cases, be properly made transferable, or have a power to sublicence to the extent of the district, &c. The consideration may be a definite sum or sums, subject to the success of the practice. A quarterly rent is common where the patent is for a process or machinery, or for certain parts of machinery, as for each loom or each spindle. When the product is the patent, it may be computed per set, or per pound, &c., or by a per centage on the *gross* proceeds, to exclude the creation of partnership. A minimum is often fixed, and, on the other hand, the payments reduced

as the amount produced increases. This is a more efficient mode of securing the cultivation of the patent than stipulation for diligent attention, or to embark a certain amount of capital, or employ so many hands, &c. As to all such points, however, and the provision (see Precedent) for mutual communication of improvements, and not taking up rival inventions, it must be recollected that the landlord and tenant are, to a great degree, in the same boat. The licencee cannot force the sale beyond a certain point; and to that point it is his interest to force it. Covenants are added for accounts of the above produce, and inspection of premises, and for marking all articles; this may be not only to check the sales, but sometimes to keep the patentee's name on the article. Title is not implied; if required, it must be provided for, as, where a premium is paid down, or a capital embarked; arrangements being made in such cases as to costs of prosecuting infringers. Covenants for payment are essential; and for annulling the licence on a certain extent of arrear; and as to covenants of assignees or sub-licencees, if such be contemplated.

On the other hand, the grantor should covenant not to use the invention himself, or grant licence to others, or only so far as may be stipulated; and it is usually arranged, that on the grant of any licence at lower terms, the rent of the one in question shall sink to the same level.

As arrangements are sometimes made while the success is evidently doubtful, the licence may be made voidable on the failure of a certain result, or it may take the shape of an agreement for a licence on the accomplishment of it; and from similar motives, the royalty or rents are often remitted for the first twelve months, &c.

A licence, though usually, is not necessarily under seal, although inattention to what is said in the letters patent might be a contempt of the Great Seal (*Chanter* v. *Dewhurst*, 12 M. W. 823); and if sealed, is not necessarily a deed, or requires a stamp: (*Chanter* v. *Johnson*, 14 M. & W. 408.)

The term licence is incorrect; it is really a grant (*Wood* v. *Ledbitter*, 9 Jur. 187); this, perhaps, applies more properly to the exclusive licence, which defines a certain thing. The patent itself, originally, was rather a licence than a grant; a right to do rather than to have. The licence is closely analogous to a lease (*Warwick* v. *Hooper*, 3 M. & G. 60), and the construction of it to that of contracts in general (*Chanter* v. *Dewhurst*, 12 M. & W. 823) as to acquiescence, &c. Past payments are gone and irrecoverable, though the patent prove invalid (*Taylor* v. *Hare*, 1 B. & P. 260); they may be repudiated for the future: (*Pidding* v. *Frank*, 1 Mac. & G. 56; *Neilson* v. *Fothergill*, Webs. P. C. 287; *Hayne* v. *Mattley*, 3 T. R. 438.) If a deed estops the denial of validity, a *scire facias* must be resorted to to annihilate the patent. In *Cutler* v. *Bower* (12 Jur. 721), a licence was followed by an assignment to the same party; on the failure of the latter the former revived.

CHAP. VII.

REMEDIES GENERALLY.

A LARGE proportion of patent cases are a judicial acquisition, or at least recognition, of title: they are really brought to try a right. The judge or jury in such cases really grant the letters patent, which are, in the first instance, provisional, it being not worth while to contest at the grant a claim to what may never be worth contending for. The cost of litigation is usually part of the case made for extension, not only to the vigilance in defence of the right, but as substantial evidence that the subject was valuable, and the title actually tested. The question of infringement is usually but a pretext for assaulting the right, or, at least, derives its difficulty from the indefinite limits of the property trespassed on; and, as one trial, in a great degree, settles this question for all, the bias subsequently runs strongly in favour of a patentee, who, indeed, needs this favourable presumption, having, single-handed, to hold at bay the public, or, at least, the trade, leagued more or less openly against him, or harassing him by independent skirmishes. Thousands are sometimes thus spent, but only, of course, when weak points exist, not properly fortified and provided for at the period of the grant. *Howard's patent*, a very lucrative one, for instance, never even reached Nisi Prius. It is seldom, however, that the patentee can entirely carry out the rule of not bringing his title deeds into court. A verdict against the patentee is no *proof* of invalidity, even partial, so as to require disclaiming, &c.; but it affects the right to damages, which, until after one favourable trial, are seldom insisted on. The statutes expressly recognise this

distinction, and give larger costs on a second verdict, as hereafter detailed. Much of the cost in patent cases, as that of experiments, models, and scientific evidence, which is not allowed in taxation (*Severn* v. *Olive*, 3 B. & B. 72), and which in difficult cases is considerable; and the act (5 & 6 Will. 4) has failed to abbreviate the pleadings or arguments, it being still worth while to try everything that endangers the patent right. In 1829, 600*l.* was named (Evid. Ho. Com.) as an average expense of trial to one party, without reference to procedure in equity and those after the verdict. It is, therefore, no wonder that the Privy Council (*In re Muntz*) should have congratulated a patentee on having got damages and costs enough out of a series of law proceedings to nearly cover his expenses. Actual compensation is got usually, if at all, in Chancery; in two cases it was assessed by juries, at a round sum, viz., 200*l.* (*Lewis & Marling*, Webs. P. C. 493), and 500*l.* (*Morris* v. *Branson*, Bull. N. P. 76); as to the difficulty of more accurately estimating it, see the section on Equity.

Three kinds of procedure require notice. The common action (no case has yet gone to a County Court), which does really involve the stability of the patent: the peculiar action of *scire facias* explicitly directed to that end: and equity, which acts solely and entirely as an auxiliary either to obtain evidence and information as to the points in dispute, particularly to take account of the value of the infringed portion, or sometimes to prevent its commission.

For the formal details of the *scire facias*, which has recently been amended by statute, see the treatises devoted to it, of which those by Foster and Abbott are the latest. The substantial nature of, and mode of treating, the questions arising will be sufficiently seen in the chapter on the ordinary action. As aiming at nothing short of the destruction of the property, it seems an invidious and unfavoured proceeding; but it involves the right of opening and reply, and, till lately, no patent had survived it.

There are now, however, certain means of amendment even during a pending *scire facias* (see the section on Disclaimer.) Some of the peculiarity of the procedure (which is not known in Scotch law) arises from the Crown being nominally the prosecutor—a mistake, or rather, deception in making the grant being the ground for setting it aside. The plaintiff being in place of the Crown receives no costs (which are heavy), nor should by rights pay any for the same supposed reason. An arrangement is made, however, for costs to a patentee who passes the ordeal, to prevent his opponent from harassing him on slight grounds. It is, therefore, often preferred to act on the negative, and defend against a void patent.

The legal and equitable jurisdictions are not always harmonious, and the conflict between the two legal processes mentioned is still more inconvenient, a single question being thus mooted at once in three different courts, to say nothing of proceedings on Scotch and English patents for one and the same invention. No rules can be laid down as to the interposition of the various courts to stay contemporaneous proceedings: (see the cases of *Muntz* v. *Foster*, 1 Dowl. & L. 490; *Smith* v. *Upton*, 6 Scott, 804; *Haworth* v. *Hardcastle*, Webs. 486; *R.* v. *Wilson*, Webs. 665.)

All the proceedings deal with property, not with the *intention* of the parties, except in so far as furnishing evidence or argument: (compare the insurance law cases.) In *Heath & Unwin* (10 M. & W. 684), some expressions of an opposite tendency occur, but the doctrine (if it were so meant) was rejected at the subsequent trial of the same case at law, as well as when before Vice-Chancellor Knight Bruce: (15 Sim. 522; *Stead* v. *Anderson*, 11 Jur. 677.) Fraud is a loose expression in some patent cases for failure, as where a proviso has not been fulfilled; thus (in *Boeill* v. *Moor*, 2 Marsh. 211), fraud and inadvertence are interchanged.

A patent, of course, carries a certain weight, both in

law and with a jury; so that a pirate is often desirous of the influence of a rival patent: (*Baskett* v. *Cunningham*, 2 Eden C. R. 147.) It is also matter of notoriety, and without notice, the public are bound not to infringe. It must be presumed valid till actually cancelled and repealed. The secondary rights, actions, &c., of course, survive the patent on which they are founded; but apart from substantial injury, courts discourage the litigation on questions of right, or the completion of litigation, with reference to costs: (*Dalgleish*, 14 Jur. 945.)

In passing to the particular species of litigation, it is impossible not to remark that they are an operose means of determining the subtle questions of patent cases, and might with advantage, when there are rights on both sides, be remitted to arbitration, or compromised, in preference to plunging into (*Spottiswood* v. *Clarke*, 2 Phill. C. R. 154) or protracting (*Crossley* v. *Beverly*, 3 M. & C. 428) litigation.

Sect. 1.—Equity.

The equitable *rights* in patents (*ante*) present nothing peculiar, but equitable remedy is resorted to in aid of legal rights, the jurisdiction being analogous to that in case of waste, mines, &c., and the technical proceedings relative to which will be found in treatises on injunction, &c.

A patent enters a Court of Chancery either verified by legal authority, or challenging and appearing likely to obtain it. Even in the former case, each fresh defendant may dispute the right, not only because his breach may be different, but on the possible failure of the former trial accurately to explore the title; for such trials are sometimes collusive, and, again, new facts may be presentable. In the absence of legal title, the extent of user, under the patent, is material, affecting not only the amount of injury, but the argumentative value of acquiescence. Possession proves little where it was not worth disputing. The length of period which amounts to prescription

(*Kay*, 1 Myl. & Cr. 373), therefore, is calculated rather from the time of the first ripening, and often consumes a considerable portion of the entire term, but then the last portion, in such cases, is the more worth protection. One year (*Hill* v. *Thompson*, 3 M. & C. 622) is insufficient, probably, in any case (*Losh* v. *Hague*, Webs. 277; *Bunnett* v. *Smith*, V. C. 1844; 25 Newton Lond. Jour., 68); seven years were sufficient, and (*Beeston* v. *Ford*, Carpm. Patent Cas. I. 491), six under litigation. Such possession, however, is materially weakened by any violation (*Collard* v. *Allison*, 4 Myl. & Cr. 417), or by a rival patent, and proportionally fortified by judicial decision, or the threat of it efficiently employed to repress infringement.

Matters of personal conduct the court can appreciate, and to a certain degree the merits of the invention and breach which may in a subject of general and popular nature be obvious enough to determine the judge, such as ornaments addressed to the eye or contrivances for domestic use. But in scientific subjects the voluminous affidavits and elaborate models, occupying frequently several days to go through, result in raising difficulty enough to require a reference to a jury. Even the distinction in *Sherriff* v. *Coates* (1 Russ. & M. 159,) between the comparison of plaintiffs and defendants exhibits, which Lord Lyndhurst assumed to be practicable; and the question of originality which he said required a power of cross-examination; may be doubted, for to know what infringes you must know the precise nature and extent of the infringed. At all events, whatever force the patent carry in equity, a trial at law is demandable (*Russell* v. *Barnsley*, Webs. 472); which was formerly by an issue, and now on arranged terms, one of which is generally an order to "speed the cause." Such terms, however, it seems are liable to be disregarded (*Bunnett* v. *Smith*, 8 Jur. 1634) by the law court, which will allow a defendant to raise every defence; and the legal decision on its coming back into the Chancery is liable (*Kay* v. *Marshall*, 1 Myl. & Cr. 373) to the con-

sideration of the court, which decides how far it will enforce it: (*Neilson* v. *Harford*, Webs. 373; *Bridson* v. *Benecke*, 12 Beav. 1.) As to parties, a part proprietor is competent (*Westhead* v. *Keem*, 1 Beav. 309), or all may join. *Quære*, however, as to the ownership of severed parts of a patent. A vendor is not precluded without special agreement from denying the validity (*Muntz* v. *Grunfell*, 7 Jur. 121), nor a licencee from throwing up his licence for a similar purpose (*Pidding* v. *Franks*, 1 Mac. & G. 56; *Huddan* v. *Smith*, 16 Sim. 42), nor either from denying what he formerly admitted (*Fisher* v. *Oliver*, M. R. 1847; 30 Newt. Lond. Jour.; *Bunnett* v. *Smith*, 8 Jur. 1634. (From an observation of Lord Eldon (*Beaumont* v. *George*, 27 Rep. Arts, 2nd Ser. 252), it seems that an interest of a licencee for instance would be recognised.)

Equity acts, on an ascertained right, or with a view to ascertain it; the difficulty of ascertaining the amount of injury done would in either case be a motive to enjoin and prevent the act at least till the right were settled, but this would infringe rights or alleged rights of the defendant equally transient and irreparable; a fashionable pattern enjoined for a single season (*Sheriff* v. *Coates*, 1 Russ. & M. 159; compare *Spottiswood* v. *Clark*, 2 Phill. C. R. 154) loses its sale altogether. Still more where costly works have been erected (perhaps with some degree of laches or acquiescence on plaintiff's part) for a certain process exclusively, and which are useless without it: (*Neilson*, Webs. 278.) The court looks merely to the preservation of entire means of ultimate justice; for an injury by enjoining wrongly it can give no compensation, but an account of profits (which may go back as well as to the future) secures to a great extent due restoration to a patentee; especially (*Neilson's case*) where a licence had been offered at a certain royalty no more could reasonably be asked.

The main object, however, of parties is to see the nature of the defence. or to secure evidence against the trial, or obtain it from abroad as to prior use, &c. The right of

inspecting defendant's works and premises is not well defined (*Russell* v. *Cowley*, Webs. 458, and Drewry on Inj., Supp.; *Morgan* v. *Seaward*, Webs. 169), it has usually been by consent and reciprocal, the difficulty being that it violates privacy, and may disclose a rightful secret in trade. It is usually by notice of the time of visiting, which would allow in most cases of evasion, but in reality patent cases seldom turn on matters of specific fact, the actual practice of parties being generally admitted. In *Botten* v. *Smith* (24 Newt. Lond. Jour. C. S. 66) a witness exhibited a sophisticated model; the court refused to impound it, as being the witness's own property.

The right being settled, it is not always easy to adjust compensation; the account gives the infringer's sales, but if his prices were low this may be no measure of the patentee's loss, who might have sold at a higher price and made proportionably more, or by asking a high price might not have sold a single copy (*Colburn* v. *Simms*, 2 Hare, 554.) In *Crossley* v. *Derby Gas Company* (3 M. & Cr. 428), it was still more difficult to ascertain the profit of an improved gas meter, which by allowing all the supply to be counted and paid for, enabled the gas company to lower their prices. The scheme acted on by the Master was objectionable; but the Chancellor refused to give special directions in the matter, and advised an arrangement. Such difficulties, however heighten the propriety of the preventive remedy which, after trial (*Bridson* v. *Benecke*, 12 Beav. 1), is no longer shackled by tenderness of injuring the defendant. The injunction is perpetual, and covers any mode of violating the patent; it includes (*Crossley* v. *Beverly*, Webs. 119) articles made ready to throw into the market on the term expiring (*quære*, as to the erection of work under similar circumstances), (*Abbott* v. *Williams*, 9 Rep. Arts, 103); so the sale of things suited for making a patent article (*Anderson* v. *Warner*, 1850, Chan.; Pat. Jour. 195, 243), and we may notice that though a threat (*Hill* v. *Thompson*, 3 Mer. 622, Webs. 229) is not ground for an

injunction, an actual breach is not made innocent by a promise to desist (*Losh* v. *Hagen*, Webs. 200); a certificate of a previous trial (see the end of the next chapter) entitles the plaintiff (subject to the decision of the court) to full costs (5 & 6 Will. 4, c. 83, s. 3, modified by 5 & 6 Vict. c. 97, s. 1.)

Sect. 2.—Actions.

The action is in case; the same act may infringe one patent or more. If, however, these are dealt with in separate actions one will probably be selected and abided by in so far at least as the grounds are the same. One or all the owners of the patent (by the same or unequal titles) may sue. A piracy *may* injure any of them, it injures all of them generally: (*Wellers* v. *Dippers*, 2 Wils. 423.) *Quære* as to the proprietor of the patent for a local district, or as to part of the invention (or rather as to a partial use of the invention, the patent being granted for one thing) if they alone were injured they would seem the parties to sue: rights of action would probably not pass to an executor.

The mere purchase of an article could not make a person defendant (*Gibson* v. *Brand*, Webs. 631), unless in so far as it amounted to ordering and employing another to make it: (see *Jones* v. *Price*, Webs. 125; *Denley* v. *Blore*, C. P. 1851.) The venue may be in any county, and cannot be changed (*Brunton* v. *White*, 7 D. & R. 103; *Cameron* v. *Gray*, 6 T. R. 363), because "the letters patent being enrolled at Middlesex the cause of action is not wholly elsewhere."

The declaration recites the letters patent, date, term, seal, and title, the grant and prohibition (profert being made, 10 Co. 94), the legal title, assignments, &c., are stated, and the compliance with the provisoes to specify (not the other provisoes); this instrument is usually, but need not be, set out, profert is not necessary (*Muntz* v. *Foster*, 1 Dowl. & L. 743), it is not a record, but like a notice of particulars (*R.* v. *Mill*, 1 Pract. Rep. 695.)

Continued user of the patent need not be alleged, as in equity, nor notice of the infringement. As to a declaration on an extended patent, see *Russell* v. *Ledsam* (11 M. & W.)

The breach is in the words of the letters patent (*Minter* v. *Williams*, 4 A. & E. 251), an infringement of the whole and of part being sometimes separately stated, and the allegations are divisible: (*Gillett* v. *Welby*, 9 C. P. 334.)

Particulars were ordered in *Perry* v. *Skinner* (2 M. & W. 471; Webs. 250), and refused in *Electric Telegraph* v. *Nott* (4 C. B. 462): it is much a matter of discretion, but the distinction would seem to be, that the former patent claimed various distinct articles—pens of different shapes, holders, &c.—and the latter, various portions of a compound apparatus. Giving particulars would have embarrassed the latter, but not so in the former. The specification describes the invention, and plaintiff need not produce a sample (*Crofts* v. *Peach*, 2 Hodg. 110); of course, however, specimens may be indispensable at the trial.

The sole plea was formerly the general one, not guilty. The special pleas, under the new rules, have but little effect in defining the defence; the operation of costs does not prevent every sort of plea from being entered. It is, said Baron Alderson, "not guilty, in every possible way." Another learned judge called it "the expanded general issue." Indeed, the substantial pleas are wantonly multiplied by verbal variations, so as to elicit disapprobation from the court. In *Edwards* v. *Da Costa* (Rep. Pat. Inv., No. 680), out of twelve pleas, three only were really put to the jury; and much difficulty arises in adjusting the verdict (*R.* v. *Hamilton*, 14 Repert. Arts, enlarged series, *Croll* v. *Edge*, 14 Jur. 553.) In a recent case, Vice-Chancellor Knight Bruce remarked, that he could not prevent the parties from throwing dust about. Mr. Webster (Evidence Ho. Lords, 1851) says, five or six pleas are ordinarily sufficient: viz.—1. Not guilty. 2 & 3 Not new, and not the inventor (which treat almost the same question.) 4. Not useful; or the question whether

there be any invention at all. 5. Anything impugning the title of the invention: and, 6. The specification. The formal accuracy of the patent and specification are not often really in question.

In framing the pleas, not guilty denies the breach in the declaration. The other pleas are to the title. *Non concessit* (*Bedells* v. *Massey*, 8 Jur. 808; *Bunnett* v. *Smith*, 13 M. & W. 552) denies the existence in complete form of the letters patent. The title is referred to by a plea of false suggestion in obtaining the patent (*Morgan* v. *Seaward*, 2 M. & W. 544); the letters patent reciting the petitioner's allegations. The inventorship and novelty are required by the statute of James, and mentioned in the letters patent: (*Stead* v. *Anderson*, 4 C. B. 806; *Household Co.* v. *Neilson*, Webs. 689.)

Utility is denied by a plea of no manufacture: (see the statute of James), or of no utility, referring to the petition recited in the patent: (*Bedell* v. *Massey*, 2 Dowl. & L. 322; *Morgan* v. *Seaward*, *supra*; *Jupe* v. *Pratt*, Webs. 151.) The specification derives from the patent grant not from any law (*Bentley* v. *Goldthorpe*, 9 Jur. 470) as to setting it out, if not already so done: (*Muntz* v. *Foster*, 1 Dowl. & L. 741.) A plea of no specification enrolled, standing by itself, denies both the substantial and formal sufficiency. If it follow a plea of no sufficient specification, it will be referred to the enrolment only: (*Leaf* v. *Topham*, 2 Dowl. & L. 863.) As to invalidity under the terms of the patent, by transfer to more than twelve persons, see *McAlpin* v. *Mangnall* (3 C. B. 496; 15 L. J. 298, C. P.) As to a plea of informal execution of a disclaimer, see *R.* v. *Mill*, &c. (1 Pract. Rep. 695.) The substantial defects of it will lie in its extending the right.

Pleas are not allowed to the whole invention and the undisclaimed remainder (*Clark* v. *Kenrick*, 1 Dowl. & L. 392), but they are allowed to a part of the invention and the whole: (*Bentley* v. *Keighly*, 1 Dowl. & L. 944.) In the *Electric Telegraph case* (20 L. J. 123, C. B.) pleas

were entered to each head of claim. The invention being single, any part that fails is a failure as to the whole.

As to estoppels, see *Oldham* v. *Langmead* (cit. 3 T. R. 439); *Bowman* v. *Taylor* (2 A. & E. 278); and *Baird* v. *Neilson* (8 Cl. & Fin. 726.) In *Betts* v. *Betts* (Vice Chancellor Knight Bruce, 1851), it was doubted whether the right could be tried without a plea of not guilty, and an admission of the facts was ordered, instead of omitting the plea. The verdict for the defendant on the title does not affect the issue on the infringement, the patent being unrepealed, though it would affect the damages if asked for: (*Neilson* v. *Harford*, Webs. 311; *Sealy* v. *Brown*, 14 L. J. 169; 9 Jur. 537.)

