THE

LAW OF PATENTS

FOR

INVENTIONS.

THE

LAW OF PATENTS

For Inventions,

FAMILIARLY EXPLAINED

FOR THE USE OF

INVENTORS AND PATENTEES.

BY

WILLIAM CARPMAEL, ESQ.,

OF LINCOLN'S INN.

THIRD EDITION.

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ADVERTISEMENT.

A THIRD Edition of this Work being called for, the Author has made various alterations and additions to the former Volume, which have been rendered necessary by important decisions in Courts of Law and Equity, in modern patent cases.

The Author would call attention to the circumstance of a decision having been come to since this work has been printed, to the effect that an invention being in public use in England, before the sealing of a Patent in Scotland renders the Scotch Patent void. According to this decision, an Inventor, intending to take Patents in England, Scotland, and Ireland, must have them all sealed before putting the Invention into public use, and before enrolling the Specification in either country.

The Author takes this opportunity of congratulating persons interested in Patent Property, on the security now offered by this department of the Law, and to express the opinion that if an inventor take reasonable care, and be well advised, he cannot fail to obtain full security by a Patent.

LINCOLN'S INN,
Feb. 1842.

PREFACE TO FIRST EDITION.

AMONGST the various publications, which at present treat of the Laws relating to Patents for Inventions, it is surprising that no popular work, adapted to the use of inventors and patentees, has made its appearance, particularly when we reflect that they have to suffer from any want of judgment in obtaining grants from the Crown to protect new inventions.

To supply this defect is the object of the present work; and it has been the desire of the Author to explain, in a familiar manner, the nature of Letters Patent, and the laws which relate to this description of *property*.

The many years the Author has been engaged in the study of mechanical science, and in giving advice to inventors and patentees, as to the best means of securing to themselves a recompense for their ingenuity, have made him acquainted with the description of information most generally required by that class of persons; and, at the same time, with the know-

ledge of the loss of many valuable inventions, from the inventors not being possessed of sufficient information as to what is required, either to guide them in obtaining Letters Patent, or to enable them to judge of the capacity of those to whom they entrust the drawing of their specification.

It has been the desire of the Author briefly to explain the essential points to be observed in securing inventions by Letters Patents. In doing which, he has thought it necessary to enforce, strongly and repeatedly, the care requisite to the main objects to be attended to in keeping to the inventor the sole and exclusive right in his invention; these are—*the Title, which, in the first instance, is given to the invention, on application for a Patent;*—*and the Specification, which describes and defines the nature and extent of the Invention.*

LINCOLN'S INN,
JULY, 1832.

CONTENTS.

CHAPTER I.

Of Letters Patent for Inventions ..... Page 1

CHAPTER II.

Of the Construction which has been put on the Act 21 James I. c. 3, s. 6, shewing what may become the subject of a Patent 10

CHAPTER III.

On the new application of known Principles to mechanical and manufacturing Purposes 30

CHAPTER IV.

Of a Caveat; its nature and object 40

CHAPTER V.

The means of obtaining Patents for Invention, and the care to be observed 47

CHAPTER VI.

Of the Specification or Description of the Invention 56

CHAPTER VII.

An Act to amend the Law touching Letters Patent for Inventions 75

CHAPTER VIII.

On the Clauses and Provisos contained in Letters Patent .. 87

CHAPTER IX.

On the Legal Proceedings to be taken to protect Letters Patent 95

CHAPTER X.

Page
Observations on the Patent Laws, and on the manner of Trying Patent Causes 107

APPENDIX.

Form of Declaration i
Form of Petition to Her Majesty..... ii
Form of Reference to the Attorney or Solicitor-General iii
Form of Caveat ..... iii., xxxiii
Form of Notice of Application for a Patent..... iii
Form of the Report of Attorney or Solicitor-General... iv
Form of Warrant vi
Form of Letters Patent viii
Form of Specification..... xv
Certificate of the Due Enrolment of the Specification... xvii
An Act to amend the Law touching Letters Patent for Inventions xvii
An Act to amend an Act of 5 & 6 Wm. IV., intituled, "An to amend the law touching Letters Patent for Inventions (2 & 3 Vict.)..... xxv
Rules to be observed in Proceedings before the Judicial Committee of the Privy Council xxviii
Rules of Practice laid down by the Attorney or Solicitor-General xxx
Form of Petition to Her Majesty's Attorney or Solicitor-General xxxii
Form of Entry Paper xxxiii
Form of Assignment of Letters Patent xxxiv
Form of Liecnce to Use Invention xxxviii
Cost of a Patent for England xliii
Cost of a Patent for Scotland xliv
Cost of a Patent for Ireland xlv
The Cost of Caveats xlv

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THE
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CHAPTER I.