Drawings are not admissible in the pleas (*Betts* v. *Walker*, 14 Jur. 647), and precision is requisite in citing the title: (*Stead* v. *Carey*, 1 C. B. 496.) The notice of objections is peculiar to Patent Law (5 & 6 Will. 4, c. 83, s. 5); it is not applied to Scotland, where particulars are otherwise afforded (*The Houschill Co.* v. *Neilson*, Webs. P. C. 552, 711, 714); the section was enacted in inadvertence to the special pleas already given by the new rules, and is open to similar abuses; thus, in one case ninety-six objections were talked of. They are loosely worded, usually more numerous than the pleas (*Neilson* v. *Harford*, Webs. P. C. 370), multiplying them rather by varying the phrase than by substantial division, and are usually described as an *echo* of them; and the vague terms of the act have led to contradictory cases on them, so that authors say each case stands on its own merits: (*Jones* v. *Berger*, Webs. 544.) The broadest rule laid down was (*Bulnois* v. *Mackenzie*, 4 Bing. 127; *Losh* v. *Hagen*, 7 Dow. 495; Webs. 202) that they must be deemed to require somewhat more specialty than the pleas, but this cannot be relied on; the pleas may be definite enough (*Russell* v. *Ledsam*, 11 M. & W. 647; *Neilson* v. *Harford*, Webs. P. C. 364), and they are not to argue the case: (*Heath* v. *Unwin*, Webs. 552.) As to amendment by the judge, see *R.* v.

Walton (2 Q. B. 969); *Betts* v. *Walker* (14 Jur 647); they must certainly be within the pleas, and cannot be objected to at the trial: (*Neilson, supra.*) They are not on the record, but like particulars (*Betts* v. *Walker*, 14 Jur. 647), and to be read at the opening of the case and do not give a reply. If omitted to be delivered (see *Losh* v. *Hagen*, 7 Dow. 495) as to pleading *de novo.*

As to the matters for objection: not guilty need not be, but is usually included; nor the existence of a patent, or anything apparent on the face of it. Fraud, in obtaining a patent, must be specially stated (*Russell* v. *Ledsam*); the cases seem to show that if *a part* of the invention be alluded to, *what part* must be specified; but the objecting to the whole invention is usually sufficient (*Neilson* v. *Harford, supra*) on the point of novelty, the names of previous inventors or patentees, or of books describing the invention have sometimes been required (*Galloway* v. *Bleadon*, 2 Chit. Arch. P. 1031, Webs. 522; *Jones* v. *Berger*, 5 M. & G. 208; *Edwards* v. *Da Costa*, Repert. Patents, 680.) The trial is usually by special jury, and the assizes in a manufacturing district may be preferred, or a particular judge who, having been Attorney-General, may be more familiar with patents. The burden of proof is rather on the plaintiff; *i. e.*, in an action for infringement the patentee; in *scire facias*, his assailant.

A jury leans, in modern times, to favour a patent, especially when the utility of the invention is conspicuous, and even the objection of want of utility comes ungracefully from a man who has used the invention, while it is usually obvious that the patentee was practically the introducer, even if some obscure remote instance had preceded, which is raked up by a man who in fact would, but for the patent, have continued in unacquaintance with it. The history of the invention is interesting, and exhibits the merit of the inventor; and scientific questions relieve the length of trial, but patents are by law granted for *manufactures*, and they are apt to lead away from the

manufacturing question. The extent of the manufacture often is mentioned at the outset, when the individual article (a button, &c.) would seem trivial, and the defects of former articles and the efforts made by prior inventors to remove them illustrate the merit of the plan by which they were ultimately overcome. Counsel read the specification which is the text of their argument.

The trial is not unfrequently protracted and difficult; patent law lies in but few elementary principles, and is not much a matter of technical law; but the combination of the leading principles afford a variety of combinations, and these, unless closely watched, shift or pass into one another; thus, by extending the principle, you endanger the novelty; if you narrow the principle the infringement escapes. Some pains must be spent sometimes to get at the merits of a mechanical point; the then Mr. Copley spent, it is said, ten days in getting up the action and adjustment of some lace machinery. A passage in *Newall* v. *Webster*, (26 Lond. Jour. C. S., printed case) illustrates the attention required on such points. It was material to see whether one strand of a piece of wire rope was twisted in itself as well as round the central core; the judge (whose scientific reputation stands high) suggested that certain visible appearances were a demonstration of the twist, and the argument proceeded in some measure on this assumption, but the fallacy of the test, however, was afterwards recognised and stated on motion in Banco. The Lord Chief Baron at once admitted it, and added, "considering the very great skill and mechanical and scientific talent and ingenuity you had about you, I really wonder that so simple a matter (the moment you mentioned it) was not pointed out; I was certainly taking all the pains I could."

The importance of drawings, specimens, and working models (explained by competent witnesses) is evident: the experiment too may be performed, and the merit of the result judged of; thus, in *Edwards* v. *Da Costa* (Repert. Arts, No. 680), potatoes were cooked and handed round

for tasting: (Lord Abinger, it is said, refused a musician in a copyright case leave to play a tune on his violin.) The judge explains the drawings of the specification to the jury, who take them and the models, &c., into their private room to deliberate on.

As to witnesses, the patentee who knows the origin, &c., of the invention was hitherto usually incompetent from interest; a licensee is not excluded (*Derosne* v. *Fairrie*, 1 Moo. & Rob. 457), though his credit may be affected according to circumstances; he may in some cases be a gainer by setting the patent aside; a party not directly interested may as an assignor be under covenants to support the right.

The trade are more or less openly in opposition to the patentee; other patentees will sympathize with him, unless their rival inventions clash.

Mercantile men form another class, who speak to the utility of the article, and the extent of the demand; and official persons, when there has been use by the navy, ordnance, &c. Workmen and others give evidence on practical points. But there is a class requiring special notice, known as scientific witnesses. They have indeed been repeatedly complained of by the judges, nor is the reason obscure; they deal in words and principles, rather *than on facts*. *In fact*, while nominally witnesses, they are really advocates; and their superior cognizance of that "matter" in which the case is "immersed," gives them a serious amount of influence, while they gradually and insensibly acquire an art of preparing experiments, and giving evidence to support or destroy an invention. This applies, for instance, to the intelligibility of the specification, which must materially depend on the precise temper in which it is set about; a man willing to be puzzled or misled by it would probably succeed. But their aid is indispensable; and perhaps the consciousness of their efficiency, especially because known to be enlisted on one side of the argument (and perhaps in the

case of the patent agent, in defence of their own specification), has heightened the jealousy of them. Indeed, apart from positive interest, the bias of their own theories leads them to erroneous opinions on fact. It is well known that an eminent chemist, seeing the metallic lustre of the newly-discovered potassium, poised it on his finger, and exclaimed, "how heavy!"—it being in reality light enough to float. But whether on points of science, or the more peculiarly patent questions, they render valuable assistance, they may point out the merits of specimens exhibited, comment on the evidence of other parties, and state the conclusions allowed by men of science in general; they may draw comparisons and point out relations, not so as to supplant the exercise of judgment by the court or jury, but to supply material for it: (*Russell* v. *Cowley*, *passim*, Webs. 459; *Jupe* v. *Pratt*, Webs. 144.) Mr. Justice Story, on one occasion, spoke of being in this way "fortified and sustained. They are checked, too, by testimony on the other side (*Severn & Olive*, 3 B. & B. 72), and invalidated even by their own opinion on a former occasion, or perhaps a publication in a book, in which case, of course, the last opinion preponderates. A man may always be wiser than he was the day before. Sometimes opinion may be still more effectually controverted by fact; as, where a specification is said to be incapable of execution, and evidence is produced of something executed from it. Indeed, in physical science theory is constantly obliged to adapt itself to the results of practice. In examining men of science, their experience and reputation are not omitted, and the weight of their authority compendiously employed by the question, "Do you agree generally with the last witness?" A witness may refresh his memory of a machine, by a drawing made by some one else: (*R.* v. *Haddon*, 2 C. P. 184.)

As to documents, the specification is proved by a copy (12 & 13 Vict. c. 109; 1 & 2 Vict. c. 94) from one of the three offices, Rolls, Petty Bag, and Enrolment, and since

January, 1849, the latter only. The entry of the disclaimer is usually by a clerk of the office; printed copies of the specification are found convenient by all parties, including the judge and jury. The provisional specification, under the 1851 Act, will doubtless be made accessible; and that which is required under the recent rules of the Attorney-General. A deposit made under opposition was used in evidence in *Hancock* v. *Somervill.* Foreign patents are sometimes employed as evidence of novelty and authorship: (*R.* v. *Hamilton*, 14 Repert. Pat. enlarged.) The letters patent and specification are construed conjointly (*R.* v. *Arkwright*, Dav. P. C. 128; *Morgan* v. *Seaward*, Webs. P. C. 173, 176); but the latter is not absolute proof (*Cornish* v. *Keene*, 3 Bing. N. C. 250; Webs. P. C. 393) of the meaning of the prior instruments, and the interpretation, especially of the specification, requires detailed consideration.

The *first* rule is that they are not to be construed with rigour, not so as to "subject them to over nice and critical refinements;" "not to fritter them away on formal or subtle objections of a purely technical character:" (*Story*, Curtis on Patents, 128.) Patents are based on national policy and justice, and the courts will not be (*Russell* v. *Cowley*, 1 C. M. R. 864; *Hallett* v. *Hagen*, 2 B. & Ad. 377) astute to find flaws: (see *Beard* v. *Egerton*, 8 C. B. 165.) *Ut magis valeat quam pereat* is sometimes applied to this; but a better maxim would be that of not presuming fraud (*Mangnall* v. *McAlpin*, 3 C. B. 496; *Morgan* v. *Seaward*, Webs. P. C. 170); thus, of two meanings, that which would be fatal to a patentee should be avoided, but *quære* whether, subject to this, the less favourable one, the narrower range, be not preferable on the rule of construing words against him who uses them. Perhaps the modern power of amendment, too, may render the courts somewhat more rigid than when the whole patent was at stake on each point. A man will not, however, (*Mangnall* v. *Mc Alpine*, 3 C. B. 518) be presumed to claim

what is notoriously old, so that evidence of extreme publicity may sometimes assist the patentee; so (*Crossley* v. *Beverly*, Webs. 112; 1 Moo. & Mal. 283) a claim is interpreted with reference to what was then cheap enough to be employed. *R.* v. *Wheeler* (2 B. & Ad. 349) speaks of "unnecessary ambiguity affectedly introduced," and then of that which "tends to mislead:" the latter is the true point: the *animus* is immaterial; but a positive mis-statement cannot be removed (*Neilson* v. *Harford*, Webs. P. C. 317, 321); unless it be on an immaterial point it is fatal. A mere misuse of words is unimportant, as where a man injudiciously claims a "principle" after really describing an invention; the word is one of bad reputation, but (*Watt's Patent*, 2 H. Bl. 463; Dav. P. C. 361) there is no magic in words.

Secondly.—Reference is always had to context (*Neilson* v. *Harford*, *supra*), or even to drawings (*Bloxam* v. *Elsee*, 1 C. P. 563), which may explain apparent mis-statements or inappropriate words, and (*Derosne* v. *Fairrie*) to define an expression that is vague. This ought to have applied with peculiar force to a case like *Beard's*, where the main channel is clear enough, and a little side stream interrupted by an error, his general description was elaborately correct; but he (with superfluous pains) appended a variation of the process under special circumstances, and a blunder here, though ultimately got over, led to much difficulty. In detailing the steps of a process the context is indispensable. A man, said Lord Abinger, must gather as he goes. Under this head we may place the rule of qualifying general words by their antecedents, and inserting the word *ejusmodi:* (*Crossley* v. *Beverly*, 1 Moo. & M. 283.)

Thirdly.—But all parts of the context are not of equal force. The claim, or any part which assumes the office of claiming, is of a more legal and precise character (*Electric Telegraph Co.* v. *Nott*, 20 L. J. 123, C. B.), explained, but not indeed, readily contradicted by the descriptive portion

Mangnall v. *McAlpin*, Newton L. Jour. C. S. 209); and the verbal questions here are more narrowly looked to; as, where a specification (*Croll* v. *Edge*, 14 Jur. 553) inserted the words "therein and" into the title of the patent:—"Improvements in the manufacture of gas, and in the apparatus used [therein and] in the measuring and transmitting it." So, in *Stead* v. *Carey* (1 C. B. 496), "the invention" was materially different from "an invention." The one claims a result by any means; the other only by one means in particular.

Fourthly.—The ordinary common sense of words may always be displaced by evidence of specific meaning, either as to terms used in a technical and perverted sense (*R.* v. *Metcalf*, 2 Stark. 246; *Elliott* v. *Acton*, Webs. 222), or when, without such evidence, the term has no meaning at all. And, again, the state of contemporary art must be regarded: the scope of an expression becomes wider or narrower in the progress of science: (*Electric Telegraph case, supra.*)

Fifthly.—But, of course, evidence is unavailing as to what the patentee omitted to write. *Wharton's patent* (13 Rep. 248) was for bands (wire coated with gutta percha, and described as adapted to harness, packing, &c. Evidence was inadmissible that the idea of using such bands for electric telegraphs (as was actually done afterwards) occurred to the inventor, and though unspecified, was fully contemplated by him.

And *lastly*, — The construction of a specification in some degree resembles that of a will; the one, however, exercises a right, the other executes a duty, and the interpretation of the patentee's language is followed by a question of fact, viz.: whether the interpreted meaning afforded a certain result, amounted to efficient instruction in the art.

Circumstantial evidence is not usually important. If, however, the facts of the use of certain processes be in dispute, the identity of the product, coupled with secrecy

in the operation, is evidence of infringement: (*Hall* v. *Boot*, Webs. 100; *Huddart* v. *Grimshaw*, Dav. Pat. Cas. 265.) The remarks of the defendant at a previous period often show that the invention was new to him, but do not prove absolute novelty; and his visits to the premises, and obtaining models, &c., may show whence he derived his knowledge of what he alleges to have been publicly known. The claims between two persons as to inventorship, where any communication has passed, is obviously difficult, the degree of assistance derived from one another is only known to themselves, and there is little of that master's handworkmanship—that characteristic touch, which identifies some of the creations of art. A defect blindly imitated—a servile copy, suggests piracy, and variations are sometimes seen to be introduced for mere purpose of colourable difference; but a more serious part of the case is often to prove that the plaintiff's own practice falls within his patent, which though not altering his right, prejudices his invention in point of merit.

There is seldom much stress on the question of utility, whether as to the consumption and commercial value, or the tangibility and substantial existence of a patented something—still less on the old point of pubiic policy. Novelty is the valuable part. It is a negative, and cannot (*Cornish*, 3 Bing. 570; Webs. 501, 513) be made absolutely secure. It may be built up by any number of witnesses who had any amount of chance of knowing it, and then be overthrown by the assertion of some person evoked from the remotest and obscurest district, who produces an article which was once publicly exposed. His credibility is, of course, to be questioned, apart from wilful falsehood. A mere belief that he did so and so will not do. It is easy for a man to think *à posteriori* that he must have gone that way to work; and a man's vanity helps to convince him that his success was complete. The reply is—"Why, having attained a complete result,

was it not turned to profit?" It may be remarked generally, that it is important to keep the witnesses to then known facts, to prevent their importing into the prior period what they have subsequently ascertained.

The judge explains the points really involved in the pleadings; the main points, as in Lord Mansfield's time (*Liardet* v. *Johnson*, Bull. N.P. 76), being two—the novelty of the invention, and the sufficiency of the account given of it. The judge states the effect of the specification, either aided by the evidence as to special terms or circumstances which may affect the language, or leaving it conditionally, as the jury find such special sense. He states what and how much is claimed, and what the patentee says in explanation of the mode of performance; also what degree of precision is required in one, and what degree of copiousness in the other, in other words what amounts to a fulfilment of the proviso. The whole specification, as an instruction to workmen, may be deemed a long technical term; it is a matter, however, of *fact* what operations it would conduct him to: (see *Neilson* v. *Harford*, *passim*, Webs. 295, 331.) The judge defines the degree of identity or similarity which would infringe, also the legal conditions of the right infringed, inventionship, and publication, and the legal idea of a manufacturer, just as (*Clementi* v. *Goulding*, 2 Campbell, 255; 11 E. 244) the court included music under the term book, and in the mining cases it was matter of law that a mine was a mine by the mode of working, not on account of the mineral obtained from it.

Legal points, when reserved, often lead to elaborate argument, authorities are often at conflict, and the altered nature of practical art and society require a degree of accommodation of the old cases (see Lord Mansfield as to *Bircot's case*, Bull. N.P. 76) patent practice is sometimes recognised (*Boulton* v. *Bull*, 2 H. Bl. 463), and sometimes the old common law referred to: (*Crane* v. *Price*, Webs. 377; 4 M. & G. 580.) Baron Alderson speaks of the

loose dicta (*Morgan* v. *Seaward*, Webs. 190) in this branch of law, and it is curious that he had just before alluded to the reason of the kaleidoscope patent failing, which it seems (Sir D. Brewster's recent evidence, Ho. Com. 1851) did not fail at all. It will be recollected that the court were divided on one of the oldest cases: (*Watts's patent*, 2 H. Bl. 463.) And in a recent instance (*The Electric Telegraph*) the court took *further* time to consider, with a remark, according to the papers, by Mr. Baron Maule, that the more the court studied the case, the less they understood it. Coke's authority was early set aside, and his "Discourse on Monopolies" pronounced more copious than intelligible (Baron Parke, in *Seaward* v. *Morgan*, Webs. 197), indeed patents have pretty well outlived the disgrace they fell into from their connexion with those arbitrary imposts. The judges, in modern times, have more than once expressed their sympathy with an inventor, and regret at having to deprive him of his moral due on technical grounds: (*Morgan* v. *Seaward*, Webs. 194.)

The damages, as stated in a previous section, are usually nominal: as to the apportionment of costs under section 3 of the 5 & 6 Will. 4, altered by 5 & 6 Vict c. 97, (*Losh* v. *Hagen*, 7 Dow. 495; Webs. 202), the statute affects the specific issue, but does not decide the general costs. The proper period for putting in the certificate of a former trial is, probably after the trial, so as not to prejudice that case: (*Newall* v. *Wilkins*, 17 L. T. 20.) The certificate as to nominal damage (3 & 4 Vict. c. 94) must be obtained before the next case (*Gillett* v. *Green*, 7 M. & W. 347); the certificate under the Patent Act may be obtained at Chambers, and that under the County Courts Act if the case could have been tried there. And a certificate is required (5 & 6 Will. 4, c. 83, s. 6, Reg. Gen. s. 74) of the objections that are proved. That of the validity having come in question is at the judge's discretion, who may think the title too insufficiently tested (whether by

collusion or accident) to be allowed to prejudice subsequent defendants (*Stocker* v. *Rodger*, 1 C. & K. 99); it was, however, granted in *Gillett* v. *Wibley* (9 C. & P. 334; Webs. 270) though only part of the title was proved, there is the additional security against the patent, that at the subsequent trial the judge (see the Act, s. 6) may deprive the prior certificate of its effect.

CHAP. VIII.

COPYRIGHT IN DESIGNS AND WORKS OF ART.

SECT. 1.—UNPUBLISHED.

WE may add, to what is said in Chapter II., that the gift of copies to private parties, or the private negotiation for its sale, do not amount to publication, though it may lead to irreparable violation, and under the Designs Act, 1850, a public exposer at the Crystal Palace is made secure from that danger also.

A contract to execute a work of invention cannot be directly enforced, though it may be negatively withheld from execution for other parties (*Clark* v. *Price*, 2 Wils. C. C. 157); such a contract may be for a fixed sum, or a royalty on the copies taken, or on the profits, or the engagement of a designer's services may imply a right to his productions: (*Makepeace* v. *Jackson*, 4 Taunt. 770.)

SECT. 2.—COMPETENCY FOR REGISTRATION.

Designs must be new in this country, "or elsewhere," which probably requires novelty as to all nations, and rather favours the right of an alien to register. The Engraving Acts refer to plates executed in England (*Page* v. *Townshend*, 5 Sim. 295), a circumstance not alluded to in the case of *Boosey* v. *Jeffreys*: (Q. B. 1851.) Copyright in design is the only class not provided for by the International Act; but it must be taken, on the last-mentioned case, that the balance, at least, of authority is in favour of the right of the foreigner, whether residing here or abroad, and that the *lex loci* must determine the rights of foreign parties in the property, Designs of all copyrights are most

analogous to patents, in which the liberal side of the international question has always been received. The designer may be cautioned that publication here affects the right in other countries; and that, except in the United States, printing is expressly made publication. Registration, *per se*, does not publish an invention: (*Wigram* v. *Brown.*) The point of novelty (see Chapter I., section 2) occurs most in utilities, as to which it is almost impossible to secure the point; but what is new to an individual is probably new to the members of the trade, and that is a *presumption* that it is new altogether. As to the qualification of the subject-matter for protection, the nature of sculpture is pretty obvious; see, however, the verbose enumeration in the acts: it is the character of the art that determines the point—not the themes or object represented. As to ornament, also, see the Act of 1842; but as to the other class of design, that of useful form, shape, or configuration, a point arises requiring a little especial discussion, viz., the connexion existing between form and its effects; there are, unfortunately, two systems of legal protection, differing materially from one another, viz., patents, and useful designs, copyright; the latter, expressly restricted to form; the other, including useful arts of every kind; the province of the one, therefore, being avowedly a part of the other, and there being motives for including as much as possible of the patent district with safety under registration: and notice that—

1. Simplicity, or deg ◦ of value, has nothing to do with the matter; a new pair of nutcrackers might require a patent—a new arch for a metropolitan bridge, of gigantic cost and dimensions, might properly be registered.

2. It need hardly be stated that the word "principle" has nothing to do with the question except in a conventional meaning sometimes given to it, of action as opposed to force.

3. Chemicals, and raw materials for a certain purpose are clearly inadmissible, except in so far as the form of the

latter can be defined; the arrangement of fibres in a thread, or the grains in a cement, is nearly indistinguishable; but the strands of a rope may be registered, or a special form of grains of mosaic, though the individual portions are useless till combined.

4. As to mechanical action, and here arises the main difficulty. All action is carried on by *appropriate* shape: thus, to squirt water, you must have a certain tubular form, and a rod adjusted to it; the tube must be cylindrical, and the piston straight, and some other points of form must be adhered, and some relative proportions: no doubt some immaterial part may be altered, the diameter of the cylinder and direction of the spout, but this merely shows that there are variations of a form, and variations are not allowed to evade copyright. Now turn the doctrine the other way. A form is put together to effect a mechanic motion or pressure, to transmit or retain mechanical force; a pin is pointed at one end to penetrate the material, and blunt at the other to unpenetrate the finger, and when placed in position it holds two surfaces together; it performs all these functions whether round or flat headed, straight or curved. The degree of variation sometimes seems to destroy all recognisable identity, and sometimes no variation at all is permissible, thus: a glazier's diamond must be at one particular mathematical angle; but in his panes of glass (for skylights) in one point great latitude is practicable; they are sometimes curved at the base to lead the water to trickle down the centre between the sash bars (a most distinct instance of *utility* attained by *shape*), substitute an angle for a curve, and the utility is still there, it is really the same thing, the base of the pane is the thing registered: but what can be more different, geometrically, than an angle and a curve. It is, however, essential to notice that the two forms have a certain type or principle in common; but the shapes effecting a principle may be so wide asunder that this cannot be detected—the limit cannot be accurately marked—different persons will

more or or less recognise an identity of form. Thus, in *Wolferstan* v. *Warner* (41 Mech. Mag. 314), a cock allowed three vents to open by a turn of one handle; the position of the points of action was copied, but the connecting outlines were varied. This was decided to be different, though identical in utility: (*Fox* v. *Evans*, Pat. Jour. 1847.) A dial-face was lighted by a candle, the shadow of which travelled down as the candle consumed, but in the imitation, the wasting of the candle liberated a coiled wire, which (the flame being stationary) moved the face of the dial. This was considered a piracy, but here the identity *of form* is obscure. In *Kennedy* v. *Coombs* (26 Newton Lond. Jour. 111), an inkbox dropped into a well in a desk, the hinge being arranged so that the lid opened upwards, and, therefore, without removing the box from its place. The same result, attained by another kind of hinge, was considered no piracy of the *design*. *Margetson* v. *Wright* (2 De Gex & Smale, 420) was about a direction label, for tying to a parcel. The string was prevented from tearing the paper by a metal eyelet to the perforation. An opinion of the Attorney-General against the validity of the matter for registration was produced at the trial, but no judicial decision took place on the point.

It is submitted that the subject either was, or might have been efficiently registered; the use of metal, indeed, was clearly not registrable; but the use of metal was only a convenient means, the essence of the invention, this lay in thickening the edge of the perforation sufficiently to prevent the commencement of a rent, just like hemming the edge of handkerchief; it was the *shape* of the hole that prevented the tearing. In *R.* v. *Bessell* (17 L. T. 104) the court ruled on the visible ocular non-identity, and on the putting together parts with screws; the claim was to the "configuration and combination," not the parts *per se*. There is nothing necessarily wrong in this not holding to be a shape; but of course the application of screws at particular points would construct a special form,

and the reliance on visible character is subject to the distinction between the vital and accidental portion. The court admitted the point to be difficult. Another question was raised as to this act (*Hodges* v. *Driver*, 16 L. T. 364); but it hardly needed a decision in Banco that a concave surface, an intaglio, for instance, is a form and configuration; the matter in dispute was a hollow brick, and it is difficult to imagine anything more exactly within the province of the act.

Sect. 3.—The Value of Protection.

A picture is not easily copied, nor a statue moulded from, or modelled; and there are works of art which the public will only obtain at the hand of the artist himself. Again, in respect of demand of a transient nature, as fashion and light literature, the pirate may be forestalled, or the article may be introduced to the market so well and cheaply as to offer no chance of profitable infringement. But if many copies are issued (and those are the cases most liable to piracy), the cost of registering is but little on each. Such multiplication of impressions, however, admits of employing superior moulds, types, and machinery, which is the most efficient of protections; and when the number of parties possessing means of piracy is limited, character and moral feeling may be relied on. Whether the registration mark give an article any favour in the eye of the public is doubtful; it may not, like the word "patent," be used in the absence of the fact.

Sect. 4.—Form of Registration.

The choice of the class of protection is regulated by the act, the owner's interpretation of it being checked by the veto of the registrar, though the liability is still his own: he obtains a *primâ facie* right, the defendant has to prove it defective. The periods and prices of the classes vary (see Rules in Appendix); and it is the ultimate result that is looked to in selecting among them; thus (*Lowndes* v.

Brown, Q. B. Ireland, May, 1848); a pattern first *printed* on the ground, and then *worked* with a needle, was well registered under Class 10. *Quære*, whether an article of platted palm leaf were rightfully registered as an article of wood, Class 2: (*R.* v. *West*, 17 L. T. 83.) It might sometimes be worth while to register an ornament in more than one class to prevent vulgarisation, such as the printing on calico, a design registered for silks; but as publication in one class would be so in all, this must be done before any form of the pattern be in circulation. The person entitled to register is the author or artist, in respect of sculpture and engraving; in designs the proprietor (see the act 5 & 6 Vict. c. 100, s. 5), whether the designer or not, and it may be noticed that in sculpture and engraving the right attaches to the existence of the plate, type, or model; in designs it is complete as a drawing from which a mould, &c., may be made.

The object of these forms is to warn the public from trespassing on a right; to communicate to them the period when the right expires; and if infringement occur to facilitate the remedy. In the case of the older branches—sculpture and engraving—this is very imperfectly effected; as to sculpture (as far as regard the old acts) a name and date must be attached to the model, and it is then inferred probably, that every cast will bear it. As to engravings, there are a number of decisions respecting the name to be annexed to the plate; it seems that the three acts are to be construed together that the date is essential, and that the *word* "proprietor" is not; also, that the name should be the *original* proprietors. As to forms for international copyrights in the above classes (see Turner on Copyright) the act (7 Vict. c. 12) is not practically in operation.

But with the first of the existing designs acts (1842) a more organic system was introduced and an office constituted, the rules of which afford copious information (see Appendix), subject to some explanation and criticism.

1. *Ornament.*—The rules restricting the size of sample or

drawings, though reasonable to be complied with, are not authorized by the act; and the practice of attaching the same mark to all designs, sent at one time by one person, seems open to inconvenience as to subsequent identification. To show the position of a design, something not intrinsically part of it may require to be shown (see a decision against the registrar in Newton Lond. Jour., No.CCXXX), and generally (same case) that the office does not judge the sufficiency of the drawings. The name of the class is all the description required, and anything more the office need not receive. Thus, "I, A. B., proprietor of the enclosed design, desire to register it under Class 3," is on payment of the fee all the requisite formality.

2. *Utility.*—Certain inventions (see sect. 3) are subjects, at pleasure, of a patent or a registration; and as their respective administrations are profoundly ignorant of one another's proceedings, two evils may occur. 1. The public may know nothing about a patent till six months after it is sealed (see Chapter IV.), for the title is an enigma, and the deposit outline is locked up. If two competitors in any walk of art, light on the same idea (*Brett* v. *Electric Telegraph Company*, 30 Newton Lond. Jour.), one may register (and lose his fees) what is already privately secured in the Patent-office. 2. The really first inventor may be six weeks in getting his grant, and a party coming subsequently may in one day effect a registration, and be first in law. Both evils afford facilities for fraud as well as accident. In the former case it would seem (*Cornish* v. *Keen*, Webs. 510, 513) that the mere grant of a patent is not *absolute* evidence of what is contained in the specification in the latter case. Registration *alone* (*Wigram* v. *Brown*, not reported) would not vitiate the patent, and it may be questioned whether (section 10) such a registration might not be transferred to the patentee.

The title of the design is immaterial; it may refer to the object, the use of the article, or the nature of its

operation; or have no meaning at all; as a proper name; any such word, however, as is proscribed by the rules of action, principle, &c., had better be avoided. "A new lever action," however, passed muster; a new lever for such and such action would be better.

The drawing and description require a little consideration; the first is not so absolutely a copy as in ornamental design, the object being to show prominently the essential features; and it may be well to lean much on the description, words being general where drawings are particular, "a triangle" pledges you to no proportion, it may be rectangular, equilateral, obtuse, and so on. The first point should be to get an actual working specimen of the article in its most characteristic shape, and then to consider what variation of detail would leave it in possession of its identity. From such limits a central standard would be deduced; next, it may be compared with whatever it might be an improvement of, or the elements of which it might be composed; it would be worth while to make drawings of all such matters which would not enable accuracy in the registration paper, but also suggest minor practical improvements in the article. The scale might be reduced or enlarged from reality, and details should be omitted or subdued by fainter outlines, or distinguished by colour, from the principle which should be conspicuous. The novelty might be similarly distinguished from the old parts, or the elementary parts may be shown by separate sketches. A sample is sometimes admitted, when flat enough for a book, but this seems an irregularity. It will, of course, be sometimes necessary to draw the object to which the design may be an appendage—a blade, for instance, where the design is for the handle.

The description explains the drawing and defines the points claimed; it does not seem bound like a specification to tell the material or mode of making, which, indeed, is usually obvious. Under the last act (1850, section 11) writing may be received by the registrar without drawing

at all. The words ought, as much as possible, to state the principle, the drawing being an example of it; a spiral wire, for instance, to act as a spring is usually cylindrical. A double cone, like an hour glass, would, in most cases, be an infringement, though it would be different to the eye, as is seen in the drawing; the useful effect is the same, and this is given by the words. *Motte* v. *Welch* (17 L. T. 105) showed a curious error; the ingenuity was in cutting *one piece* of leather to form the whole of a portmanteau; the drawing showed the latter made up, which was merely an oblong like any other box. It was only by laying the sides flat that the new form was apparent. The new form was the means; the form claimed was the result, which was old. Had a type case (*Gallie* v. *Thorowgood*, Pat. Jour., January, 1849) been argued, it would, I imagine, have shown a similar defect; what was claimed was italic types, sloping to an unusual degree. Now (besides the question whether sloped letters, however ornamental, be utilities), a sloped character is not new; it has always been done in engraving: the sloping, however, was but the result; the invention really was a particular base to the type, which allowed of oblique letters being securely packed in the case.

The provisional registration requires description enough in the registrar's judgment to identify the invention; and in all the designs there would probably be an appeal to the Board of Trade, though not explicitly given by the 1842 Act, and by the 1843 Act only as to designs wholly refused registration.

Sect. 5.—Enjoyment of Right.

A registration is not a publication, and it need not be brought into use at all. Copies of designs, *i. e.* manufactures, must, at the time of issue, be marked. (See Ornamental Act, s. 4; Utility Act, s. 3; Provisional Act, s. 3.) Prints and sculpture have the impression of their plate or

mould; the design itself or copies of it, as on paper, a book, &c., require no mark (*Branchardiere* v. *Elvery*, 4 Ex. 380); and so with designs in the provisional state. The mark may be printed, moulded, or attached on any part of the article, or to the end of a piece of fabric; in the latter case it will, of course, be cut off in using the article; and on articles, as a stove, &c., it is often placed in an inaccessible part.

The mark (sect. 4) must not be applied to an unregistered article; it must not be *applied* to an article after expiry of the right, or one made out of this country; the latter restriction is implied in the Utility Act, or would be extended to it.

As to the transfer of the right copyright is personalty, see the Literary Act. The Sculpture Act speaks of transfer "by a deed in writing," and it is doubtful whether the contingent fourteen years would fall to the author (if surviving) after transfer of the right generally. The property in prints seems appurtenant to the plate; the acts also mention a licence to copy the plate, and leave to use the plate to a certain extent, might be sold as for a certain edition, which (*Sweet* v. *Cater*, 5 Jur. 68) implies an exclusive right till that impression is disposed of. Compare the section on patent licences, and some precedents as to books (Jarman's Conveyancing, vol. 7.) Selling a copy of a design is not absolutely licence to apply it; thus, in *Branchardiére* v. *Elvery*, *supra*, copies of patterns were deemed to be sold for private use, not to make articles for sale. See the act as to the mode of transfer (sect. 6, 5 & 6 Vict. c. 100) which may apparently be registered at any period after the transfer between the parties, and blank forms are provided at the office of the requisite applications both for voluntary transfer, and cases of death, bankruptcy, &c. It seems that contracts for copyright are enforceable in Equity: (*Thombleson* v. *Black*, 1 Jur. 128.)

Sect. 6.—Wrongs.

A breach may by the act be of all or any part: it is not usually direct, some degree of disguise being employed, and some original matter added. Upon this point, however, we must refer to the chapter on patent infringement, and that in which principle and form, &c., are discussed. It is obvious that the making is the real piracy; but the sale is sometimes the only accessible one. An innocent sale, however, only becomes culpable after receipt of notice of the piracy on the part of the proprietor of the design: subject to this making wrongfully would seem to be one breach, and selling another; and in any case each copy is a separate offence, which makes a fixed penalty disproportionate, as it falls heavily on the piracy of a gross of small articles. The Designs Acts forbid applying for sale: the latter qualifications seems to be passed over in *McCrae* v. *Holdsworth*: (2 De G. & S. 496.) It is sometimes put, that private and domestic imitation does not amount to piracy, because it seeks no profit; but this would bear out the imitating and giving copies to the public: the true test should be, the injury to the copyright holder. In *Moore* v. *Clark* (6 Jur. 648) there was no injury to the original sale, and it was a question whether there could be nominal damages, and after once doing homage to the owner of the privilege, the subsequent employment of any copy is unrestrained, it may be used or transferred in any manner whatever. Unfair criticism might damage a copyright in the way of libel, but would not be an infringement (*Bell* v. *Whitehead*, 3 Jur. 68); and so, perhaps, the vulgarising it by such a qualified use as should not be within the term "imitation" (*Martin* v. *Wright*, 6 Si. 298), such injury would seem to be analogous to a nuisance. The Designs Act forbids application to *any* article of manufacture, which probably means any such article as registered. "For sale" would probably include "letting to hire" on the section which gives the right,

which, however, does not seem to cover any liberties taken with a design, apart from its use for manufactures. Taking copies illegally, from a legal plate, is not an offence under the Print Acts (*Murray* v. *Heath*, 1 B. & Ad. 804), it would be the same, probably, with sculpture. Designs are on this point altogether dissimilar; a fraudulent use of the registration mark affords sometimes a means of punishing an infringer (see sect. 11, 5 & 6 Vict. c. 100.)

Sect. 7.—Remedies and Proceedings.

A single successful prosecution, or even an apology published to others, is generally effectual; and notice to sellers will often check piracy, or bring the real infringer to light, noticing at the same time that damages would probably be incurred by such notice, if unfounded: (5 & 6 Vict. c. 100, s. 11.) The proceedings requiring notice are three: the summary one, given by the Designs Acts, and the equitable and the legal remedies specially given by the statutes, or attaching to the general right, as constituted therein: (*Sheriff* v. *Coates*, 1 R. & M. 159; *McCrae* v. *Holdsworth*, 2 DeGex & Smale, 496.) Election, however, is necessary between proceeding for penalties or damages: (Designs Act, 5 & 6 Vict. c. 100, s. 9.)

First.—The penal process in design cases is, before local magistrates, it would seem to include County Courts, and one such case is said to have been tried at Birmingham. One magistrate suffices (Jervis's Act) not being himself actually engaged in that trade (sect. 8, Designs Act, 1842); the jurisdiction is that wherein the defendant *resides*, not his place of business; a point on which several cases have failed. No special form of notice is requisite; it may be verbal to the party, or left for him in writing, signed by the proprietor, or for him; but must be delivered by a party who can prove it. The information (see sect. 8) will be filled up by reference to the certificate as a design for ornamenting a certain article (to wit, a lamp), and the breach made to tally with the words of section 7; a state-

ment that it was after notice and without licence, &c., seems proper, notwithstanding the provisions of Jervis's Act: in *R.* v. *Welch* (17 L. T. 105) the conviction (even aided by the depositions) did not show whether there had been notice not to sell, or not to apply, and it was quashed. Sometimes two counts are made: viz., 1, applying the design, and 2, applying an imitation of it; or, 1, selling, and 2, exposing to sale: and it is prudent in utility cases to refer to the Acts both of 1842 and 1843.

The largest amount of penalty has hitherto been 30*l.*; a 60*l.* was given (in one case), but set aside by *certiorari*. Costs are given to an uncertain amount, the penalty being often adjusted to cover the professional expenses. A defendant (sect. 13) is entitled to costs.

Counsel are often employed, and the cases are usually unwelcome to police magistrates, to whose business they are essentially foreign, while unprofessional magistrates often take prejudices and crotchets on the points of interpretation that arise. No appeal is given (see sect. 8 as to Scotland), but several cases have been removed by *certiorari*; and in *R.* v. *Welch* (17 L. T. 105), and in *R.* v. *Bessell* (17 L. T. 105), it was said that from the discussionable nature of the question, though the decision was quite wrong, no action would be allowed against the alderman who pronounced it.

Secondly.—Equity will afford an account or an injunction as in the patent cases which are analogous, copyright being, however, still more transient in duration (*Sheriff* v. *Coutts* (1 Ru. & M. 159), and the court still more chary of interference. The question of originality, it seems, must go to a jury, but the comparison of the original and the piracy is often a matter for the court to inspect; if difficult, it goes to a jury; if voluminous, to a Master. As to confiscation of the plates and block, and impounding the impressions till the expiry of the term, see *McCrea* v. *Holdsworth* (2 De Gex & Smale, 496); after this period, the court looks with disfavour on the prosecution of proceedings: (*Dalgleish* v. *Jarvie*, 2 M. & G. 231.) The bill

usually states the origin of the right, the compliance with the formalities of marking, &c. It may properly state that A. for money, by direction of C., drew, &c., whereby C. became the proprietor: (*McCrea, supra.*) The exhibition to various persons before registration of a design, is a material fact in the title, and should be stated: (*Dalgleish, supra.*) The breach may be taken from sect. 3, which gives exclusive right to *apply*, unrestricted by sect. 7, which forbids others to apply for sale.

Thirdly.—Legal process will, of course, be in the name of the proprietor; as to the case of joint proprietors, see the section on patent actions. The period of limitation is, in sculpture, six months from the discovery under the old acts; and twelve months in designs and sculpture after registration. The agent or seller cannot be sued along with the maker; a part proprietor of a design is a proprietor under the act. The action for a design may be in debt or case; in sculpture case only; and (*Roworth* v. *Wilks*, 1 Camp. 94) a piracy under the Print Acts may be joined in an action respecting literary copyright; as to damages, see the observations in reference to patent cases.

There is nothing peculiar in the declaration (see *Margetson* v. *Wright*); compliance with registration, and marking clauses, is essential to the plaintiff's title (*McMurdo* v. *Smith*, 7 T. R. 518), and assignments must be duly stated to be legally effected; the pleas resemble those of a patent case (*Margetson* v. *Wright*, Q. B., Feb. 1849); they denied the proprietorship, novelty, fitness of the subject for registration, the due registration, and the breach. A plea that B. was not the inventor or proprietor of a design for, &c., does not go to the subject-matter (*Millingen* v. *Pickle*, 1 C. B. 799), but only amounts to "you did not invent it, nor did you pay for it."

Evidence and Argument generally.

Firstly.—Formal, as to certificate, &c., see the acts and

rules, and sects. 12, 13, 14, of the recent act, 13 & 14 Vict. c. 104. With reference to the certificate, this puts the plaintiff *in possession* of the title. The defendant must displace this, and it is obvious that the *prestige* of an official document is sometimes a material advantage; the rules of the registrar says, that the certificate is no evidence of validity, but the registrar has no authority whatever to construe this portion of the act, or rather to contradict it. The proprietor is not bound to adhere to his own design, but in proportion as he departs from it, he excites an unfavourable prejudice; and both on this head, and in the comparison of piracies, the object is to show the identity of the shape, if not ocularly, yet in respect of its utility or purpose. Purpose, it is true, must be got by shape, but shape must be weighed and valued; the quantity taken may be small, but it may be the grain, which is far less bulky than the wheat: much of a painter's success lies in knowing in what particular lines of the countenance the *expression* resides. To exhibit this, it is often worth while to show the effect and operation of the article in actual practice; no actual specimens, however, are necessary, even in print cases, where there is no registration, as if (*Fradella* v. *Weller*, 2 Russ. & M. 247,) the exhibits of the piracies be lost or (*Thompson* v. *Symond*, 5 T. R. 41) the original plate, and it is well to view the imitation separately as well as together, the former being probably the mode in which the purchaser is deceived. The lower price of the pirated article was noticed as evidence in *Roworth* v. *Wilkes* (1 Ca. 94), and the *primâ facie* similarity may be borne out by actual sales supplanting the original. A degree of variation which does not affect the general result is often an indication of an attempt at concealment of the fraud. It is the business of the defendant to restrict the claim as closely as possible to one particular shape, and to contend that if it be a useful invention he merely used facts familiar to all; or, if an ornamental one, that he merely

delineated from natural or existing objects their inevitable outlines. But (*Blackwell* v. *Harper*, 2 Atk. 92) there is no claim to the natural plants which are drawn in a herbal; they are claimed *modo et formâ*, as in that particular print "an engraving is not a monopoly of a picture; you also may go and copy it, but may not save yourself trouble by drawing from him" (*De Berenger* v. *Wheble*, 2 Stark. N. P. C. 548): it is true, "in so far as it is a copy (*Roworth*, *suprâ*) you will in copying produce the same: *Newton* v. *Cowie*, 12 J. B. Moo. 457.) An artist has a right to his own peculiar treatment of a common theme; men's styles are their own, as their faces, and indeed a single person's ideas vary like the perpetual changes of the kaleidoscope, and one very effective test of copying (when it occurs) is the reproduction of a blunder; it is almost the only circumstantial evidence in record of pure fact, a mathematical table for instance, or what is meant to be a transcript of a real object. So, of combinations of parts, "The Ancient Mariner" is an original poem, though all the words may be found in the dictionary. A difficult point in copyright is, how far the public may avail themselves of a prior work as material for reproduction (see the literary cases as to abridgments, &c.) Probably the original may be deemed to be given to the world for all purposes that do not injure itself (*Moore* v. *Clark*, 6 Jur. 648), and (*West's case*, 5 B. & Ald. 737) the point turns on the piracy of the main design; thus in music, of the air, though clothing in new variations: (*Dalmaine* v. *Boosey*, 1 Y. & Coll. 288.)

As to remedies in general, it may be noticed that the right is essentially one of property; the intention to pirate, except as to evidence of the fact, has no proper place in the argument. As to the labour that has been spent, on pirated material, the wrong-doers must suffer any loss consequent on restoration: (*Lewis* v. *Fullerton*, 2 Beav. 6; *Mawman* v. *Tegg*, 2 Russ. 390.) The maxim of law not caring for minutiæ, is inapplicable to these cases, where

one case becomes a precedent for many, and where the judicial proceeding is really a mode of proving title, though, of course, it applies where (*Baily* v. *Taylor*, 1 R. & M. 73) the entire subject-matter is trivial.

The rule of construing penalties strictly ought not to operate here; it applies properly to matters of questionable wrong, not to direct violation of property, which may be the ruin of the owner; indeed, juries and police magistrates are, on the whole, favourable to a plaintiff, practically appreciating that *jus possessionis*, which is almost always on his side, for whatever be his title, it is to him and him only the pirate owes the idea. Questions of piracy are more obvious and less technical than those of original title, and more appreciated in a police court or a jury; they lie between man and man—not between one man and the public.

CHAP. IX.

TRADES MARKS.