OF LETTERS PATENT FOR INVENTIONS.

We find in the earliest history of the manufactures of Great Britain, that it has ever been considered as part of the prerogative of the crown to grant privileges of an exclusive character, as a reward to individuals who have been the first to introduce manufactures into this country. These grants may be said to be the origin of the laws of patents for inventions, and at the same time it may be safely stated that we are indebted for the commencement of weaving woollen and linen fabrics, as well as for many other branches of our manufactures, to the privileges thus offered to foreigners to bring their arts to

this country, for it should be understood that, at the early period now spoken of, few manufactures originated with the natives of England. At that period this country might be said to be warlike, its inhabitants looking with a degree of contempt on the peaceful manufacturers, at the same time often taxing them heavily to carry on the wars; and hence privileges of incorporation, as compensation, were granted, by which all persons, within certain districts, were prevented carrying on a manufacture, unless free of a particular corporation.

So long as exclusive privileges were granted only to persons bringing new manufactures to this country, or to natives or others, for originating new inventions, these rewards from the crown tended materially to advance trade. But a practice of another character was by degrees engrafted on this branch of the crown's prerogative, that of granting to favourites, and also to others, exclusive rights of the sale of various articles of commerce. To such an extent had this abuse of the prerogative been carried in the reign of Queen Elizabeth, that public prosperity was sinking under its baneful effects. On the subject being brought to the notice of the house of commons in that reign, it was stated that salt, iron, powder, cards, train oil, sea coal, brushes, pots, bottles, indeed almost every branch of

trade, was carried on by virtue of a monopoly, which had been granted by the crown, either to favourites, or to others, for money to replenish an exhausted treasury. The examination into these improper grants called forth very decided expressions, from various members of the house of commons, which induced Her Majesty to send a message to the house to the effect, that all monopolies should be cancelled; and many of them were put an end to; but it was not till the reign of James I., that such grants were actually destroyed, and prevented for the future, by the famous statute of monopolies (passed 21st James, c. 3, s. 6), by which all monopolies were declared void; at the same time, defining the King's prerogative, in respect to the description of grants which might legally be made; amongst these were patents for inventions, which had heretofore been granted for twenty-one years, to use new manufactures, it enacted that patents should in future be granted for not more than fourteen years for "*any manner of new manufactures.*" This act at once eradicated the system which had been so long and so prejudicially pursued.

Having thus given a concise outline of the origin of our present law of patents for inventions, it will be desirable to consider the meaning of the word "*monopoly*," it being often confounded with a patent for an invention, which is

certainly not a correct meaning of a grant of this nature. A monopoly may be thus defined, it is "a grant or allowance by the King to any person or persons of the sole buying, selling, making, working, or using, of anything *whereby any person or persons are sought to be restrained of any freedom or liberty they had before.*"* Now it is evident, that a grant of a patent for an invention is the very opposite to a monopoly; for a patent, to be valid, must be for a new invention, consequently, no persons, by such a grant, are restrained from any freedom they *had before.* It is essential that this distinction should be borne in mind, as on it depends the whole law of patents. Some writers have been of opinion that even this limited prerogative is prejudicial to trade, preventing, as they conceive, the rapid strides of improvement, which, they imagine, would follow what may be termed a free trade in inventions, or, more properly speaking, that every invention should at once become the property of the public at large. Such propositions as these do not require very deep arguments to set them aside. Let the extra cost which is consequent on bringing any new invention to bear, and the anxiety to the inventor, be but for a moment considered, the answer will be obvious, that no one would venture on a large

* Sir Edward Coke.

outlay of monies, in realizing a new manufacture, if his neighbours and opponents in trade could immediately, on the invention being matured, proceed to work on the same plans without compensation to the inventor. Ingenuity evidently requires some encouragement and reward. What, it may be asked, can be more consistent, and, at the same time, more advantageous to the state, than to grant to the first inventor, or to the first introducer, of any valuable and new discovery, an exclusive privilege for a term of years, provided he lodge such a description of the invention as will enable the public at large to enjoy the invention more fully at the expiration of the patent right? Such is the nature of patent property.—It is a reward to the first inventor of any new means of producing a known material, or for producing a new manufacture which is useful in itself. In thus speaking of the "*first inventor*," the term should be understood to include the first introducer from abroad, who is held to be equally deserving of protection and reward for any new discoveries he may bring to this country.