THESE are principally employed on manufactured articles, to warrant their maker, but the names of public conveyances (*Knott* v. *Morgan*, 2 Ke. 213), or even on business premises, prospectuses, &c. (11 Jur. 938), are analogous. As are the titles of books and periodicals: (*Hogg* v. *Kirby*, 8 V. 215; *Spottiswood* v. *Clark*, 2 Ph. Ch. R. 154.) The forgery of such *indiciæ* is a fraud or deceit on the purchaser by an implied guarantee of authorship, but the injury to the counterfeitee is not properly a fraud, though loosely so called, but a piracy of good will, depriving him of profit by something analogous to personation: (*Croft* v. *Day*, 7 Beav. 84; *Knott* v. *Morgan*.) The notion of a *property* in the marks has been expressly repudiated: (*Crawshay* v. *Thompson*, 5 Scott N. R. 562; *Day* v. *Day*, Ed. Inj. 314), &c. And though Lord Cottenham (*Millington* v. *Fox*, 3 My. & Cr. 338) recognised "a right to the exclusive use" of the mark, this must be interpreted in reference to what the mark denoted, to the mark as a mark: (the immediate question was as to the *animus* of the piracy, and as to that the mark is analogous to property.) These observations, of course, would be inapplicable where the originality of the mark created an appreciable design or copyright.

The mark affects a man's mercantile, not his professional repute (*Clark* v. *Freeman*, 12 Jur. 149); a doctor who sells medicine, not one who prescribes it; the general business being affected, not a particular sale (*Rodgers* v. *Nowill*); such marks are particularly applicable to foreign commerce, and there is little doubt that aliens' rights exist here (*Pisani* v.

Lawson, 8 Scott, 182) as ours in the United States, and, I believe, in other countries.

Occupation and *continued* use (*Mottley* v. *Dowman*, 3 My. & C.) is the mode of acquisition, especially if avowed, but not by an express assumption alone (*Crawshay* v. *Thompson*.) The acquired, not the original or literal, sense of the mark is material, but it must not be itself a fraud on the public (*Pidding* v. *How*, 8 Sim. 477; *Perry* v. *Truefitt*, 6 Beav. 66.) The word "patent" may be employed (*Sykes* v. *Sykes*, 3 B. & C. 541) after the patent right has expired; not so, probably, if none ever existed. The right, like good will, is transferable and descends: (*Singleton* v. *Bolton*, 3 Doug. 293; *Longman* v. *Tripp*, 2 N. R. 67; *Lewis* v. *Langdon*, 7 Sim. 421.) The registration mark is regulated by the provisions of the statute.

The breach is said (*Rogers* v. *Nowill*, 5 C. B. 109; 6 Hare, 325) to consist in resemblance with fraud (meaning properly with *injury*); an imitation such as produces an injury, even if there be enough likeness to persuade the buyer that there is some *connection* (*Day* v. *Day*.) It is enough if it mislead a buyer of ordinary judgment (*Rodgers*), "a clumsy fraud" (see *Spottiswood* v. *Clark*, *supra*), and it is immaterial that the *article* is not really pirated (*Blofield* v. *Payne*, 4 B. & Ad. 410.) Any part of a mark may require protection (*Ransome* v. *Bentall*, 3 L. J., N. S. 161), and may be only employed by inuendo (*Franks* v. *Weaver*, 10 Beav. 297), or implied indirectly. It is not uncommon for the pirate to have or procure a workman or partner, &c., of the same name as that pirated (*Day* v. *Day*; *Rodgers* v. *Nowill*; *Sykes* v. *Sykes*, 3 B. & C. 541; *Lewis* v. *Langdon*), which is no justification if it be used in deception: and it is not an answer that the retailer, &c., was not deceived for the ultimate purchaser might be: (*Blofield* v. *Payne*, *supra*.)

The remedy by injunction is analogous to that in patents; a mere counterfeiting without sale appears insufficient (*Delondre* v. *Shaw*, 2 Si. 213) ground. For the

form (see *Knott* v. *Morgan*; *Day* v. *Day*; *Franks* v. *Weaver*, 10 Beav. 297), and (*Washbourn* v. *Onion*, Vice-Chancellor, Feb. 1850), as to the particularity required. It covers the use of the mark or sale of articles bearing it at home or for abroad (*Gout* v. *Aleplogu*, 6 Beav. 69.) The title may be legal or presumptive (*Rodgers* v. *Nowill*; *Day* v. *Day*; *Hine* v. *Leat*, 10 Jur. 106; *Delondre* v. *Shaw*), and the infringement shown by specimens produced, observing that they should be looked at together, and also apart, and should be estimated by reference to the average kind of marks used in the trade. The marks, if written, admit of being set out on the proceedings.

As to proceedings at common law (see *Rogers* v. *Nowill*, a patentee, by 5 & 6 Will. 4, c. 83, s. 7, has an action of *qui tam*, the penalty being 50*l.* on each offence, which, on a gross of buttons, would amount to a large sum, but the imperfection of the act has made, and probably will make it inoperative. An improper use of the word "patent" *per se*, a fraud on the public, is not affected, though it is said that the clause included this as originally framed; the patent must be unexpired, but its actual invalidity, till repealed, could hardly be an answer to an action. The general principles of the common law cases, above mentioned, would apply for the most part to the determination of infringement, &c.

APPENDIX.

Statutes.

I.—PATENT LAW.

18 Hen. 6, c. 1.

Directs letters patent to be made upon the warrant (the Privy Seal Bill) being delivered to the Lord Chancellor, "bearing date the day of the said delivery in the Chancery, and not before in any wise."

6 Hen. 8, c. 15.

An Act avoiding Second Letters Patent granted by the King.

Second letters patent (for the same thing to another party) to be void.

This act is practically obsolete.

27 Hen. 8, c. 11.

An Act concerning Clerks of the Signet and Privy Seal.

All royal grants to pass the Signet and Privy Seal.

13 Eliz. c. 6.

An Act that the Constats and Exemplifications of Letters Patent shall be as good and available as the Letters Patent themselves.—[A. D. 1571.]

Patentees may make title by an exemplification or constat under the Great Seal of the enrolment of letters patent, then not lawfully surrendered or cancelled.

43 Eliz. c. 1.

An Act for the Confirmation of Grants made to the Queen's Majesty, and of Letters Patent made by Her Highness to others.—[A. D. 1601.]

Letters patent (not being for illegal monopolies) to be favourably construed.

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21 Jac. 1, c. 3.

An Act concerning Monopolies and Dispensations with Penal Laws, and the Forfeitures thereof.—[A. D. 1623.]

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 of 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 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 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 the 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 anything within this realm or the dominion of Wales, or of any other monopolies, or of power, liberty or faculty to dispense with any others, or to give license or toleration to do, use, or exercise anything against the tenor or purport of any law or statute, or to give or make any warrant for any such dis-

The king's declaration against monopolies and grants, of penalties and dispensations.

All monopolies and grants, &c., thereof, or of dispensations and penalties to be void.

pensation, license 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 use or execution.

Proviso for charters of London and other corporations.

9. Provided also, and it is hereby further intended, declared and enacted, that this act, or anything 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 patent, to 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 merchandise; 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.

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5 & 6 Will. 4, c. 83.

An Act to amend the Law touching Letters Patent for Inventions.—[10th September, 1835.]

Whereas it is expedient to make certain additions to, and alterations in, the present law touching letters patent for inventions, as well for the better protecting of patentees in the rights intended to be secured by such letters patent, as for the more ample benefit of the public from the same: be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that

Any person having obtained letters patent for any invention, may

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

enter a disclaimer of any part of his specification, or a memorandum of any alteration therein, which, when filed, to be deemed part of such specification.

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 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 such Attorney-General, or Solicitor-General, or Lord Advocate, shall seem right, and shall, if he so require such advertisement, certify in his fiat that the same has been duly made.

Caveat may be entered as heretofore.

Disclaimer not to affect actions pending at the time.

Attorney-General may require the party to advertise his disclaimer.

2. And be it enacted, that if in any suit or action it shall be proved, or specially found by the verdict of a jury, that any person who shall have obtained letters patent for any invention, or supposed invention, was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same, or some part thereof, before the date of such letters patent, or if such patentee or his assigns shall discover that some other person had, unknown to such patentee, invented or used the same,

Mode of proceeding where patentee is proved not to be the real *inventor*, though he believed himself to be so.

or some part thereof, before the date of such letteers 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.

If in any action or suit a verdict or decree shall pass for the patentee, the judge may grant a certificate, which being given in evidence in any other suit, shall entitle the patentee, upon a verdict in his favour, to receive treble costs.

[Altered by 5 & 6 Vict. c. 97.]

3. And be it enacted, that if any action at law or any suit in equity for an account shall be brought in respect of any alleged infringement of such letters patent heretofore or hereafter granted, or any *scire facias* to repeal such letters patent, and if a verdict shall pass for the patentee or his assigns, or if a final decree or decretal order shall be made for him or them, upon the merits of the suit, it shall be lawful for the judge before whom such action shall be tried to certify on the record, or the judge who shall make such decree or order, to give a certificate under his hand, that the validity of the patent came in question before him, which record or certificate being given in evidence in any other suit or action whatever touching such patent, if a verdict shall pass, or decree or decretal order be made, in favour of such patentee or his assigns, he or they shall receive treble costs in such suit or action, to be taxed at three times the taxed costs, unless the judge making such second or other decree or order, or trying such second or other action, shall certify that he ought not to have such treble costs.

Mode of proceeding in case of application or the prolongation of the term of a patent.

4. And be it further enacted, that if any person who now hath or shall hereafter obtain any letters patent as aforesaid shall advertise in the *London Gazette* three times, and in three London papers, and three times in some country paper published in the town where or near to which he

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

[Repealed by 2 & 3 Vict. c. 67.]

In case of actions, &c., notice of objections to be given.

5. And be it 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 defendant or plaintiff on such plaintiff or defendant respectively to show cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections, on such terms as to such judge shall seem fit.

As to costs in actions for infringing letters patent.

6. And be it enacted, that in any action brought for infringing the right granted by any letters patent, in taxing the costs thereof regard shall be had to the part of such case which has been proved at the trial, which shall be certified

by the judge before whom the same shall be 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.

Penalty for using unauthorized the name of a patentee, &c.

7. And be it enacted, that if any person shall write, paint, or print, or mould, cast, or carve, or engrave or stamp, upon any thing made, used, or sold by him, for the sole making or selling of which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without leave in writing of such patentee or his assigns, or if any person shall upon such thing, not having been purchased from the patentee or some person who purchased it from or under such patentee, or not having had the 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 fifty pounds, to be recovered by action of debt, bill, plaint, process, or information in any of His Majesty's courts of record at Westminster or in Ireland, or in the court of session in Scotland, one half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same: provided always, that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "patent" upon anything made, for the sole making or vending of which a patent before obtained shall have expired.

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2 & 3 Vict. c. 67.

An Act to amend an Act of the Fifth and Sixth Years of the Reign of King William the Fourth, intituled "An Act to amend the Law touching Letters Patent for Inventions."

"Whereas by an act passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled *An Act to amend the Law touching Letters Patent for Inventions*, it is amongst other things enacted, that if any

5 & 6 Will. 4, c. 83.

person having obtained any letters patent as therein mentioned, shall give notice, as thereby required, of his intention 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 be first given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses, whereupon, and upon hearing and inquiry of the whole matter, the judicial committee may report to His Majesty that a further extension of the term in the said letters patent shall be granted, not exceeding seven years, and His Majesty is thereby authorized and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary notwithstanding; provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent: and whereas it has happened since the passing of the said act, and may again happen, that parties desirous of obtaining an extension of the term granted in letters patent of which they are possessed, and who may have presented a petition for such purposes in manner by the said recited act directed, before the expiration of the said term, may nevertheless be prevented by causes over which they have no control from prosecuting with effect their application before the judicial committee of the privy council; and it is expedient therefore that the said judicial committee should have power, when under the circumstances of the case they shall see fit, to entertain such application, and to report thereon, according to the provisions of the said recited act, notwithstanding that before the hearing of the case before them the terms of the letters patent sought to be renewed or extended may have expired:" be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said recited act as provides that no extension of the term of letters patent shall be granted as therein mentioned if the application by petition for such extension be not prosecuted with effect before the expiration of the term originally granted

Repealing provision requiring the application by petition to be prosecuted with effect before the expiration of the term of the patent.

in such letters patent, shall be, and the same is hereby repealed.

Term of patent right may be extended in certain cases, though the application for such extension not prosecuted with effect before the expiration thereof.

2. And be it further enacted, that it shall be lawful for the judical committee of the privy council, in all cases where it shall appear to them that any application for an extension of the term granted by any letters patent, the petition for which extension shall have been referred to them for their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the petitioner, to entertain such application, and to report thereon as by the said recited act provided, notwithstanding the term originally granted in such letters patent may have expired before the hearing of such application; and it shall be lawful for Her Majesty, if she shall think fit, on the report of the said judicial committee recommending an extension of the term of such letters patent, to grant such extension, or to grant new letters patent for the invention or inventions specified in such original letters patent, for a term not exceeding seven years after the expiration of the term mentioned in the said original letters patent: provided always, that no such extension or new letters patent shall be granted if a petition for the same shall not have been presented as by the said recited act directed, before the expiration of the term sought to be extended, nor in case of petitions presented after the thirtieth day of November one thousand eight hundred and thirty-nine, unless such petition shall be presented six calendar months at least before the expiration of such term, nor in any case unless sufficient reason shall be shown to the satisfaction of the said judicial committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

Act may be amended this session.

3. And be it further enacted, that this act may be altered, amended, or repealed, by any act to be passed in the present session.

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7 & 8 Vict. c. 69.

An Act for amending an Act passed in the Fourth Year of the reign of His late Majesty, intituled An Act for the better Administration of Justice in His Majesty's Privy Council; and to extend its Jurisdiction and Powers.—

[6th August, 1844.]

On petition Her Majesty may grant an extension of

2. "And whereas it is expedient, for the further encouragement of inventions in the useful arts, to enable the time of monopoly in patents to be extended in cases in

patent terms in certain cases.

which it can be satisfactorily shown that the expense of the invention hath been greater than the time now limited by law will suffice to reimburse;" be it enacted, that if any person having obtained a patent for any invention shall before the expiration thereof present a petition to Her Majesty in Council, setting forth that he has been unable to obtain a due remuneration for his expense and labour in perfecting such invention, and that an exclusive right of using and vending the same for the further period of seven years, in addition to the term in such patent mentioned, will not suffice for his reimbursement and remuneration, then, if the matter of such petition shall be by Her Majesty referred to the judicial committee of the privy council, the said committee shall proceed to consider the same after the manner and in the usual course of its proceedings touching patents, and if the said committee shall be of opinion, and shall so report to Her Majesty, that a further period greater than seven years extension of the said patent term ought to be granted to the petitioner, it shall be lawful for Her Majesty, if she shall so think fit, to grant an extension thereof for any time not exceeding fourteen years, in like manner and subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said act of the sixth year of the reign of His late Majesty.

Her Majesty may grant extension for a lesser term than that prayed.

3. Provided always, and be it enacted, that nothing herein contained shall prevent the said judicial committee from reporting that an extension for any period not exceeding seven years should be granted, to prevent Her Majesty from granting an extension for such lesser term than the petition shall have prayed.

As to extension of term where patentees have assigned their patent rights.

4. And whereas doubts have arisen touching the power given by the said recited act of the sixth year of the reign of His late Majesty in cases where the patentees have wholly or in part assigned their right; be it enacted, that it shall be lawful for Her Majesty, on the report of the judicial committee, to grant such extension as is authorized by the said act and by this act, either to an assignee or assignees, or to the original patentee or patentees, or to an assignee or assignees and original patentee or patentees conjointly.

Disclaimer and memorandum of alteration under 5 & 6 Will. 4, c. 83, may be made, notwithstanding original patentee may have assigned his patent right.

5. And be it enacted, that in case the original patentee or patentees hath or have departed with his or their whole or any part of his or their interest by assignment to any other person or persons, it shall be lawful for such patentee, together with such assignee or assignees if part only hath been assigned, and for the assignee or assignees if the whole hath been assigned, to enter a disclaimer or memorandum of alteration under the powers of the said recited act; and such

disclaimer and memorandum of such alteration, having been so entered and filed as in the said recited act mentioned, shall be valid and effectual in favour of any person or persons in whom the rights under the said letters patent may then be or thereafter become legally vested; and no objection shall be made in any proceeding whatsoever, on the ground that the party making such disclaimer or memorandum of such alteration had not sufficient authority in that behalf.

Disclaimer and memorandum of alteration already made to be deemed valid.

6. And be it enacted, that any disclaimer or memorandum of alteration before the passing of this act, or by virtue of the said recited act, by such patentee with such assignee, or by such assignee as aforesaid, shall be valid and effectual to bind any person or persons in whom the said letters patent might then be or have since become vested; and no objection shall be made in any proceeding whatsoever that the party making such disclaimer or memorandum of alteration had not authority in that behalf.

New letters patent granted under 5 & 6 Will. 4, to assignees before passing of this act declared valid.

7. And be it enacted, that any new letters patent which before the passing of this act may have been granted, under the provisions of the above recited act of the sixth year of the reign of His late Majesty, to an assignee or assignees, shall be as valid and effectual as if the said letters patent had been made after the passing of this act, and the title of any party to such new letters patent shall not be invalidated by reason of the same having been granted to an assignee or assignees: provided always, that nothing herein contained shall give any validity or effect to any letters patent heretofore granted to any assignee or assignees, where any action or proceeding in *scire facias* or suit in equity shall have been commenced at any time before the passing of this act, wherein the validity of such letters patent shall have been or may be questioned.

Proviso.

Judicial committee may appoint clerk of Privy Council to take proofs in matters referred to them.

8. Provided always, and be it enacted, that in the case of any matter or thing being referred to the judicial committee, it shall be lawful for the said committee to appoint one or other of the clerks of the Privy Council to take any formal proofs required to be taken in dealing with the matter or thing so referred, and shall, if they so think fit, proceed upon such clerk's report to them, as if such formal proofs had been taken by and before the said judicial committee.

11 & 12 Vict. c. 94.

An Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common-Law side of that Court, and the Enrolment Office of the said Court.—[31st August, 1848.]

Specifications and disclaimers enrolled under 5 & 6 Will. 4, c. 83, to be enrolled in the Enrolment Office only.

14. And be it enacted, that from and after the first day of January, 1849, every specification or instrument in writing for describing or ascertaining any invention, and to be enrolled in Chancery in pursuance of letters patent under the Great Seal, shall be enrolled in the Enrolment Office of the Court of Chancery, and every disclaimer and memorandum of alteration to be enrolled in pursuance of an act passed in the sixth year of the reign of His late Majesty King William the Fourth, intituled *An Act to amend the Law touching Letters Patent for Inventions*, shall also be enrolled in the said Enrolment Office, whether the specification of the invention to which such disclaimer or memorandum of alteration shall relate, shall or shall not have been enrolled in the said Enrolment Office; and the enrolment of every such disclaimer and memorandum of alteration in the said Enrolment Office shall be and be deemed to be the enrolment thereof in the proper office, in pursuance of the provisions of the said act.

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12 & 13 Vict. c. 109.

An Act to amend an Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common-Law side of that Court, and the Enrolment Office of the said Court.—[1st August, 1849.]

Certificates of enrolment in the Petty Bag Office.

12. And be it enacted, that the clerk of the Petty Bag shall, upon request, and payment of the proper fees payable in respect thereof, endorse or write upon every specification which at any time heretofore has been enrolled in the Petty Bag Office (provided the enrolment shall then be in his custody), and upon every deed, instrument in writing, and document which at any time heretofore has been or at any time hereafter shall be enrolled in the Petty Bag Office, a certificate stating that such specification, deed, instrument in writing, or document, has been or was enrolled in the said Petty Bag Office, and the day of such enrolment, and shall cause such certificate to be sealed or stamped with the said Chancery common law seal; and every such certificate purporting or appearing to be so sealed or stamped shall be admitted and received in evidence as well before either

House of Parliament as also before any committee thereof, and also by and before all courts, tribunals, judges, justices, and other persons whomsoever, without further proof, and as sufficient *primâ facie* evidence that the specification, deed, instrument in writing, or document, therein mentioned, was duly enrolled in the Petty Bag Office on the day mentioned in such certificate.

Copies of documents sealed to be received as evidence without further proof.

13. And be it enacted, that every office copy issued from the Petty Bag Office shall be sealed with the said Chancery common law seal for the time being; and every document sealed with such seal, and purporting to be a copy of any record or other document of any description, shall be deemed to be a true copy of such record or other document, and shall, without further proof, be admissible and admitted and received in evidence, as well before either House of Parliament as also before any committee thereof, and also by and before all courts, tribunals, judges, justices, officers, and other persons whomsoever, in like manner and to the same extent and effect as the original record or other document would or might be admissible or admitted or received if tendered in evidence, as well for the purpose of proving the contents of such record or other document, as also proving such record or other document to be a record or document of or belonging to the said Court of Chancery, but not further or otherwise.

Specifications to be enrolled in the Enrolment Office.

15. And be it enacted, that every specification or instrument in writing for describing or ascertaining any invention, and to be enrolled in Chancery in pursuance of letters patent under the Great Seal, shall be enrolled in the Enrolment Office of the Court of Chancery; and every disclaimer and memorandum of alteration to be enrolled in pursuance of an act passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled *An Act to amend the Law touching Letters Patent for Inventions*, shall also be enrolled in the said Enrolment Office, whether the specification of the invention to which such disclaimer or memorandum of alteration shall relate shall or shall not have been enrolled in the said Enrolment Office; and the enrolment of every such disclaimer and memorandum of alteration in the said Enrolment Office shall be and be deemed to be the enrolment thereof in the proper office in pursuance of the provisions of the said act.

5 & 6 Will. 4, c. 83.

Seal as approved by Master of the Rolls to be provided for the Enrolment Office.

17. And whereas it is expedient to facilitate the proof of the due enrolment of specifications, deeds, and other instruments in the said Enrolment Office, and also of copies of the enrolments thereof: be it therefore enacted, that such a seal or stamp as the Master of the Rolls shall approve of shall be

provided and kept in the said Enrolment Office; and from time to time, when the Master of the Rolls shall think fit, a new seal or stamp shall be provided in place of any seal or stamp for the time being kept and used in the said office, and whenever any new seal or stamp shall be so provided the old seal shall be forthwith cancelled; and the seal for the time being kept and used in the said Enrolment Office in pursuance of this act, shall be and be called the seal of the Enrolment Office in Chancery, and all courts and other tribunals, judges, justices, officers, and other persons whomsoever, shall take notice of the said seal of the Chancery Enrolment Office, and shall take notice of and receive in evidence every instrument and writing purporting or appearing to be sealed or stamped therewith, without proof that the same has been so sealed or stamped.

Certificates of enrolment to be given, and when sealed shall be admitted as evidence.

18. And be it enacted, that the clerk of the said Enrolment Office, or his deputy or assistant, shall, upon request, and payment of the proper fees payable in respect thereof, endorse or write upon every deed, specification, instrument in writing, and document, which at any time heretofore has been or at any time hereafter shall be enrolled in the said Enrolment Office, a certificate that such deed, specification, instrument in writing, or document has been or was enrolled in Chancery, and the day on which such enrolment was made, and shall cause such certificate to be sealed or stamped with the said seal of the Chancery Enrolment Office; and every such certificate purporting or appearing to be so sealed or stamped shall be admitted and received in evidence by all courts and other tribunals, judges, justices, and others, without further proof, and as sufficient *primâ facie* evidence that the deed, specification, document, or instrument in writing therein mentioned was duly enrolled in the Court of Chancery on the day and at the time mentioned in such certificate.

Copies of enrolments stamped with seal of Enrolment Office to be admitted in evidence.

19. And be it enacted, that every document or writing sealed or stamped or purporting or appearing to be sealed or stamped with the said seal of the Chancery Enrolment Office, and purporting to be a copy of any enrolment or other record, or of any other document or writing of any description whatsoever, including any drawings, maps, or plans thereunto annexed or endorsed thereon, shall be deemed to be a true copy of such enrolment, record, document, or writing, and of such drawing, map, or plan (if any) thereunto annexed, and shall, without further proof, be admissible and admitted evidence, as well before either House of Parliament as also before any committee thereof, and also by and before all courts, tribunals, judges, justices, officers, and

other persons whomsoever, in like manner and to the same extent and effect as the original enrolment, record, document, or writing could or might be admissible or admitted in evidence, as well for the purpose of proving the contents of such enrolment, record, document, or writing, and the drawing, map, or plan (if any) thereunto annexed, as also proving such enrolment, record, document, or writing to be an enrolment, record, document, or writing of or belonging to the said Court of Chancery, and that such enrolment, record, document, or writing was made, acknowledged, prepared, filed, or entered on the day and at the time when the original enrolment, record, document, or writing shall purport to have been made, acknowledged, prepared, filed, or entered.

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14 Vict. c. 8.

An Act to extend the Provisions of the Designs Act, 1850, *and to give Protection from Piracy to Persons exhibiting new Inventions in the Exhibition of the Works of Industry of all Nations in one thousand eight hundred and fifty-one.*—[11th April, 1851.]

Whereas it is expedient that such protection as hereinafter mentioned should be afforded to persons desirous of exhibiting new inventions in the Exhibition of the Works of Industry of all Nations in one thousand eight hundred and fifty-one: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Proprietors of new inventions to be allowed to exhibit them without prejudice to letters patent to be thereafter granted.

I. Any new invention for which letters patent might lawfully be granted may at any time during the year one thousand eight hundred and fifty-one, but not afterwards, be publicly exhibited in any place previously certified by the Lords of the Committee of Privy Council for trade and foreign plantations to be a place of exhibition within the meaning of the Designs Act, 1850, without prejudice to the validity of any letters patent to be thereafter, during the term of the provisional registration hereinafter mentioned, granted for such invention to the true and first inventor thereof: provided always, that such invention have previously to such public exhibition thereof been provisionally registered in manner hereinafter mentioned; and provided also, that the same be not otherwise publicly exhibited or used by or with the consent of the inventor prior to the

Invention to be provisionally registered, and not to be used before granting of the letters patent.

granting of any such letters patent as aforesaid, except as hereinafter mentioned: provided also, that no sale or transfer, or contract for sale or transfer, of the right to or benefit of any invention so provisionally registered, or of the rights acquired under this act, or to be acquired under any letters patent to be granted for such invention, shall be deemed a use of such invention; and the publication of any account or description of such invention in any catalogue, paper, newspaper, periodical, or otherwise shall not affect the validity of any letters patent to be during such term granted as aforesaid.

Public trial of agricultural or horticultural implements, under the direction of the commissioners, not to prejudice letters patent.

2. The public trial or exhibition of any such invention as aforesaid (being an invention for purposes of agriculture or horticulture), which shall be certified by the Lords of the said committee to have taken place under the direction of the Commissioners for the Exhibition of 1851 for purposes connected with the exhibition thereof, in such place of public exhibition as aforesaid, whether such trial or exhibition take place before or after the passing of this act, shall not prevent the provisional registration of such invention under this act, nor prejudice or affect the validity of any letters patent to be granted for such invention during such term as aforesaid.

Certificate of invention to be granted for provisional registration.

3. Her Majesty's Attorney-General, or such person or persons as he may from time to time appoint to issue certificates under this act, on being furnished with a description in writing, signed by or on behalf of the person claiming to be the true and first inventor within this realm of any new invention intended to be exhibited in such place of public exhibition as aforesaid, and on being satisfied that such invention is proper to be so exhibited, and that the description in writing so furnished describes the nature of the said invention so intended to be exhibited, and in what manner the same is to be performed, shall give a certificate in writing, under the hand or hands of such Attorney-General or the person or persons appointed as aforesaid, for the provisional registration of such invention.

Certificate of invention to be registered.

4. The Registrar of Designs acting under the Designs Act, 1850, upon receiving such certificate, and being furnished with the name and place of address of the person by or on whose behalf the registration is desired, shall register such certificate, name, and place of address, and the invention to which any certificate so registered relates shall be deemed to be provisionally registered, and the registration thereof shall continue in force for the term of one year from the time of the same being so registered, and the registrar shall certify, under his hand and seal, that such invention

has been provisionally registered, and the date of such registration, and the name and place of address of the person by or on whose behalf the registration was effected: provided always, that if any invention so provisionally registered be not actually exhibited in such place of public exhibition as aforesaid, or if the same invention be in use by others at the time of the said registration, or if the person by or on whose behalf the said registration has been effected be not the first and true inventor thereof, such registration shall be absolutely void.

Description to be preserved, and invention to be marked with the words "provisionally registered."

5. The description in writing of any invention so provisionally registered shall be preserved in such manner and subject to such regulations as the Attorney-General shall direct, and any invention so provisionally registered, and exhibited at such place of public exhibition as aforesaid, shall have the words "provisionally registered" marked thereon or attached thereto, with the date of the said registration.

Provisional registration to confer same benefits as under the Designs Act, 1850.

6. Such provisional registration as aforesaid shall during the term thereof confer on the inventor of such invention, with respect thereto, all the protection against piracy and other benefits which by the Designs Act, 1850, are conferred upon the proprietors of designs provisionally registered thereunder with respect to such designs; and so long as such provisional registration continues in force the penalties and provisions of the Designs Act, 1842, for preventing the piracy of designs shall extend to the acts, matters, and things next hereinafter mentioned, as fully and effectually as if those penalties and provisions had been re-enacted in this act, and expressly extended to such acts, matters, and things; that is to say, to the making, using, exercising, or vending the invention so provisionally registered, to the practising the same or any part thereof, to the counterfeiting, imitating, or resembling the same, to the making additions thereto or subtraction from the same, without the consent in writing of the person by or on whose behalf the said invention was so provisionally registered.

Letters patent thereafter granted to be as valid as if inventions were not registered or exhibited.

7. All letters patent to be during the term of any such provisional registration granted in respect of any invention so provisionally registered shall, notwithstanding the registration thereof, and notwithstanding the exhibition thereof in such place of public exhibition or otherwise as aforesaid, be of the same validity as if such invention had not been so registered or exhibited; and it shall be lawful for the Lord High Chancellor, if he think fit, on the grant of any letters patent to any inventor in respect of any invention provisionally registered under this act, to cause such letters patent

to be sealed as of the day of such provisional registration, and to bear date the day of such provisional registration, the act of the eighteenth year of King Henry the Sixth or any other act notwithstanding.

Proprietors of new and original designs exhibited to be entitled to benefits of Designs Acts, although designs have been previously published elsewhere than in United Kingdom, if not previously publicly sold or used.

8. Notwithstanding anything contained in the Designs Act, 1850, and the two acts therein referred to, and called the Designs Act, 1842, and the Designs Act, 1843, the protection intended to be by those acts extended to the proprietors of new and original designs shall be extended to the proprietors of all new and original designs which shall be provisionally registered and exhibited in such place of public exhibition as aforesaid, notwithstanding that such designs may have been previously published or applied elsewhere than in the United Kingdom of Great Britain and Ireland; provided that such design or any article to which the same has been applied have not been publicly sold or exposed for sale previously to such exhibition thereof as aforesaid.

The Designs Act, 1850, and this act to be construed as one act.

9. All the provisions of the Designs Act, 1850, and the provisions incorporated therewith, relating or applicable to the designs to be provisionally registered thereunder, or to the proprietors of such designs, except the provision for extending the term of any such provisional registration, shall, so far as the same are not repugnant to or inconsistent with the provisions of this act, apply to the inventions to be provisionally registered under this act, and to the inventors thereof; and the said Designs Act and this act shall be construed together as one act.

Short title.

10. This act may be cited as The Protection of Inventions Act, 1851.

II.—COPYRIGHT.

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38 Geo. 3, c. 71.

An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned.—[21st June, 1798.]

Preamble.

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, or cast, or any such 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.

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

2. 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 from 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 as aforesaid, or any copy or cast of any such new cast from nature as aforesaid for sale, or shall sell or

Persons making copies of any model or cast without the consent of the proprietor may be prosecuted.

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 inquiry thereon, shall give or assess, together with full costs of suit.

Except such persons who shall purchase the same of the original proprietor.

3. Provided nevertheless, that no person who shall hereafter purchase the right, either in any such 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, anything contained in this act to the contrary hereof notwithstanding.

Limitation of actions.

4. 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.

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54 Geo. 3, c. 56.

An Act to amend and render more effectual an Act of His present Majesty for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned, and for giving further Encouragement to such Arts. 18th May, 1814.]

38 Geo. 3, c. 71.

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 authority 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 or 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 such 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 in 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.

The sole right and property of all new and original sculpture, models, copies, and casts vested in the proprietors for fourteen years.

Works published under the recited act vested in the proprietors for fourteen years.

2. 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.

Persons putting forth pirated copies or pirated casts may be prosecuted.

3. 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 and double costs.

Purchasers of copyright secured in the same.

4. 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, anything contained in this act to the contrary notwithstanding.

Limitation of actions.

5. 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.

6. 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.

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

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5 & 6 Vict. c. 100.

An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.—[10th August, 1842.]

Whereas by the several acts mentioned in the Schedule (A.) to this act annexed there was granted, in respect of the woven fabrics therein mentioned, the sole right to use any new and original pattern for printing the same during the period of three calendar months: and whereas by the act mentioned in the schedule (B.) to this act annexed there was granted, in respect of all articles except lace, and except the articles within the meaning of the acts hereinbefore referred to, the sole right of using any new and original design, for certain purposes, during the respective periods therein mentioned; but forasmuch as the protection afforded by the said acts in respect of the application of designs to certain articles of manufacture is insufficient, it is expedient to extend the same, but upon the conditions hereinafter expressed: now for that purpose, and for the purpose of consolidating the provisions of the said acts, 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 this act shall come into operation on the first day of September, one thousand eight hundred and forty-two, and that thereupon all the said acts mentioned in the said

Commencement of act, and repeal of former acts.

schedules (A.) and (B.) to this act annexed shall be and they are *hereby repealed.*

Proviso as to existing copyrights.

2. Provided always, and be it enacted, that notwithstanding such repeal of the said acts, every copyright in force under the same shall continue in force till the expiration of such copyright; and with regard to all offences or injuries committed against any such copyright before this act shall come into operation, every penalty imposed and every remedy given by the said acts, in relation to any such offence or injury, shall be applicable as if such acts had not been repealed; but with regard to such offences or injuries committed against any such copyright after this act shall come into operation, every penalty imposed and every remedy given by this act in relation to any such offence or injury shall be applicable as if such copyright had been conferred by this act.

Grant of copyright.

3. And with regard to any new and original design (except for sculpture and other things within the provisions of the several acts mentioned in the schedule (C.) to this act annexed), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined; be it enacted that the proprietor of every such design, not previously published either within the United Kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such subtances as aforesaid, provided the same be done within the United Kingdom of Great Britain and Ireland, for the respective terms hereinafter mentioned, such respective terms to be computed from the time of such design being registered according to this act; (that is to say,)

In respect of the application of any such design to ornamenting any article of manufacture contained in the first, second, third, fourth, fifth, sixth, eighth, or eleventh of the classes following, for the term of three years:

In respect of the application of any such design to ornamenting any article of manufacture contained in the seventh, ninth or tenth of the classes following, for the term of nine calendar months:

In respect of the application of any such design to ornamenting any article of manufacture or substance contained in the twelfth or thirteenth of the classes following, for the term of twelve calendar months :

Class 1.—Articles of manufacture composed wholly or chiefly of any metal or mixed metals :

Class 2.—Articles of manufacture composed wholly or chiefly of wood :

Class 3.—Articles of manufacture composed wholly or chiefly of glass :

Class 4.—Articles of manufacture composed wholly or chiefly of earthenware :

Class 5.—Paper-hangings :

Class 6.—Carpets :

Class 7.—Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics :

Class 8.—Shawls not comprised in class 7 :

Class 9.—Yarn, thread or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced :

Class 10.—Woven fabrics, composed of linen, cotton, wool, silk or hair, or of any two or more of such materials, if the design be applied by printing or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, excepting the articles included in class 11 :

Class 11.—Woven fabrics, composed of linen, cotton, wool, silk or hair, or of any two or more of such materials, if the design be applied by printing or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the design whereof shall be more than twelve inches by eight inches :

Class 12.—Woven fabrics not comprised in any preceding class :

Class 13.—Lace, and any article of manufacture or substance not comprised in any preceding class.

Conditions of copyright.

4. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act, with regard to any design in respect of the application thereof to ornamenting any article of manufacture, or any such substance, unless such design have before publication thereof been registered according to this act, and unless at the time of such registra-

Registration.

tion such design have been registered in respect of the application thereof to some or one of the articles of manufacture or substances comprised in the above-mentioned classes, by specifying the number of the class in respect of which such registration is made, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every such article of manufacture or such substance to which the same shall be so applied, published by him, hath thereon, if the article of manufacture be a woven fabric for printing, at one end thereof, or, if of any other kind or such substance as aforesaid, at the end or edge thereof, or other convenient place thereon, the letters "Rd.," together with such number or letter, or number and letter, and in such form as shall correspond with the date of the registration of such design according to the registry of designs in that behalf; and such marks may be put on any such article of manufacture or such substance, either by making the same in or on the material itself of which such article or substance shall consist, or by attaching thereto a label containing such marks.

Marks denoting a registered design.

The term "proprietor" explained.

5. And be it enacted, that the author of any such new and original design shall be considered the proprietor thereof, unless he have executed the work on behalf of another person for a good or a valuable consideration, in which case such person shall be considered the proprietor, and shall be entitled to be registered in the place of the author; and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to ornamenting any one or more articles of manufacture, or any one or more such substances as aforesaid, either exclusively of any other person or otherwise, and also every person upon whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

Transfer of copyright and register thereof.

6. And be it enacted, that every person purchasing or otherwise acquiring the right to the entire or partial use of any such design may enter his title in the register hereby provided, and any writing purporting to be a transfer of such design and signed by the proprietor thereof shall operate as an effectual transfer; and the registrar shall, on request and the production of such writing, or in the case of acquiring such right by any other mode than that of purchase on the production of any evidence to the satisfaction of the registrar, insert the name of the new proprietor in the register; and the following may be the form of such transfer and of such request to the registrar:

Form of Transfer, and Authority to register.

"I, *A. B.*, author [*or* proprietor] of design, No. , having transferred my right thereto [*or if such transfer be partial*], so far as regards the ornamenting of [*describe the articles of manufacture or substance, or the locality with respect to which the right is transferred*] to *B. C.*, of , do hereby authorize you to insert his name on the register of designs accordingly."

Form of Request to register.

"I, *B. C.*, the person mentioned in the above transfer, do request you to register my name and property in the said design as entitled [*if to the entire use*] to the entire use of such design, [*or if to the partial use*] to the partial use of such design, so far as regards the application thereof [*describe the articles of manufacture, or the locality in relation to which the right is transferred.*]"

But if such request to register be made by any person to whom any such design shall devolve otherwise than by transfer, such request may be in the following form:

"I, *C. D.*, in whom is vested by [*state bankruptcy or otherwise*] the design, No. [*or if such devolution be of a partial right, so far as regards the application thereof*] to [*describe the articles of manufacture or substance, or the locality in relation to which the right has devolved.*]"

Piracy of designs.

7. And for preventing the piracy of registered designs, be it enacted, that during the existence of any such right to the entire or partial use of any such design, no person shall either do or cause to be done any of the following acts with regard to any articles of manufacture or substances, in respect of which the copyright of such design shall be in force, without the licence or consent in writing of the registered proprietor thereof; (that is to say),

No person shall apply any such design, or any fraudulent imitation thereof, for the purpose of sale, to the ornamenting of any article of manufacture, or any substance, artificial or natural, or partly artificial and partly natural:

No person shall publish, sell or expose for sale any article of manufacture, or any substance, to which such design, or any fraudulent imitation thereof, shall have been so applied, after having received, either verbally or in writing, or otherwise, from any source other than the proprietor of such design, knowledge that his consent has not been given to such application, or after having

been served with or had left at his premises a written notice signed by such proprietor or his agent to the same effect.

Recovery of penalties for piracy.

8. And be it enacted, that if any person commit any such act he shall for every offence forfeit a sum not less than five pounds and not exceeding thirty pounds to the proprietor of the design, in respect of whose right such offence has been committed; and such proprietor may recover such penalty as follows:

In England, either by an action of debt or on the case, against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides; and if such proprietor proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city or borough, where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture, or in the design to which such summary proceeding relates, may issue a summons requiring such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending, either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending, or upon the oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds as aforesaid for each offence, as to such justices doth seem fit; but the aggregate amount of penalties for offences in respect of any one design committed by any one person, up to the time at which any of the proceedings herein mentioned shall be instituted, shall not exceed the sum of one hundred pounds; and if the amount of such penalty or of such penalties, and the costs attending the conviction so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender, wherever the same happen to be in England; and the justices before whom the party has been convicted, or,

on proof of the conviction, any two justices acting for any county, riding, division, city or borough in England, where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels on demand; and every information and conviction which shall be respectively laid or made in such summary proceeding before two justices under this act, may be drawn or made out in the following forms respectively, or to the effect thereof, *mutatis mutandis*, as the case may require:

Form of Information.

"Be it remembered, that on the , at , in the county of , *A. B.* of , in the county of , [*or C. D.* of , in the county of , at the instance and on the behalf of *A. B.* of in the county of ,] cometh before us and , two of Her Majesty's justices of the peace in and for the county of , and giveth us to understand that the said *A. B.* before and at the time when the offence hereinafter mentioned was committed, was the proprietor of a new and original design for [*here describe the design*], and that within twelve calendar months last past, to wit, on the , at , in the county of , *E. F.* of , in the county of , did [*here describe the offence*], contrary to the form of the act passed in the year of the reign of Her present Majesty, intituled *An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.*"

Form of Conviction.

"Be it remembered, that on the day of , in the year of our Lord , at , in the county of , *E. F.* of , in the county aforesaid, is convicted before us and , two of Her Majesty's justices of the peace for the said county, for that he the said *E. F.* on the day of , in the year , at , in the county of , did [*here describe the offence*], contrary to the form of the statute in that case made and provided; and we the said justices do adjudge that the said *E. F.* for his offence aforesaid hath forfeited the sum of to the said *A. B.*"

In Scotland, by action before the Court of Session in ordinary form, or by summary action before the Sheriff

of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses shall convict the offender and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding; provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction or otherwise.

In Ireland, either by action in a Superior Court of Law at Dublin, or by Civil Bill in the Civil Bill Court of the county or place where the offence was committed.

Proviso as to action for damages.

9. Provided always, and be it enacted, that notwithstanding the remedies hereby given for the recovery of any such penalty as aforesaid, it shall be lawful for the proprietor in respect of whose right such penalty shall have been incurred (if he shall elect to do so) to bring such action as he may be entitled to for the recovery of any damages which he shall have sustained, either by the application of any such design or of a fraudulent imitation thereof for the purpose of sale, to any articles of manufacture or substances, or by the publication, sale or exposure to sale as aforesaid by any person, of any article or substance to which such design or any fraudulent imitation thereof shall have been so applied, such person knowing that the proprietor of such design had not given his consent to such application.

Registration may in some cases be cancelled or amended.

10. And be it enacted, that in any suit in equity which may be instituted by the proprietor of any design, or the person lawfully entitled thereto, relative to such design, if it shall appear to the satisfaction of the judge having cognizance of such suit, that the design has been registered in the name of a person not being the proprietor or lawfully entitled thereto, it shall be competent for such judge, in his discretion, by a decree or order in such suit, to direct either that such registration be cancelled (in which case the same shall thenceforth be wholly void), or that the name of the proprietor of such design, or other person lawfully entitled thereto, be substituted in the register for the name of such

wrongful proprietor or claimant, in like manner as is hereinbefore directed in case of the transfer of a design, and to make such order respecting the costs of such cancellation or substitution, and of all proceedings to procure and effect the same as he shall think fit ; and the registrar is hereby authorized and required, upon being served with an official copy of such decree or order, and upon payment of the proper fee, to comply with the tenor of such decree or order, and either cancel such registration or substitute such new name, as the case may be.

Penalty for wrongfully using marks denoting a registered design.

11. And be it enacted, that unless a design applied to ornamentating any article of manufacture or any such substance as aforesaid be so registered as aforesaid, and unless such design so registered shall have been applied to the ornamenting such article or substance within the United Kingdom of Great Britain and Ireland, and also after the copyright of such design in relation to such article or substance shall have expired, it shall be unlawful to put on any such article or such substance, in the manner hereinbefore required with respect to articles or substances whereto shall be applied a registered design, the marks hereinbefore required to be so applied, or any marks corresponding therewith or similar thereto ; and if any person shall so unlawfully apply any such marks, or shall publish, sell, or expose for sale any article of manufacture, or any substance with any such marks so unlawfully applied, knowing that any such marks have been unlawfully applied, he shall forfeit for every such offence a sum not exceeding five pounds, which may be recovered by any person proceeding for the same by any of the ways hereinbefore directed with respect to penalties for pirating any such design.

Limitation of actions.

12. And be it enacted, that no action or other proceeding for any offence or injury under this act shall be brought after the expiration of twelve calendar months from the commission of the offence ; and in every such action or other proceeding the party who shall prevail shall recover his full costs of suit or of such other proceeding.

Justices may order payment of costs in cases of summary proceeding.

13. And be it enacted, that in the case of any summary proceeding before any two justices in England, such justices are hereby authorized to award payment of costs to the party prevailing, and to grant a warrant for enforcing payment thereof against the summoning party if unsuccessful, in the like manner as is hereinbefore provided for recovering any penalty with costs against any offender under this act.