It has, till within a short period, been a common observation, that the laws relating to patents for inventions were not adapted to give to the inventor that protection which he had a right to expect for the advantages the country at all times

derives from the introduction of any new means of manufacture; this feeling arose principally from the want of information which existed amongst those interested as to what was the law; hence specifications of valuable inventions were constantly enrolled, from which no certain or definite knowledge of what was really the claim of invention of the patentee, could be obtained. It consequently followed, that when patents came into court, having such specifications, however much the judges might be desirous of giving effect to the intention of the law, by keeping to the inventor a just recompense for his invention, still, with such documents as were formerly enrolled, it has often been impossible to support the patents; and this, in almost every case, has arisen from the patentee not defining, and, at the same time, clearly and honestly explaining, his invention. The extensive publication of the modern decisions in courts of law of patent cases, has, however, for the most part, removed all doubts as to patent property being secure, provided the patentee take the ordinary caution of a man of business, in making a clear and explicit specification; hence patents at the present time are taking that position amongst the various descriptions of the property of England, which they ought long ago to have arrived at; and this may, in a great measure, be attributed to the

care and diligence consequent on a better knowledge of the subject, which mark the drawing up of the larger portion of the specifications that have been enrolled within the last few years.

Every one must feel satisfied *that an inventor must know where his invention commences and where it stops.* This he should point out in his specification, and disclaim all the parts described which are not of his invention. In the absence of such information, other inventors, as well as the public in general, cannot know how much is secured by a particular patent; this they have a right to be informed of, and it is for this purpose the specification is required by law. Lord Eldon very justly remarked, that "they (the public) have a right to apply to the patent office to see the specification, that they may not throw away their time and labour, perhaps at great expense, upon an invention upon which the patentee might come with his specification, alleging an infringement of his patent, when, if those persons had seen the specification, they never would have engaged in their project."* Yet how is this to be accomplished unless the patentee fully, fairly, and honestly, describes his invention, and at the same time points out how much of the parts described constitutes the invention claimed under the patent.

* Ex parte Koops, 6 *Ves.* 599.

By the act of James I. the crown is declared to have the power of granting letters patent of exclusive right for "*any manner of new manufactures;*" the crown, in using the power, grants its privilege on condition that a full description of the invention shall be enrolled for the benefit of the public; at the same time, it conceives that the party in whose favour the grant is made, will take every means to make the patent most secure. *The patentee is therefore judged on his own deed.* If the patentee, in his specification, attempts to claim more than is new and useful, the patent is void; for the King has not the power of granting the exclusive use of that which is old, to any individual; and this is also the case if there be essential information kept back: and it will be clear to every one who examines the laws as at present constituted, that if an inventor be honest in describing his invention for the benefit of the public, and at the same time restrict his claim of novelty to that which is new and useful, the law will give him every protection.

By the amendments introduced by Lord Brougham's Act, the severity of the law has been in some degree modified, a patentee having now the right of disclaiming parts claimed by his original specification; at the same time, if the specification, at the trial of any suit or action, contains

a claim of more than was new at the date of the patent, the patentee would fail in obtaining a verdict; and, further, if the suit were a writ of *scire facias* to repeal the patent, should the specification be found to contain a claim of more than was new, the patent would be declared void. It is therefore equally necessary, under the present state of the law, to use the utmost care in drawing up specifications, otherwise it will become the object of those who are desirous of setting aside a patent to proceed at once by *scire facias*.

CHAPTER II.

ON THE CONSTRUCTION WHICH HAS BEEN PUT ON THE ACT 21 JAMES I. C. 3, S. 6.

In the former chapter the statute of monopolies was spoken of in general terms, it will now be desirable that so much of the statute as relates to patents for inventions should be quoted, in order that every one may judge for himself the meaning which the particular clause, now under consideration, is intended to convey. The statute in the first place, declares all "*grants of monopoly*" are contrary to the laws of the realm; it then directs that such monopolies shall be tried by the common law of the land, it disables all persons from practising or setting up such grants, and all parties grieved by pretext of a monopoly shall recover treble damages and double costs. It then goes on to declare that the statute does not extend to patents which had been granted for new manufactures, nor to grants afterwards to be made for new inventions, in the following words (s. 6): "Provided also, and be it declared and enacted, that any declaration before mentioned, shall not extend to any letters patent, or grants of privilege for the term of fourteen