Registrar, &c., of designs to be appointed.

14. And for the purpose of registering designs for articles of manufacture, in order to obtain the protection of this act, be it enacted, that the Lords of the Committee of Privy Council

for the consideration of all matters of trade and plantations may appoint a person to be a registrar of designs for ornamenting articles of manufacture, and, if the Lords of the said committee see fit, a deputy registrar, clerks, and other necessary officers and servants; and such registrar, deputy registrar, clerks, officers and servants, shall hold their offices during the pleasure of the Lords of the said committee; and the Commissioners of the Treasury may from time to time fix the salary or remuneration of such registrar, deputy registrar, clerks, officers and servants; and, subject to the provisions of this act, the Lords of the said committee may make rules for regulating the execution of the duties of the office of the said registrar, and such registrar shall have a seal of office.

Registrar's duties.

15. And be it enacted, that the said registrar shall not register any design in respect of any application thereof to ornamenting any articles of manufacture or substances, unless he be furnished, in respect of each such application, with two copies, drawings or prints of such design, accompanied with the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and the number of the class in respect of which such registration is made; and the registrar shall register all such copies, drawings or prints, from time to time successively, as they are received by him for that purpose; and on every such copy, drawing or print, he shall affix a number corresponding to such succession; and he shall retain one copy, drawing or print, which he shall file in his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give ready access to the copies of designs so registered, he shall class such copies of designs, and keep a proper index of each class.

Certificate of registration of design.

16. And be it enacted, that upon every copy, drawing or print of an original design so returned to the person registering as aforesaid, or attached thereto, and upon every copy, drawing or print thereof received for the purpose of such registration, or of the transfer of such design being certified thereon or attached thereto, the registrar shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and also the number of such design, together with such number or letter, or number and letter, and in such form as shall be employed

by him to denote or correspond with the date of such registration; and such certificate made on every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall, in the absence of evidence to the contrary, be sufficient proof, as follows:—

Of the design and of the name of the proprietor therein mentioned having been duly registered; and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design; and

Of the provisions of this act, and of any rule under which the certificate appears to be made, having been complied with:

And any such writing purporting to be such certificate shall, in the absence of evidence to the contrary, be received as evidence, without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar.

Inspection of registered designs.

17. And be it enacted, that every person shall be at liberty to inspect any design whereof the copyright shall have expired, paying only such fee as shall be appointed by virtue of this act in that behalf; but with regard to designs whereof the copyright shall not have expired, no such design shall be open to inspection, except by a proprietor of such design or by any person authorized by him in writing, or by any person specially authorized by the registrar, and then only in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as to take a copy of any such design or of any part thereof, nor without paying for every such inspection such fee as aforesaid: provided always, that it shall be lawful for the said registrar to give to any person applying to him, and producing a particular design, together with the registration mark thereof, or producing such registration mark only, a certificate stating whether of such design there be any copyright existing, and if there be, in respect to what particular article of manufacture or substance such copyright exists, and the term of such copyright, and the date of registration, and also the name and address of the registered proprietor thereof.

Application of fees of registration.

18. And be it enacted, that the Commissioners of the Treasury shall from time to time fix fees to be paid for the services to be performed by the registrar, as they shall deem

requisite to defray the expenses of the said office, and the salaries or other remuneration of the said registrar, and of any other persons employed under him, with the sanction of the Commissioners of the Treasury, in the execution of this act; and the balance, if any, shall be carried to the Consolidated Fund of the United Kingdom, and be paid accordingly into the receipt of Her Majesty's Exchequer at Westminster; and the Commissioners of the Treasury may regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for, and they may also remit or dispense with the payment of such fees in any cases where they may think it expedient so to do: provided always, that the fee for registering a design to be applied to any woven fabric mentioned or comprised in classes 7, 9 or 10, shall not exceed the sum of one shilling; that the fee for registering a design to be applied to a paper hanging shall not exceed the sum of ten shillings; and that the fee to be received by the registrar for giving a certificate relative to the existence or expiration of any copyright in any design printed on any woven fabric, yarn, thread or warp, or printed, embossed or worked on any paper hanging, to any person exhibiting a piece end of a registered pattern, with the registration mark thereon, shall not exceed the sum of two shillings and sixpence.

Penalty for extortion.

19. And be it enacted, that if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the Commissioners of the Treasury, he shall forfeit for every such offence fifty pounds to any person suing for the same by action of debt in the Court of Exchequer at Westminster; and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the Commissioners of the Treasury see fit.

Interpretation of act.

20. And for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows; (that is to say) the expression "Commissioners of the Treasury" shall mean the Lord High Treasurer for the time being, or the Commissioners of Her Majesty's Treasury for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender.

Alteration of act.

21. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)

Date of Acts.	Title.
27 Geo. 3, c. 38. (1787.)	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.
29 Geo. 3, c. 19. (1789.)	An Act for continuing 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.
34 Geo. 3, c. 23. (1794.)	An Act for amending and making perpetual 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.
2 Vict. c. 13. (1839.)	An Act for extending the Copyright of Designs for Calico Printing to Designs for printing other woven Fabrics.

SCHEDULE (B.)

Date of Act.	Title.
2 Vict. c. 17. (1839.)	An Act to secure to Proprietors of Designs for articles of Manufacture the Copyright of such Designs for a limited Time.

SCHEDULE (C.)

Date of Acts.	Title.
38 Geo. 3, c. 71. (1798.)	An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned.
54 Geo. 3, c. 56. (1814.)	An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned, and for giving further Encouragement to such Arts.

6 & 7 Vict. c. 65.

An Act to amend the Laws relating to the Copyright of Designs. [22nd August, 1843.]

5 & 6 Vict. c. 100.

WHEREAS by an act passed in the fifth and sixth years of the reign of Her present Majesty, intituled *An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture*, there was granted to the proprietor of any new and original design, with the exceptions therein mentioned, the sole right to apply the same to the ornamenting of any article of manufacture, or any such substance as therein described, during the respective periods therein mentioned: and whereas it is expedient to extend the protection afforded by the said act to such designs hereinafter mentioned, not being of an ornamental character, as are not included therein: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this act shall come into operation on the first day of September, one thousand eight hundred and forty-three.

Commencement of act.

Grant of copyright.

2. And with regard to any new or original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and that whether it be for the whole of such shape or configuration or only for a part thereof, be it enacted, that the proprietor of such design not previously published within the United Kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according to this act: provided always, that this enactment shall not extend to such designs as are within the provisions of the said act, or of two other acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of His late Majesty King George the Third, and intituled respectively *An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned*, and *An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other things therein mentioned.*

Proviso.

38 Geo. 3, c. 71.

54 Geo. 3, c. 56.

Conditions of copyright.

3. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act unless such design have before publication thereof been registered according to this act, and unless the name of such person shall be regis-

tered according to this act as a proprietor of such design and unless after publication of such design every article of manufacture made by him according to such design, or on which such design is used, hath thereon the word "registered," with the date of registration.

Penalty for wrongfully using marks denoting a registered design.

4. And be it enacted, that unless a design applied to any article of manufacture be registered either as aforesaid or according to the provisions of the said first-mentioned act, and also after the copyright of such design shall have expired, it shall be unlawful to put on any such article the word "registered," or to advertise the same for sale as a registered article; and if any person shall so unlawfully publish, sell, or expose or advertise for sale any such article of manufacture, he shall forfeit for every such offence a sum not exceeding five pounds nor less than one pound, which may be recovered by any person proceeding for the same by any of the remedies hereby given for the recovery of penalties for pirating any such design.

Floor or oil cloths included in class six.

5. And be it enacted, that all such articles of manufacture as are commonly known by the name of floor cloths or oil cloths shall henceforth be considered as included in class six in the said first-mentioned act in that behalf mentioned, and be registered accordingly.

Certain provisions of 5 & 6 Vict. c. 100, to apply to this act.

6. And be it enacted, that all and every the clauses and provisions contained in the said first-mentioned act, so far as they are not repugnant to the provisions contained in this act, relating respectively to the explanation of the term proprietor, to the transfer of designs, to the piracy of designs, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees of registration, and to the penalty for extortion, shall be applied and extended to this present act as fully and effectually, and to all intents and purposes, as if the said several clauses and provisoes had been particularly repeated and re-enacted in the body of this act.

Appointment of registrar, &c.

7. And be it enacted, that so much of the said first-mentioned act as relates to the appointment of a registrar of designs for ornamenting articles of manufacture, and other officers, as well as to the fixing of the salaries for the payment of the same, shall be and the same is hereby repealed; and for the purpose of carrying into effect the provisions as well of this act as of the said first-mentioned act, the Lords of the Committee of the Privy Council for the consideration of all matters of trade and plantations may appoint a person to be registrar of designs for articles of manufacture, and, if the

lords of the said committee see fit, an assistant registrar and other necessary officers and servants; and such registrar, assistant registrar, officers and servants shall hold their offices during the pleasure of the lords of the said committee; and such registrar shall have a seal of office; and the Commissioners of Her Majesty's Treasury may from time to time fix the salary or other remuneration of such registrar, assistant registrar and other officer officers and servants; and all the provisions contained in the said first-mentioned act, and not hereby repealed, relating to the registrar, deputy registrar, clerks, and other officers and servants thereby appointed and therein named, shall be construed and held to apply respectively to the registrar, assistant registrar, and other officers and servants to be appointed under this act.

Registrar's duties.

8. And be it enacted, that the said registrar shall not register any design for the shape or configuration of any article of manufacture as aforesaid, unless he be furnished with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible according to the judgment of the said registrar, together with the title of the said design, and the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address; and every

Drawings.

such drawing or print, together with the title and description of such design, and the name and address of the proprietor aforesaid, shall be on one sheet of paper or parchment, and on the same side thereof; and the size of the said sheet shall not exceed twenty-four inches by fifteen inches; and there shall be left on one of the said sheets a blank space on the same side on which are the said drawings, title, description, name and address, of the size of six inches by four inches, for the certificate herein mentioned; and the said drawings or prints shall be made on a proper geometric scale; and the said description shall set forth such part or parts of the said design (if any) as shall not be new or original; and the said registrar shall register all such drawings or prints from time to time as they are received by him for that purpose; and on every such drawing or print he shall affix a number corresponding to the order of succession in the register, and he shall retain one drawing or print which he shall file at his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give a ready access to the designs so registered, he shall keep a proper index of the titles thereof.

Discretionary power as to the

9. And be it enacted, that if any design be brought to the

said registrar to be registered under the said first-mentioned act, and it shall appear to him that the same ought to be registered under this present act, it shall be lawful for the said registrar to refuse to register such design otherwise than under the present act and in the manner hereby provided; and if it shall appear to the said registrar that the design brought to be registered under the said first mentioned act or this act is not intended to be applied to any article of manufacture, but only to some label, wrapper or other covering in which such article might be exposed for sale, or that such design is contrary to public morality or order, it shall be lawful for the said registrar, in his discretion, wholly to refuse to register such design: provided always, that the Lords of the said Committee of Privy Council may, on representation made to them by the proprietor of any design so wholly refused to be registered as aforesaid, if they shall see fit, direct the said registrar to register such design, whereupon and in such case the said registrar shall be and is hereby required to register the same accordingly.

registry vested in the registrar.

Proviso.

10. And be it enacted, that every person shall be at liberty to inspect the index of the titles of the designs, not being ornamental designs, registered under this act, and to take copies from the same, paying only such fees as shall be appointed by virtue of this act in that behalf; and every person shall be at liberty to inspect any such design, and to take copies thereof, paying such fee as aforesaid; but no design whereof the copyright shall not have expired shall be open to inspection, except in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as to take a copy of such design, nor without paying such fee as aforesaid.

Inspection of index of titles of designs, &c.

11. And, for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows: (that is to say,) the expression "Commissioners of the Treasury" shall mean the Lord High Treasurer for the time being, or the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number, and the masculine gender shall include the feminine gender as well as the masculine gender.

Interpretation of act.

12. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

Alteration of act.

13 & 14 Vict. c. 104.

An Act to extend and amend the Acts relating to the Copyright of Designs.—[14th August, 1850.]

Whereas it is expedient to extend and amend the acts relating to the copyright of designs; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

Certain designs may be registered provisionally for one year.

1. That the registrar of designs, upon application by or on behalf of the proprietor of any design not previously published within the United Kingdom of Great Britain and Ireland or elsewhere, and which may be registered under the Designs Act, 1842, or under the Designs Act, 1843, for the provisional registration of such design under this act, and upon being furnished with such copy, drawing, print, or description in writing or in print as in the judgment of the said registrar shall be sufficient to identify the particular design in respect of which such registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business, or other place of address, or the style or title of the firm under which he may be trading, shall register such design in such manner and form as shall from time to time be prescribed or approved by the Board of Trade; and any design so registered shall be deemed "provisionally registered," and the registration thereof shall continue in force for the term of one year from the time of the same being registered as aforesaid; and the said registrar shall certify, under his hand and seal of office, in such form as the said board shall direct or approve, that the design has been provisionally registered, the date of such registration, and the name of the registered proprietor, together with his place of abode or business, or other place of address.

Benefits conferred by provisional registration.

2. That the proprietor of any design which shall have been provisionally registered shall, during the continuance of such registration, have the sole right and property in such design; and the penalties and provisions of the said Designs Act, 1842, for preventing the piracy of designs, shall extend to the acts, matters and things next hereinafter enumerated, as fully as if those penalties and provisions had been re-enacted in this act, and expressly extended to such acts, matters and things respectively: that is to say,

I. To the application of any provisionally registered design, or any fraudulent imitation thereof, to any article of manufacture or to any substance.

II. To the publication, sale or exposure for sale of any article of manufacture, or any substance to which any provisionally registered design shall have been applied.

3. That during the continuance of such provisional registration neither such registration nor the exhibition or exposure of any design provisionally registered, or of any article to which any such design may have been or be intended to be applied, in any place whether public or private, in which articles are not sold or exposed or exhibited for sale, and to which the public are not admitted gratuitously, or in any place which shall have been previously certified by the Board of Trade to be a place of public exhibition within the meaning of this act, nor the publication of any account or description of any provisionally registered design exhibited or exposed, or intended to be exhibited or exposed in any such place of exhibition or exposure in any catalogue, paper, newspaper, periodical, or otherwise, shall prevent the proprietor thereof from registering any such design under the said Designs Acts, at any time during the continuance of the provisional registration, in the same manner and as fully and effectually as if no such registration, exhibition, exposure or publication had been made; provided that every article to which any such design shall be applied, and which shall be exhibited or exposed by or with the license or consent of the proprietor of such design, shall have thereon or attached thereto the words "provisionally registered," with the date of registration.

The exhibition of provisionally registered designs in certain places not to defeat copyright, &c.

4. That if during the continuance of such provisional registration the proprietor of any design provisionally registered shall sell, expose or offer for sale any article, substance or thing, to which any such design has been applied, such provisional registration shall be deemed to have been null and void immediately before any such sale, offer or exposure shall have been first made; but nothing herein contained shall be construed to hinder or prevent such proprietor from selling or transferring the right and property in any such design.

Sale of articles to which provisionally registered designs, &c., have been applied to defeat copyright, but design itself may be sold.

5. That the Board of Trade may by order in writing with respect to any particular class of designs, or any particular design, extend the period for which any design may be provisionally registered under this act, for such term not exceeding the additional term of six months, as to the said Board may seem fit; and whenever any such order shall be made, the same shall be registered in the office for the registration of designs, and during the extended term the protection and benefits conferred by this act in case of provisional

Extension of period of provisional registration by Board of Trade.

registration shall continue as fully as if the original term of one year had not expired.

Registration of sculpture, models, &c.

6. That the registrar of designs, upon application by or on behalf of the proprietor of any sculpture, model, copy or cast, within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print or description, in writing or in print, as in the judgment of the said registrar shall be sufficient to identify the particular sculpture, model, copy or cast, in respect of which registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business, or other place of address, or the name, style or title of the firm under which he may be trading, shall register such sculpture, model, copy or cast, in such manner and form as shall from time to time be prescribed or approved by the Board of Trade for the whole or any part of the term during which copyright in such sculpture, model, copy or cast, may or shall exist under the Sculpture Copyright Acts; and whenever any such registration shall be made, the said registrar shall certify, under his hand and seal of office, in such form as the said board shall direct or approve, the fact of such registration, and the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business, or other place of address.

Benefits conferred by registration of sculpture, &c.

7. That if any person shall, during the continuance of the copyright in any sculpture, model, copy or cast, which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such sculpture, model, copy or cast, in such manner and under such circumstances as would entitle the proprietor to a special action on the case, under the Sculpture Copyright Acts, the person so offending shall forfeit for every such offence a sum not less than five pounds, and not exceeding thirty pounds, to the proprietor of the sculpture, model, copy or cast, whereof the copyright shall have been infringed; and for the recovery of any such penalty, the proprietor of the sculpture, model, copy or cast, which shall have been so pirated, shall have and be entitled to the same remedies as are provided for the recovery of penalties incurred under the Designs Act, 1842: provided always, that the proprietor of any sculpture, model, copy or cast, which shall be registered under this act, shall not be entitled to the benefit of this act, unless every copy or cast of such sculpture, model, copy or cast, which shall be published by him after such registration, shall be

marked with the word "registered," and with the date of registration.

Designs for ornamenting ivory, &c., may be registered under Designs Act, 1842, for three years.

8. That designs for the ornamenting of ivory, bone, papier mache, and other solid substances not already comprised in the classes numbered 1, 2 or 3, in the Designs Act, 1842, shall be deemed and taken to be comprised within the class numbered 4 in that act, and such designs shall be so registered accordingly.

Board of Trade may extend copyright in ornamental designs.

9. That the Board of Trade may from time to time order that the copyright of any class of designs, or any particular design, registered or which may be registered under the Designs Act, 1842, may be extended for such term, not exceeding the additional term of three years, as the said board may think fit, and the said board shall have power to revoke or alter any such order as may from time to time appear necessary; and whenever any order shall be made by the said board under this provision, the same shall be registered in the office for the registration of designs; and during the extended term the protection and benefits conferred by the said Designs Acts, shall continue as fully as if the original term had not expired.

Regulations for the registration of designs may be made by Board of Trade.

10. That the Board of Trade may from time to time make, alter and revoke rules and regulations with respect to the mode of registration, and the documents and other matters and particulars to be furnished by persons effecting registration and provisional registration under the said acts and this act: provided always, that all such rules and regulations shall be published in the *London Gazette*, and shall forthwith upon the issuing thereof be laid before Parliament, if Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the commencement of the then next session; and such rules and regulations, or any of them, shall be published or notified by the registrar of designs in such other manner as the Board of Trade shall think fit to direct.

Registrar of designs may dispense with drawings, &c., in certain cases.

11. That if in any case in which the registration of a design is required to be made under either of the said Designs Acts it shall appear to the registrar that copies, drawings or prints as required by those acts cannot be furnished, or that it is unreasonable or unnecessary to require the same, the said registrar may dispense with such copies, drawings or prints, and may allow in lieu thereof such specification or description in writing or in print as may be sufficient to identify and render intelligible the design in respect of which registration is desired; and whenever registration shall be so made in the absence of such copies, drawings or prints, the registration shall be as valid and effectual to all intents

and purposes as if such copies, drawings or prints had been furnished.

Public books and documents in the Designs Office, not to be removed without judge's order.

12. That in order to prevent the frequent and unnecessary removal of the public books and documents in the office for the registration of designs, no book or document in the said office shall be removed for the purpose of being produced in any court or before any justice of the peace, without a special order of a judge of the Court of Chancery, or of one of Her Majesty's Superior Courts of Law, first had and obtained by the party who shall desire the production of the same.

Judges may order copies of documents to be furnished to be given in evidence.

13. That if application shall be made to a judge of any of Her Majesty's Courts of Law at Westminster by any person desiring to obtain a copy of any registration, entry, drawing, print or document, of which such person is not entitled as of right to have a copy, for the purpose of being used in evidence in any cause, or otherwise howsoever, and if such judge shall be satisfied that such copy is *bonâ fide* intended for such purpose as aforesaid, such judge shall order the registrar of designs to deliver such copy to the party applying, and the registrar of designs shall, upon payment for the same of such fee or fees as may be fixed according to the provisions of the said Designs Act in this behalf, deliver such copy accordingly.

Copies of documents delivered by the registrar to be sealed, and to be evidence.

14. That every copy of any registration, entry, drawing, print or document delivered by the registrar of designs to any person requiring the same shall be signed by the said registrar, and sealed with his seal of office; and every document sealed with the said seal, purporting to be a copy of any registration, entry, drawing, print, or document, shall be deemed to be a true copy of such registration, entry, drawing, print or document, and shall, without further proof, be received in evidence before all courts in like manner and to the same extent and effect as the original book, registration, entry, drawing, print or document would or might be received if tendered in evidence, as well for the purpose of proving the contents, purport and effect of such book, registration, entry, drawing, print or document, as also proving the same to be a book, registration, entry, drawing, print or document of or belonging to the said office, and in the custody of the registrar of designs.

Certain provisions of Designs Acts, 1842 and 1843, extended to this act.

15. That the several provisions contained in the said Designs Act (so far as they are not repugnant to the provisions of this act) relating to the transfer of designs, to cancelling and amending registration, to the refusal of registration in certain cases, to the mode of recovering penalties, to the awarding and recovery of costs, to actions for damages,

to the limitation of actions, to the certificate of registration, to penalties for wrongfully using marks, to the fixing and application of fees for registration, and to the penalty for extortion, shall apply to the registration, provisional registration, and transfer of designs, sculptures, models, copies and casts, and to the designs, sculptures, models, copies and casts entitled to protection under this act, and to matters under this act, as fully and effectually as if those provisions had been re-enacted in this act with respect to designs, sculptures, models, copies and casts registered and provisionally registered under this act; and the forms contained in the Designs Act, 1842, may for the purposes of this act be varied so as to meet the circumstances of the case.

Interpretation of terms.

16. That in the interpretation of this act the following terms and expressions shall have the meanings hereinafter assigned to them, unless such meanings shall be repugnant to or inconsistent with the context or subject-matter, that is to say,

The expression "Designs Act, 1842," shall mean an act passed in the sixth year of the reign of Her present Majesty, intituled *An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture:*

The expression "Designs Act, 1843," shall mean an act passed in the seventh year of Her present Majesty, intituled *An Act to amend the Laws relating to the Copyright of Designs:*

The expression "Sculpture Copyright Acts" shall mean two acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of King George the Third, and intituled respectively, *An Act for encouraging the Art of making new Models and Casts of Busts and other things therein mentioned:* and *An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other things therein mentioned:*

The expression "The Board of Trade" shall mean the Lords of the Committee of Privy Council for the consideration of all matters of trade and plantations:

The expression "registrar of designs" shall mean the registrar or assistant registrar of designs for articles of manufacture:

The expression "proprietor" shall be construed according to the interpretation of that word in the said Designs Act, 1842:

And words in the singular number shall include the plural, and words applicable to males shall include females.

Short title.

17. That in citing this act in other acts of Parliament, and in any instrument, document or proceeding, it shall be sufficient to use the words and figures following, that is to say, *The Designs Act*, 1850.

Rules.

I.—LETTERS PATENT.

1. Application for Letters Patent.

The Attorney-General, with the consent and concurrence of the Solicitor-General, hereby gives notice, that any person applying for a patent after the 2nd day of November instant, will be required to deposit in the office of the Attorney-General or Solicitor-General, an outline description in writing, or drawing, to be approved by the Attorney-General or the Solicitor-General before any report will be made on such patent.

(Signed) J. Romilly.

2nd November, 1850,
Lincoln's Inn.

2. As to the Deposits.

The Attorney-General, with the consent and concurrence of the Solicitor-General, hereby gives notice, that from and after the 15th day of January, 1851,

1. Every outline description and drawing, deposited with the Attorney-General or Solicitor-General, must be signed and dated by the person applying for the patent, or by his agent.

2. Every person who shall have deposited an outline description or drawing of his invention shall be at liberty, at any time previously to the enrolment of the specification, to cancel any portion of such outline description or drawing, and for this purpose to deposit a fresh outline description or drawing of his invention, omitting the cancelled part.

3. Every person who shall have entered a caveat against the granting of any patent, and shall upon the hearing of his opposition induce the Attorney or Solicitor-General not to make any report upon the application for the patent, shall deposit with the Attorney or Solicitor-General an outline

description or drawing of his invention in respect of which he opposes the granting of the said patent, such outline description or drawing to be approved by the Attorney or Solicitor-General.

4. After the specification shall have been enrolled, any person shall be at liberty on production of a certificate of the enrolment, or after two days' notice and payment of one shilling, to inspect the outline description or drawing so deposited with the Attorney or Solicitor-General, as aforesaid, of the invention in respect of which the specification shall have been so enrolled as aforesaid, and any person shall be at liberty to obtain an office copy of such outline description from the office of the Attorney or Solicitor-General on payment of the accustomed charges.

(Signed) J. ROMILLY.

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3. AS TO DISCLAIMERS AND MEMORANDUMS OF ALTERATIONS.

(*Under* 5 & 6 *Will.* 4, *c.* 83, *s.* 1.)

Of the Attorney and Solicitor-General under sect. 1.

1. The person applying must present a petition to the Attorney-General or Solicitor-General, stating what the proposed disclaimer or alteration is, when a time will be appointed for hearing the applicant. The petition is in general to be accompanied by a copy of the original specification, and of the proposed disclaimer or alteration.

Hearing.

2. If on the hearing the Attorney or Solicitor-General should think fit to disallow the proposed alteration or disclaimer, no further proceeding is necessary. If he should think fit to allow it without any advertisement, then on being applied to for the purpose he will put his signature to the fiat, authorizing the clerk of the patent to make the required enrolment.

Advertisement.

3. If it appears to the Attorney or Solicitor-General that any advertisement or advertisements ought to be inserted, then he will give such directions as he may think fit relative thereto, and will fix any time not sooner than ten days from the first publication of any such advertisements for resuming the consideration of the matter.

Caveat.

4. Caveats may be lodged at any time before the actual issuing of the fiat, and any party lodging a caveat is to have seven days' notice of the next meeting.

Fiat.

5. The fiat must be written or engrossed on the same parchment, with the disclaimer or alteration at the foot thereof.

Rules to be observed in Proceedings before the Judicial Committee of the Privy Council,

Under the Act 5 & 6 *Will.* 4, *cap.* 83, *intituled An Act to amend the law touching Letters Patent for Inventions.*

Advertisements under sect. 2.

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

Notice of opposition to be lodged.

Advertisements under sect. 4.

2. 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.

Petitions.

3. 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.*

Affidavits.

4. All petitions must be accompanied with affidavits of

advertisements having been inserted according to the provisions of section 4 of the said act, and the 1st and 2nd of these rules, and the matters in such affidavits may be disputed by the parties opposing upon the hearing of the petitions.

Notice on caveats.

5. 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.

Objections.

6. 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.

Copies of documents.

7. Parties may have copies of all papers lodged in respect of any application under the said act, at their own expense.

Costs

8. 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.

Copies of specification to be lodged.

9. A party applying for an extension of a patent, under section 4 of the said act, must lodge at the Council Office four printed or written copies of his specification, for the use of the judicial committee. If such specification shall have been printed in some publication, lodging four copies of the publication containing the same will be deemed sufficient. In the event also of the applicant's specification not having been published as aforesaid, and if the expense of making four copies of any drawing therein contained or referred to would be considerable, the lodging of one copy only of such drawing will be deemed sufficient.

All copies mentioned in this rule must be lodged not less than one week before the day fixed for hearing the application.

Counsel for the Crown.

The judicial committee will hear the Attorney-General, or other counsel, on behalf of the Crown, against granting any application made under either the 2nd or 4th section of

the said act, in case it shall be thought fit to oppose the same on such behalf.

Council Office,
December 21st, 1835.

BY THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

At the Council Chamber, Whitehall, the 19th day of July, 1849.

It is this day ordered, that ordinary meetings of the judicial committee of the Privy Council will be held in the months of December, February, and June next. Application to be heard at ordinary meetings.

Applications to Her Majesty in Council for the extension or confirmation of Letters Patent for Inventions, under the Act 5th & 6th of Will. 4, cap. 83, must be made at times which may admit of their being heard at one of the ordinary meetings of this committee.

C. C. GREVILLE.

FEES.

Grant of Letters Patent.

	£	s.	d.
ENGLAND—Declaration	0	1	6
Home Office	2	2	6
Law officer	4	4	0
Home Office	15	7	0
Patent Bill Office	15	16	0
Signet	4	7	0
Privy Seal	4	2	0
(Extra for expedition.)			
Great Seal Patent Office	48	7	6
(Extra for Private Seal.)			
	94	7	6
THE CHANNEL ISLANDS AND COLONIES—add to this	4	4	6
If the grant is to two or more persons add for each name	18	12	10
SCOTLAND—Home Office	2	2	6
Lord Advocate	4	4	0
Home Office	16	17	0
Chancery	25	0	$7\frac{1}{2}$
Great Seal	14	19	$5\frac{1}{2}$
	63	3	7

	£.	s.	d.
IRELAND—Attorney-General's report	31	10	0
Queen's letter	14	8	6
Attorney-General, *fiant*.....	10	3	4
Chief Secretary	20	13	6½
Hanaper	4	13	9
Chancellor and Secretary	1	13	7
Rolls Office.....	3	14	10½
Stamp	30	0	0
	116	17	7

If the name of a second grantee inserted, about 10*l.* additional.

Specification.

Acknowledgment (exclusive of drawings not supplied by the patentee)	0	6	0
Enrolling, for five lines)	0	0	6
(Not being less than 10*s.* in the whole.)			
Stamp	5	0	0
Every complete 1,080 words after the first	1	0	0

Disclaimer.

Application to law officer	0	5	0
Fiat.....	4	4	0
Hearing	3	5	0
Enrolling (as the specification, *see above*)			
Filing	0	1	0
Entering, per folio, not being less than 9*s.*	0	0	10
Stamp	1	0	0
Every entire 1,080 words	1	0	6

Opposition, Costs of.

Caveat against a grant of a patent or disclaimer at each of the law offices for twelve months...	0	5	0
Summons to party opposing	0	5	0
Hearing (each party)	3	5	0
(But the party DISCLAIMING is heard, whether opposed or not.)			
Caveat at Patent Bill Office	1	1	0
Hearing, &c., as at the previous stage			
Caveat at Great Seal	0	10	0

II.—DESIGNS OFFICE.

Rules and Directions.

USEFUL.

COPYRIGHT OF DESIGNS FOR ARTICLES OF UTILITY.

By provisional registration under the Designs Act, 1850 (13 & 14 Vict. c. 104), a copyright for one year (which may be further extended for six months by order of the Board of Trade), is given to the author or proprietor of any new or original design *for the shape or configuration of either of the whole or of part of any article of manufacture, such shape or configuration having reference to some purpose of utility*, whether such article be made in metal or any other substance. During such terms the proprietor of the design may sell the right to apply the same to an article of manufacture, but must not, under the penalty of nullifying the copyright, sell any article with the design applied thereto, until after complete registration, which must be effected *prior to the expiration* of the provisional registration.

By complete registration under the Designs Act, 1843 (6 & 7 Vict. c. 65), a copyright of *three years* is given to the author or proprietor of any new or original design *for the shape or configuration either of the whole or of part of any article of manufacture, such shape or configuration having reference to some purpose of utility*, whether such article be made in metal or any other substance.

To obtain this protection, it is necessary—

1st. That the design should *not have been published* either within the United Kingdom of Great Britain and Ireland, or elsewhere, previous to its registration.

2nd. That after registration, or provisional registration, every article of manufacture made according to such design, or to which such design is applied, should have upon it the word "*Registered or provisionally registered,*" *with the date of registration.*

In case of piracy of a design so registered, the same remedies are given, and the same penalties imposed (from 5*l.* to 30*l.* for each offence), as under the Ornamental Designs Act, 1842 (5 & 6 Vict. c. 100), and all the provisions contained in the latter act relating to the transfer of *ornamental* designs, in case of purchase or devolution of a copyright, are

made applicable to those *useful* designs registered under these acts.

In addition to this, a penalty of not more than 5*l.* nor less than 1*l.* is imposed upon all persons marking, selling, or advertising for sale any article as "registered," unless the design for such article has been registered under one of the *above-mentioned acts.*

Table of Fees.

USEFUL OR NON-ORNAMENTAL.

Provisional Registration.

	Fee. s.	d.
Registering design	10	0
Certifying former registration (*to proprietor of design*)	5	0
Registering and certifying transfer.....	10	0
Cancellation or substitution (*according to decree or order in Chancery*)	5	0

Complete Registration.

	Stamp. £.	Fee. £.	Total. £.
Registering design.....	5 ...	5 =	10
Certifying former registration (*to proprietor of design*)	5 ...	1 =	6
Registering and certifying ransfer	5 ...	1 =	6
Cancellation or substitution (*according to decree or order in Chancery*)	0 ...	1 =	1

Inspections, &c., of Provisional and complete Registrations.

	Fee. s.	d.
Inspecting register, index of titles and names, for each quarter or part of quarter of an hour	1	0
Inspecting designs, unexpired copyright, each design, for each quarter or part of quarter of an hour	2	0

	s.	d.
Inspecting designs, expired copyright, each volume, for each quarter or part of quarter of an hour	1	0
Taking copies of designs, unexpired copyright (*according to judge's order*), for each hour or part of an hour, each copy	2	0
Taking copies of designs, expired copyright, for each hour or part of an hour, each copy	1	0

Office copies of a design will be charged for according to the nature of the design.

Notice.—Parties are strongly recommended to read the act before determining to register their designs, in order that they may be satisfied as to the nature, extent, and comprehensiveness of the protection afforded by it; and further, that they come within the meaning and scope of the acts, *of which facts the registration will not constitute any guarantee.*

All communications for the Registration of Designs, either for ornamental or useful purposes, may be made either through the General Post, directed to the "Registrar of Designs, Designs Office, London," or by any other mode of conveyance; and provided the carriage be paid, and the proper fees, or a post-office order for the amount, payable at the post-office, at No. 180, Strand, to James Hill Bowen, Esq., be enclosed, the designs will be duly registered, and the certified copies returned to the proprietor, free of expense. *Postage stamps, Orders upon bankers or other persons, Scotch and Country bank notes, and light gold, cannot be received in payment of fees.*

DIRECTIONS FOR REGISTERING AND SEARCHING.

Registering.

Persons proposing to register a design for purposes of utility must bring or send to the Designs Office the following particulars:—

Particulars.

1st. The title of the design.

2nd. Two exactly similar drawings or prints thereof, made on a proper geometric scale, marked with letters, figures, or colours to be referred to as hereinafter mentioned.

3rd. The name and address of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place of abode, or place of carrying on business, *distinctly written or printed.*

4th. A statement of the purpose of utility to which the shape or configuration of the new parts of such design has reference.

5th. A description to render the same intelligible, distinguishing the several parts of the design by reference to the letters, figures, or colours aforesaid.

NOTE.—*No* description of the parts of the drawings which are old will be admitted, except such as may be *absolutely necessary* to render the purpose of utility of the shape of the new parts intelligible.

6th. A short and distinct statement of such part or parts (if any) as shall not be new or original, which may be in one of the forms following:—

1. The parts of this design which are not new or original as regards the shape or configuration thereof, are all the parts except those marked (A. B. C. &c.) or coloured (blue, green, &c.)
2. The parts of this design which are not new or original as regards the shape or configuration thereof, are all the parts taken separately, but (the parts [A. and B.] or coloured [blue, &c.]) as here combined form a new design.

NOTE.—The above particulars must be given in the aforesaid order under their several heads, and in distinct and separate paragraphs, which must be strictly confined to what is here required to be contained in each.

Each drawing or print, together with the whole of the other particulars, must be drawn, written or printed, upon a separate sheet of paper or parchment, only one side of which must be drawn, written or printed upon. Such sheet must not exceed in size 24 inches by 15 inches, and on the same side as these particulars, there *must be left a blank space* of the size of 6 inches by 4 inches, upon which the certificate of registration will be placed.

If the design is for provisional registration, an additional similar space may be left for the certificate of complete registration.

Should this be omitted, one fresh drawing, copy or print, will be required for complete registration.

If such design is intended for exhibition in any place duly certified by the Board of Trade to be a place of public exhibition within the meaning of the Designs Act, 1850, then a third copy of the drawing or print, together with the whole of the other aforesaid particulars must also be furnished.

Designs which are not in compliance with the above rules will not be received at the office.

As the Designs Acts, 1843 (6 & 7 Vict. c. 65), and 1850 (13 & 14 Vict. c. 104), give protection only to the *shape or configuration* of articles of utility, and not to any *mechanical action, principle, contrivance, application*, or *adaptation* (except in so far as these may be dependent upon, and inseparable from, the shape or configuration), *or to the material of which the article may be composed.* No design will be registered, the description of or statement respecting which shall contain any wording suggestive of the registration being for any such mechanical action, principle, contrivance, application or adaptation, or for the material of which the article may be composed.

With this exception and those mentioned in the Act, 1843, clause 9, *all* designs, the drawings and descriptions of which are properly prepared and made out, will, on payment of the proper fee, be registered *without reference to the nature or extent of the copyright sought to be thereby acquired;* as proprietors of designs must use their own discretion in judging, whether or not the design proposed for registration be for the shape or configuration of an article of utility coming within the meaning and scope of the acts above mentioned.

After the design has been registered, one of the drawings will be filed at the office, and the other returned to the proprietor duly stamped and certified.

When three have been furnished, the remaining copy will be deposited in the place of public exhibition certified as aforesaid.

Parties bringing designs to this office before twelve o'clock, will be informed after three o'clock the same day whether they are approved of, and if so, they will be registered the following day, and provided the fee has been paid before half-past one o'clock on such day, the certified copies will be ready for delivery after three o'clock on that subsequent.

An acknowledgment of its receipt will be delivered, on payment of the fees, to the person bringing a design, and *no* certified copy of a design will be returned, except to the bearer of this acknowledgment, which must be produced on

application at the office for the certified copy, and given in exchange for the same.

Transfers.

In case of the *transfer* of a *completely registered design*, a copy thereof [or the certified copy, provided there is space sufficient thereon for the certificate], made on one sheet of paper, with a blank space left for the certificate, must be transmitted to the registrar, together with the *forms* of application (which may be procured at the office), properly filled up and signed; the transfer will then be registered, and the certified copy returned.

For the transfer of a design provisionally registered, the new copy will not be required, but the certified copy must be transmitted to the registrar with the above mentioned *forms*.

Persons bringing designs to be registered, on delivering their designs, and on examining their certificate, previous to leave the office, *must see that the titles, names, &c., are correct, as no error can afterwards be rectified.*

Searches.

An index of the titles and names of the proprietors of all the registered designs for articles of utility is kept at the Designs Office, and may be inspected by any person, and extracts made from it.

Designs, the copyright of which is *expired*, may be inspected and copied at the office.

Designs, the copyright of which is *unexpired*, may also be inspected, *but not copied*, except according to judge's order.

The Designs Office, No. 4, Somerset Place, Somerset House, is open every day, between the hours of ten in the morning and four in the afternoon, during which time inquiries and searches may be made. Designs and transfers are registered from eleven until three, after which latter hour *no money can be received for the same.*

Directions for registering ornamental designs may also be procured at the office.

By order of the Registrar,

J. H. Bowen, *Chief Clerk.*

ORNAMENTAL.

COPYRIGHT OF DESIGNS FOR ORNAMENTING ARTICLES OF MANUFACTURE.

By provisional registration under the Designs Act, 1850 (13 & 14 Vict. c. 104), a copyright of one year (which may be further extended for six months by order of the Board of Trade) is given to the author or proprietor of original designs for ornamenting any article of manufacture or substance. During such terms the proprietor of the design may sell the right to apply the same to an article of manufacture, but must not, under the penalty of nullifying the copyright, sell any article with the design applied thereto, until after complete registration, which must be effected *prior to the expiration* of the provisional registration.

By complete registration under the Designs Act, 1842 (5 & 6 Vict. c. 100), a copyright or property is given to the author or proprietor of any new or original design for ornamenting any article of manufacture or substance for the various terms specified in the following classes:—

Class	Article.	Copyright	Registration Fees. £	s.	d.
1.	Articles composed wholly or chiefly of metal	3 yrs. ...	3	0	0
2.	Articles do. do. do. wood	3 „ ...	1	0	0
3.	Articles do. do. do. glass	3 „ ...	1	0	0
4.	Articles do. do. do. earthenware, bone, papier maché, or other solid substances not comprised in Classes 1, 2, and 3	3 „ ...	1	0	0
5.	Paper hangings	3 „ ...	0	10	0
6.	Carpets, floor cloths, and oil cloths	3 „ ...	1	0	0
7.	Shawls (patterns printed).....	9 mos....	0	1	0
8.	Shawls (patterns not printed)	3 yrs. ...	1	0	0
9.	Yarn, thread, or warp (printed) ...	9 mos....	0	1	0
10.	Woven fabrics (patterns printed, except those included in Class 11)	9 „ ...	0	1	0
11.	Woven fabrics, furnitures (patterns printed, the repeat exceeding 12 inches by 8 inches)	3 yrs. ...	0	5	0
12.	Woven fabrics (patterns not printed)	12 mos....	0	5	0
	Do. damasks, copyright extended to	3 yrs. ...	1	0	0
13.	Lace, and all other articles	12 mos....	0	5	0

Table of Fees.

Provisional Registration.

		Each Design. £.	s.	d.
Registration in all classes	1 year	0	1	0
Transfer		0	5	0
Certifying former registration (*to proprietor of design*)		0	1	0
Cancellation or substitution (*according to decree, or order in Chancery*)		0	5	0

Complete Registration.

Registering Designs.		Copyright.		Fee. £.	s.	d.
Class 1		3 years	each design	3	0	0
„ 2		ditto	„	1	0	0
„ 3		ditto	„	1	0	0
„ 4		ditto	„	1	0	0
„ 5		ditto	„	0	10	0
„ 6		ditto	„	1	0	0
„ 7		9 months	„	0	1	0
„ 8		3 years	„	1	0	0
„ 9		9 months	„	0	1	0
„ 10		ditto	„	0	1	0
„ 11		3 years	„	0	5	0
„ 12		12 months	„	0	5	0
	Damasks for	3 years	„	1	0	0
„ 13		12 months	„	0	5	0
In all the 13 classes				7	0	0
In Classes 1, 2, 3, and 4, inclusive				5	0	0
In Classes 5 to 13 inclusive.....				3	0	0

Registration of Sculpture.

Each design	5	0	0

Complete Registration and Registration of Sculpture.

Transfer ..... / Certifying former registration (*to proprietor* / Cancellation or substitution) *according to decree or order in Chancery*	Same as registration fee, but for Class 1; and sculpture, each design	1	0	0

Inspections, &c., of Provisional and Complete Registrations and Sculpture.

Search	0	2	0

	£	s.	d.
Inspection of all the designs of which the copyright has expired, each quarter or part of quarter of an hour, each class	0	1	0
Taking copies of expired designs, each hour or part of an hour, each copy	0	1	0
Taking copies of unexpired designs (*according to judge's order*), for each hour or part of an hour, each copy	0	2	0

Damasks in class 12 may be registered at once, or at any time during the existence of the original copyright of one year for an additional term of two years.

Fee for the whole term of three years	1	0	0
„ extended term of two years	0	16	0

Office copies of a design will be charged for according to the nature of the design.

By the Designs Act of 1850, a protection of a nature similar to that granted for designs for ornamenting articles of manufacture by the Act of 1842, is granted to sculptures, models, copies, or casts of the whole or part of the human figure, or of animals, for the term or unexpired part of the term, during which copyright in such sculpture, models, copies, or casts may or shall exist under the Sculpture Copyright Acts, and the fee for registering the same is 5*l.*

To obtain this protection it is necessary—

1st. That the design *should not have been published*, either within the United Kingdom of Great Britain and Ireland, or elsewhere, previous to its registration.

2nd. That after *provisional registration*, every copy of the design *should have thereon, or attached thereto*, the words "provisionally registered," and the date of registration.

3rd. That after *complete registration*, every article of manufacture published by the proprietor thereof, to which such design shall have been applied, *should have thereon, or attached thereto*, a particular *mark*, which will be exhibited on the certificate of registration.

4th. That after registration of *sculpture* every copy thereof *should have thereon, or attached thereto*, the word "registered," and the date of registration.

These conditions being observed, the right of the proprietor is protected from piracy by a penalty of from 5*l.* to 30*l.* for each offence, each individual illegal publication or sale of a design constituting a separate offence. This penalty may

be recovered by the aggrieved party either by action in the Superior Courts, or by a summary proceeding before two magistrates.

If a design be executed by the author on behalf of another person, for a valuable consideration, the latter is entitled to be registered as the proprietor thereof; and any person purchasing either the exclusive or partial right to use the design, is in the same way equally entitled to be registered; and for the purpose of facilitating the transfer thereof, a short form (copies of which may be procured at the Designs Office) is given in the act.

Any person who shall put the registration mark on any design not registered, or after the copyright thereof has expired, or when the design has not been applied within the United Kingdom, is liable to forfeit for every such offence 5*l*.