years or under, hereafter to be made, of the sole working or making of *any manner of new manufactures* within this realm, to the true and first inventor and inventors of such manufactures, which others, at the time of making such letters patent and grants, shall not use, so as they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade or generally inconvenient: the said fourteen years to be accounted from the first letters patent or grants of privilege hereafter to be made, but that the same shall be of such force as they should be if this act had never been made." Thus it will be seen, that this statute does not newly enact the law, but declares that the crown had, before the passing of this act, the power of making exclusive grants of privilege for "*the working or making of any manner of new manufactures*;" it does, however, restrain the period for which such grants shall be made, to the term of fourteen years; the time having previously been twenty-one years. It is material that this statute should be understood to be a declaratory act, that is to say, an act declaring what is the prerogative of the crown, pointing out what may and what may not be legally done, for it will be evident that, if the statute were to be read as enacting a new law, the words "to the true and first inventor or

inventors of such manufactures," would preclude a valid patent being granted to the importer of an invention communicated from abroad, but, on perusing the whole of the statute of monopolies, it will evidently appear that the clause respecting patents for inventions was inserted for the purpose of stating that grants of that nature were not to be considered monopolies; the laws therefore with respect to that part of the crown's prerogative were "*to remain of such force as they should be if this act had never been made.*" It has already been stated, that the earliest grants were to foreigners, and for imported inventions; it follows from what has been above stated, that the custom existing previously to the passing of the statute of James I., should be still upheld, and such has been the case in modern decisions; patents taken out by individuals in this country for inventions communicated from abroad have been constantly supported.

The terms of the statute, whereby the subject matter for a patent is defined, have at times been objected to. It has been stated that the words, "*any manner of new manufactures,*" do not give that clear expression of what may become the object of a patent as might be desired. On a close examination of the meaning given to the word "*manufacture*" by our best authors

and lexicographers, it will be found to be "*something made by art*," also for "*the process of making anything by art;*" these are the constructions which have ever been put on the statute by the judges before whom patent causes have been tried. Thus Mr. Justice Heath remarked, in giving judgment in the case of Boulton and Watt *v.* Bull, "I approve of the term manufacture in the statute, because it precludes all nice refinements; it gives us to understand the reason of the proviso, that it was introduced for the benefit of trade. That which is the subject of a patent ought to be specified, and it ought to be that which is vendible, otherwise it cannot be a manufacture."

Lord Eldon said that "there may be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of applying such materials; but in order to its being effectual, the specification must clearly express that it is in respect to such new combination or application, and of that only, and not lay claim to the merit of original invention in the use of the material."*

And in another case the Lord Chief Justice Abbott said, "now the word '*manufactures*' has been generally understood to denote either a thing made which is useful for its own sake, and

* Hill *v.* Thompson, *3 Merival* 622.

vendible as such,—as a medicine, a stove, a telescope, and many others; or to mean an engine, or instrument, or some part of an engine or instrument, to be employed either in making of some previously known article, or in some useful purpose,—as a stocking frame, or a steam engine for raising water. Or it may perhaps extend to a new process to be carried on by known implements or elements acting upon known substances, and ultimately producing some other known substance; but producing it in a cheaper or more expeditious manner, or of a better or more useful kind. But no merely philosophical or abstract principal can answer to the word "*manufactures.*" Something of a corporeal and substantial nature—something that can be made by man from the matters subject to his art and skill, or at least some new mode of employing practically his art and skill, is requisite to satisfy this word." *

It has been a common practice in courts of law, for the counsel engaged against a patent to urge, that it is for a principle, and not a manufacture, for which the pátent had been obtained. This has been the course pursued in some modern instances †, though erroneously; they

* Rex *v.* Wheeler, 2 *Barn. and Ald.*, 349.

† See Minter *v.* Wells, page 354, Vol. II. *Repertory of Patent Inventions*, new series.

having confounded the principle of action of the parts of a machine with a principle inherent in nature; a new combination or application of the former being the subject of a patent, whilst the discovery of the latter, it has been laid down, at a very early period of patent law, would not be a good subject for a patent.