DIRECTIONS FOR REGISTERING AND SEARCHING.

Persons proposing to register a design for ornamenting an article of manufacture, must bring or send to the Designs Office—

1. *Two exactly* SIMILAR *copies, drawings,* (or *tracings*) or *prints* thereof, with the proper fees.
2. *The name and address* of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place of abode, or place of carrying on business, *distinctly written or printed.*
3. *The number* of the class in respect of which such registration is intended to be made, except it be for sculpture.

The aforesaid *copies* may consist of portions of the manufactured articles (*except carpets, oil-cloths, and woollen shawls*), when such can conveniently be done (as in the case of *paper hangings, calico prints, &c.*), which as well as

The *drawings* or *tracings* (not in pencil) or *prints* of the design, to be furnished when the article is of such a nature as not to admit of being pasted in a book, *must*, whether coloured or not, *be fac similes of each other.*

Should paper hangings or furnitures exceed 42 inches in length, by 23 inches in breadth, drawings will be required, but they must not exceed these dimensions.

NOTE.—These copies, drawings (or tracings), or prints, must consist of the entire design, without any addition or variation whatever, and no description will be admitted.

Applications for registering may be made in the following form :—

Application to Register.

C. D. Works, November 10th, 1850.

You are hereby requested to register, provisionally [*if not provisionally, strike out the word "provisionally"*] the accompanying designs [(*here insert* "for sculpture," *if for sculpture, or the class or classes*) in Class 1, (2, 3, 4, &c.) *or for sculpture*] in the name of [(*insert here the name and address of the proprietor, in the form in which it is to be entered on the certificate*) *A. B.* of , of , *or A. B.* of and *C. D.* of , &c., trading under the style or firm of *B. D. & Co.*, of , of , of ,] who claim to be the proprietors thereof, and to return the same [*if sent by post*] directed to , [*if brought by hand*] to the bearer of the official acknowledgment for the same.

(Signed) *B. D. & Co.*,
by *J. F.*

To the Registrar of Designs,
Designs Office, London.

The person bringing a design must take an acknowledgment for it, which will be delivered to him on payment of the proper fees. This acknowledgment must be produced on application for the certified copy, which will be returned in exchange for the same.

Blank forms may be obtained at the office.

A design may be registered in respect of one or more of the above classes, according as it is intended to be employed in one or more species of manufacture, but a separate fee must be paid on account of each separate class, and all such registrations must be made at the same time.

If such design is intended for exhibition in any place duly certified by the Board of Trade to be a place of public exhibition, within the meaning of the Designs Act, 1850, then a third such copy, drawing (or tracing), or print, must also be furnished.

After the design has been registered, one of the two copies, drawings (or tracings), or prints will be filed at the

office, and the other returned to the proprietor, with a certificate annexed, on which will appear the *mark to be placed* on each article of manufacture to which the design shall have been applied.

When three have been furnished, the remaining copy or drawing, &c., will be deposited in the place of public exhibition certified as aforesaid.

If the design is for sculpture, no mark is required to be placed thereon after registration, but merely the words "registered," and the date of registration.

If the design is for provisional registration, no mark is required to be placed thereon after registration, but merely the words "provisionally registered," and the date of registration.

Transfers.

In case of the transfer of a design, registered, whether provisionally or completely, a copy, or the certified copy thereof, must be transmitted to the registrar, together with the forms of application (which may be procured at the office), properly filled up and signed; the transfer will then be registered, and the certified copy returned.

Extension of Copyright.

The copyright may be extended in certain cases in provisional registration, for a term not exceeding the additional term of six months, and in complete registration for a term not exceeding the additional term of three years, as the Board of Trade may think fit.

In case of extension of copyright, the certified copy will have to be transmitted to the registrar.

Searches.

All designs of which the copyright has expired may be inspected at the Designs Office, on the payment of the proper fee; but no design, the copyright of which is existing, is in general open to inspection. Any person, however, may, by application at the office, and on production of the registration mark of any particular design, be furnished with a certificate of search, stating whether the copyright be in existence, and in respect to what particular article of manufacture it exists; also, the term of such copyright, and the date of registration, and the name and address of the registered proprietor thereof.

Any party may also, on the production of a piece of the manufactured article with the pattern thereon, together with the registration mark, be informed whether such pattern, supposed to be registered, is really so or not.

As this mark is not applied to a provisionally registered design, certificates of search for such designs will be given on production of the design, or a copy or drawing thereof, or other necessary information with the date of registration.

Persons bringing designs to be registered, on delivering them, must compare such designs together, count them, and see that the name and address, and number of class, is correctly given, and examine their certificates previous to leaving the office, to see that the name, &c., is correctly entered, as no error can afterwards be rectified.

An acknowledgment of its receipt will be delivered, on payment of the fees, to the person bringing a design, and *no* certified copy of a design will be returned, except to the bearer of this acknowledgment, which must be produced on application at the office for the certified copy, and given in exchange for the same.

All communications for the registration of designs may be made either through the General Post-office, directed to "The Registrar of Designs, Designs Office, London," or by any other mode of conveyance; and provided the carriage be paid, and the proper fees, or a post-office order for the amount, *payable at the Post-office, at No.* 180, *Strand, to James Hill Bowen, Esq.*, be enclosed, the designs will be duly registered, and the certified copies returned to the proprietors free of expense. *Postage stamps, orders upon bankers or other persons, country and Scotch bank notes, and light gold, cannot be received in payment of fees.*

The Designs Office, No. 4, Somerset Place, Somerset House, is open every day, between the hours of ten in the morning, and four in the afternoon, during which time enquiries and searches may be made. Designs and transfers are registered from eleven until three, after which latter hour *no money can be received for the same.*

Directions for registering designs for articles of utility may be procured at the office.

By order of the registrar,

J. H. Bowen, *Chief Clerk.*

Forms.

I.—APPLICATION FOR THE GRANT.

1. *Caveat.*

Caveat against the grant of letters patent for , without notice to me .

(*Date*)

2. *Petition.*

To the Queen's most excellent Majesty.

The humble petition of in the county of ,

Sheweth,

That your petitioner { has invented / in consequence of a communication from abroad } is in possession of an invention of { improvements } in , which he believes will be of great utility; that he is the true and first inventor thereof, and that the same hath not been used by any person or persons within this realm, to the best of his knowledge and belief.

Your petitioner therefore humbly prays that your Majesty will be graciously pleased to grant to him, his executors, administrators, and assigns, your royal letters patent under the Great Seal of [*the United Kingdom of Great Britain and Ireland*] for the sole use, benefit, and advantage of his said invention within [*England, Wales, and Berwick-upon-Tweed, the Islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all your Majesty's Colonies and Plantations abroad*] for the term of fourteen years pursuant to the statute in that case made and provided.

And your petitioner, &c.

(*Date*)

Endorsed on the Petition.

Her Majesty is pleased to refer this petition to Her Majesty's [Attorney-General] to report thereon, whereupon Her Majesty will declare her further pleasure.

3. *Declaration.*

The declaration repeats the allegation of the petition, and states that the party intends to apply for letters patent for the said invention in [*Scotland and Ireland.*]

4. *Outlines Deposit.*—(No peculiar form is adopted.)

The Attorney-General, with the consent and concurrence of the Solicitor-General, hereby gives notice, that from and after the 15th of January, 1851,

1. Every outline description and drawing, deposited with the Attorney-General or Solicitor-General, must be signed and dated by the person applying for the patent, or by his agent.

2. Every person who shall have deposited an outline description or drawing of his invention shall be at liberty, at any time previously to the enrolment of the specification, to cancel any portion of such outline description or drawing, and for this purpose to deposit a fresh outline description or drawing of his invention, omitting the cancelled part.

3. Every person who shall have entered a caveat against the granting of any patent, and shall upon the hearing of his opposition induce the Attorney or Solicitor-General not to make any report upon the application for the patent, shall deposit with the Attorney or Solicitor-General an outline description or drawing of his invention in respect of which he opposes the granting of the said patent, such outline description or drawing to be approved by the Attorney or Solicitor-General.

4. After the specification shall have been enrolled, any person shall be at liberty on production of a certificate of the enrolment, or after two days' notice and payment of one shilling, to inspect the outline description or drawing so deposited with the Attorney or Solicitor-General as aforesaid, of the invention in respect of which the specification shall have been so enrolled as aforesaid, and any person shall be at liberty to obtain an office copy of such outline description from the office of the Attorney or Solicitor-General on payment of the accustomed charges.

(Signed) J. Romilly.

5. *Letters Patent.*

1. Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all to whom these presents shall come, greeting: whereas *A. B.* of , in the county of , hath, by his petition humbly represented unto us, that he hath invented

[*here the title is inserted*], that he is the first and true inventor thereof, and that the same have never been practised by any other person or persons whomsoever, to his knowledge or belief; the petitioner, therefore, most humbly prayed that we would be graciously pleased to grant unto him, his executors, administrators, and assigns, our royal letters patent, under the Great Seal of Great Britain, for the sole use, benefit, and advantage of the said invention, within England, Wales, and town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark, and Man, and also in all our Colonies and Plantations abroad*, for the term of fourteen years, pursuant to the statute in that case made and provided: 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.

2. Know ye, therefore, that we, of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said *A. B.*, his executors, administrators, and assigns, our especial licence, full power, sole privilege and authority, that he, the said *A. B.*, his executors, administrators, and assigns, and every of them, by himself and themselves, or by his or their deputy or deputies, servants or agents, or such others as he the said *A. B.*, his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter during the term of years herein expressed, shall, and lawfully may, make, use, exercise, and vend his said invention within that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark, and Man, and also in all our Colonies and Plantations abroad*, in such manner as to him the said *A. B.*, his executors, administrators, and assigns, or any of them, shall in his or their discretion seem meet; and that he the said *A. B.*, his executors, administrators, and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage, from time to time, coming, growing, accruing, and arising by reason of the said invention, for and during the term of years herein mentioned. To have, hold, exercise, and enjoy the said licence, powers, privileges, and advantages, hereinbefore granted or mentioned, or 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 com-

plete and ended according to the statute in such case made and provided; and to the end that he the said *A. B.*, his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention, according to our gracious intention hereinbefore declared: we do by these presents, for us, our heirs and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark, and Man, and also in all our Colonies and Plantations abroad* aforesaid, that neither they, or 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 anywise counterfeit, imitate, or resemble the same, nor shall make, or cause to be made, any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the licence, consent, or agreement of the said *A. B.*, his executors, administrators, or assigns, in writing, under his or their hands and seals first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command; and further, to be answerable to the said *A. B.*, his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned. And, moreover, we do by these presents, for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers whatsoever of us, our heirs and successors for the time being, that they or any of them do not, nor shall at any time hereafter during the said term hereby granted, in any wise molest, trouble, or hinder the said *A. B.*, his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or anything relating thereto.

3. 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 part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark, and Man, and also in all our Colonies and Plantations abroad* aforesaid, or not invented and found out by the said *A. B.* as aforesaid, then, upon signification or declaration thereof to be made by us, our heirs or successors, under our or their signet, or privy seal, or by the Lords and others of our or their 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, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

4. Provided also, that these our letters patent, or any thing herein contained, shall not extend, or be construed to extend, or give privilege unto the said *A. B.*, his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever, which hath heretofore been found out or invented by any other of our subjects whatsoever, and publicly used or exercised in that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, or town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark, and Man, or in any of our Colonies and Plantations abroad* aforesaid, unto whom 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 and found out, according to the true intent and meaning of the same respective letters patent, and of these presents.

5. Provided likewise nevertheless, and these our letters patent are upon this express condition, that if the said *A. B.*, his executors or administrators, or any person or persons who shall or may at any time or times hereafter, during the continuance of this our 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 num-

ber 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 or purposes, or shall presume to act as a corporate body; or shall divide the benefit of these our letters patent, or the liberty and privileges hereby by us granted, into any number of shares exceeding the number of five; or in case the said power, privilege, or authority shall at any time hereafter become vested in, or in trust for, more than the number of five persons, or their representatives, at any one time (reckoning executors or administrators as and for the single person whom they represent as to such interest as they are or shall be entitled to in right of such their testator or intestate) that then, and in any of the said cases, these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void; anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

6. Provided also, that if the said *A. B.* shall not particularly describe and ascertain the nature of his said invention, and to 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 calendar months 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, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

7. 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 intent and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense, for the best advantage of the said *A. B.*, his executors, administrators, and assigns, as well in all our courts of record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in that part of our said United Kingdom of Great

Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark, and Man, and in all our Colonies and Plantations abroad* 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 or belonging.

In witness whereof, we have caused these our letters to be made patent.

The Scotch letters patent are (to the same effect) in Latin.

6. *Specification.*

To all to whom these presents shall come, I send greeting.

Whereas [*recite accurately grant of patent, title of invention, date, under what seal, and for what part of dominions,*]

[*Recite the proviso requiring a specification*]

Now know ye, that in compliance with the said proviso, I the said do declare that the nature of my said invention, and in what manner it is to be performed, are particularly described and ascertained in and by this present instrument in writing [and the drawings thereto annexed.]

[*Description, &c.*]

In witness, &c.

II.—DISCLAIMER OR ALTERATION.

1. *Advertisement.*

Notice is hereby given that *B.*, grantee } of letters patent
assignee }
for [*improvement*] dated , has applied to Her Majesty's [Attorney] General for leave to enter a [disclaimer] of certain parts of the [*title*] of the said invention.

(*Date*)

A. B., Solicitor to *C. D.*

2. *Caveat.*

Caveat against the grant of leave to [disclaim] or alter any part of the title or specification of letter patent granted to [*A. B.*]

(*Date*)

3. *Petition.*

To Her Majesty's [Attorney] General.

The petition of *A. B.* of [*London*] [*engineer*]

Sheweth,

[*State the grant of the patent, the assignment, if any, and enrolment of a specification.*]

That your petitioner has been advised that a part of the invention hereinafter mentioned is not [new] [sufficiently described.]

Wherefore your petitioner is desirous, pursuant to the statute in that case made and provided, of [disclaiming certain parts of and of altering the said title and specification] a copy of which [disclaimer and alteration] is hereunto annexed; that the said [disclaimer] is not such as will extend the exclusive right granted by the said letters patent.

Your petitioner, therefore, prays leave of Her Majesty's [Attorney] General, pursuant to the said statute, to enter with the clerk of the patents of England such [*disclaimer*] as hereinbefore mentioned.

(Signed)

(*Date*)

4. *Entry Paper Disclaimer.*

To all to whom, &c.

[*Recite the patent; see the specification, assignment, if any, reasons for alteration,—as in petition.*]

Now know ye, that I the said by leave of Her Majesty's Attorney-General do disclaim the following .

In witness, &c.

III.—PROLONGATION OR CONFIRMATION.

1. *Advertisement.*

Notice is hereby given that intends to petition under the { 2nd / 4th } section of 5 & 6 Will. 4, c. 83, for a prolongation of the term / confirmation } of letters patent granted by Her Majesty to the said dated for an invention of [*state assignment, if any*] And that said intends to apply to the Judicial Committee of the Privy Council on or if the Judicial Committee do not sit on that day, at their then next sitting, for a time to be fixed for hearing the matter of his said petition, on or before which day notice must be given of any

opposition intended to be made to the petition at the Privy Council Office.

2. *Caveat.*

In the Judicial Committee of the Privy Council,
In the matter of the petition, &c.
Caveat against the [prolongation] of a patent, &c.

3. *Petition for a Confirmation.*

To the Queen's most excellent Majesty in Council.

[*State petition for the original grant of letters patent, specification, and assignment, if any.*]

That your petitioner at the time of the making of the said letters patent believed, and, except as hereinafter mentioned, still believes, himself to be the first and original inventor thereof.

That the said invention, or any part thereof, had not been publicly and generally used before the grant of the said letters patent.

That your petitioner has discovered [*see section 2 of the act.*]

Your petitioner therefore prays that your Majesty will be graciously pleased to confirm the said letters patent, or grant new letters patent, pursuant to the statute in such case made and provided.

And your petitioner, &c.

4. *Petition for Extension.*

[*Commence as above, recite patent and specification, explain the nature and value of the invention, and special difficulties in working it, &c.*]

That, for the reasons aforesaid, your petitioner has been unable to obtain a due remuneration for his expense and labour in perfecting the said invention, [and that an exclusive right of using and vending his said invention for a further period of seven years will not suffice for his reimbursement, but] that if your Majesty should think fit to grant an extension of fourteen] years, your petitioner will receive some reward for his exertions.

Your petitioner therefore prays that your Majesty will be graciously pleased to take the case of your petitioner into your royal consideration, and to refer the same to the Judicial Committee of your Majesty's most honourable Privy Council, and that your petitioner may be heard before such committee by his counsel and witnesses, and that your Majesty will be pleased to grant new letters patent for a term of [fourteen] years from and after the expiration of

the term granted by the said first letters patent, or for such other term as to your Majesty shall seem fit.

And your petitioner, &c.

5. *Notice of Objection.*

In the matter of, &c.

In the Judicial Committee of the Privy Council.

Notice of the grounds of objection of to the grant of the prayer of the said petition.

That the said letters patent are null and void, and a verdict to that effect was given in a certain cause, &c.

That any failure to obtain sufficient remuneration has resulted from the neglect of the said

That the said invention has been used under licence by the said , and that large works have been erected in anticipation of the expiry of the said exclusive privilege; and the said will be seriously injured by such prolongation.

That the allegations of the said petition are not true.

(Signed)

(*Date*)

6. *Assignment of Patent.*

This indenture, made, &c.

Whereas by letters patent, under the Great Seal of bearing date at the day of in the year of the reign of Her most gracious Majesty Queen Victoria, after reciting that *A. B.* had represented to Her said Majesty that he was the true and first inventor of a certain invention of , and that the same was new, &c. [*see letters patent*]; in consideration thereof Her said Majesty did give and grant unto the said *A. B.*, his executors, administrators, and assigns, her especial licence, full power, sole privilege, and authority during the term therein expressed, to make and exercise and vend his said invention within , and the whole profit, benefit, commodity, and advantage of the same to have, hold, exercise, and enjoy the said licence, power, privilege, and authority unto the said *A. B.*, his executors, administrators, and assigns, for the term of fourteen years from the date thereof.

And whereas, in pursuance of a proviso in the said letters patent contained, the said *A. B.* did, by an instrument in writing under his hand and seal, particularly describe and ascertain the nature of his said invention, and in what manner the same was to be performed, and did cause the same to be enrolled in the High Court of Chancery on the day of

And whereas the said *A. B.*, having first obtained the leave of Her Majesty's Attorney-General, did enter a disclaimer [*or* memorandum of alteration] of so much of the said invention as relates to [*or* of certain parts of the said specifiation, &c.] with the Clerk of the Patents, and cause the same to be duly filed and enrolled.

And whereas the said *A. B.* hath agreed to assign the said letters patent to the said *C. D.* in manner hereinafter mentioned.

Now this indenture witnesseth, that in consideration of the sum of this day paid to , the receipt whereof is hereby acknowledged, the said *A. B.* doth grant and assign to *C. D.*, his executors, administrators, and assigns, the said letters patent and privilege, and all right and interest therein, and in any prolongation of the same, or in any new or other letters patent for the said invention.

To hold the same to the said *C. D.*, his executors, administrators, and assigns, for all the residue of the said, and for any other, term, for his or their own use and benefit.

[*Mortgage clauses if required.*]

Covenant, that for and notwithstanding anything by the said *A. B.* done or suffered, he the said *A. B.* now hath full power to assign as aforesaid, and that the said letters patent now are good, valid, and sufficient in law, and in no way incumbered or prejudicially affected.

[*Covenants for quiet enjoyment, and for further assurance.*]

7. *Licence.*

This indenture, &c.

Whereas by letters patent under the Great Seal of bearing date at on year of Her Majesty's reign [*insert recital, if required, for purposes of title, &c., of petition*], Her said Majesty did give and grant unto *B.*, his executors, administrators, and assigns, and such others as he or they should at any time agree with, and no other should make, use, exercise, and vend his [said] invention [of] within , for and during the term of fourteen years from the date thereof.

And whereas a proper specification of the said invention was duly enrolled on the day of

Now this indenture witnesseth, that in consideration of the sum of , as hereinafter mentioned, he the said *A. B.* doth grant to the said *C. D.* [his executors, administrators, and assigns] full and free [sole and exclusive] licence, power, privilege, and authority for all the residue of the said term, and for any further or other term to be granted

to make, use, exercise, and vend the said invention [*or* the part of the said invention described in the specification as], at , and within ten miles thereof, and all profit, benefit, commodity, and advantage arising therefrom.

To hold the same, &c.

Rendering to the said *B.*, his executors, administrators, and assigns, by quarterly payments, &c., commencing on the, &c., the sum of for every made or used according to the said invention, not exceeding the number of 20,000, and the same sum for every , by which such quantity shall fall short of the number of 10,000, and the sum of for every over and above the number of 20,000 aforesaid.

[*Covenants by grantee with the said A. B., his executors, administrators, and assigns, to*] pay the said sums at the times and in manner aforesaid, and that if any such payment be in arrear for , after the same has become due, the said may enter on the premises where any such are kept, and distrain the goods and chattels therein belonging to the said , and sell and dispose thereof in like manner as landlords are entitled to act in case of distress.

And to give to the said one week's notice before using any such machines at any new place, and on the in every year deliver to an account in writing [*to be verified, if required*] of all articles made, used, or sold according to the said invention [and the dimensions and prices thereof], and keep proper books of account, and permit and his or their agent in writing appointed, at all reasonable times, to enter on such premises, and inspect and copy the same and the said books of account.

And will number every such article with the name , and number them consecutively, and for every article not so marked will pay to the sum of as liquidated damages.

And that if any of the said payments shall be in arrear for the space of , or if the said shall not observe and perform any of the covenants herein contained, [*or* shall, without the consent in writing, of the said , assign over the licence and premises, or any part thereof,] the said *A. B.* may, by days' notice in writing, &c., revoke and annul these presents, and the licence hereby granted.

[*Covenant by grantor*]

Not during the continuance of this licence to make, use, exercise, or vend the said invention within , or permit or suffer any [more than six] other persons to use the same, and at the costs of to take [concur and assist in]

all necessary and proper proceedings for restraining and for obtaining damages for any infringements which shall obstruct the enjoyment of the rights hereby granted.

And to communicate to the said [grantee], and permit them to use any improvements upon the said invention which he may become possessed of without additional payment, whether the same be patented or not.

That if any other licence be granted, no greater rent shall be payable under these premises than by such other licence.

[*Covenant for right to convey, and that not more than licences have been granted.*]

[*Covenant for quiet possession and further assurance.*]

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E.J.L.

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