There does not appear to be any decided case of a patent having been set aside on these grounds; this may arise from the circumstance of very few patents ever having been applied for, to secure newly discovered principles, indeed it seldom happens that new principles are discovered. It must be most evident to every one who has taken the trouble to examine into the question of what ought, and what ought not, to be the subject of a patent, that the discovery of a principle existing in nature is not an invention, nor is it such a discovery as can be protected, or for the use of which an exclusive privilege can be given. Such a grant would take from the public that which before existed; for although it may not be known in what manner a particular principle acts, its workings are at all times going on in nature. Thus I may instance Newton's discovery of the cause and operation of gravitation: that process of nature had ever been going on, and the falling of bodies had been mechanically and usefully applied in a variety

of ways, though the cause of such action was unknown. It would have been an absurdity to suppose that a patent for all applications of the principle of this natural law could have been granted to Newton. It has been thought desirable to make these few observations on this part of the subject in the present chapter, merely to call attention to the distinction which is drawn between the discovery of a principle existing in nature for which a patent cannot be valid, and the invention of something knew in the arts, or, in other words, the combining known substances, instruments, and principles, so as to produce new manufactures, which are proper subjects for patents. A future chapter will be found devoted to the word principle; for although a principle in itself cannot be the subject of a patent, the newly combining or applying a known principle to a machine, or in a manufacture, whereby it becomes in any way improved, is an invention suitable to be protected by a patent.

On a careful examination of the numerous patent cases which haye been published, it will be found that the following description of inventions may be secured by letters patent.

First, *A new combination of mechanical parts or instruments whereby a new machine is produced, though each of the parts be separately old and well known.*

An instance of such a grant may be mentioned.

A patent was taken for a machine for shearing cloth, by means of rotatory spiral cutters acting on a fixed straight blade, the machine was so arranged that the cloth, in passing through it, should come under the operation of the cutting blades in a direction to be cut from list to list. This was found to be a highly useful arrangement or combination of mechanical parts producing a valuable machine; the same parts had been differently combined in a previously patented machine, in which the cloth was cut in the direction of its length. The patentee carefully claimed the combination of the parts in the manner set forth in the specification, that is, its particular character of cutting from list to list with a rotatory cutter; and as the important results depended on that peculiar character of combination, Lord Tenterden said, if, before the plaintiff's patent, the "cutting from *list to list*, as described, and the doing that by rotatory cutters were not combined, I am of opinion that this is such an invention by the plaintiffs as will entitle them to maintain the present action," thereby supporting the patent for such new combination of old mechanical parts.*

* Lewis and another *v.* Davis; 3 *Car.* & *L.* 503.

A patent was taken for improvements in propelling vessels, the invention consisting of a new mode of combining the parts of paddle wheels, by which the float-boards or paddles could be made to assume any desired angle in working; there had been many constructions of paddle-wheels having more or less of the parts differently combined, and consequently not capable of fully producing the effect required, and the desired effect had been produced in paddle-wheels by different means. It was contended that the parts being old and each of them having been used for the same purpose before, and the result obtained being old, no good patent could be sustained for a new combination of the parts which only produced a known effect. The patent however for propelling was supported by the whole court.*

It may be stated that a large number of patents are taken out for similar combinations, and a great variety of similar instances of like patents being supported might be given; but what has been above shewn will be sufficient for the present.

Secondly, *An improvement on any known machine whereby such machine is rendered capable of performing more beneficially.*

* Morgan *v.* Seaward; vol. 4, *Rep. Invent.* N. S.; 2 *Mer.* & *W.* 544; *Mur.* & *Harl.* 55.

Under this head there cannot be given a better instance than Watt's improvement of the steam-engine. It will be known to most persons engaged in manufactures that this engine, before Watt improved it, worked by the pressure of the atmosphere forcing the piston into a partial vacuum, produced by condensing steam by a jet of cold water thrown into the working cylinder, which not only condensed the steam, but cooled down the cylinder itself. Watt's grand improvement was to have the condenser a separate vessel from the steam cylinder, together with the use of an air pump; by this simple arrangement the steam-engine became of such value as to realise a very large fortune to Mr. Watt and to Mr. Boulton his partner, though they had to bring several actions to protect themselves against infringements, in which they were successful, and the patent was supported during the period for which it was granted.* This patent may be said to be the first which was successfully tried for merely an addition to an old engine, though many patents have since been upheld for additions to old machinery, such improvements being now considered a most important part of

* The specification of this patent was very badly drawn, had it been well done it would probably have saved the larger portion of the expences, and the patentee would not have had to go so often into a court of law.

the inventions by which our manufactures are constantly being improved.

Another instance may be given of an improvement on a known mechanical construction of a different character; a patent was taken for applying a peculiar leverage to the back and seat of an easy chair, by which the back and seat were so connected in their action by levers, that the pressure on the back was counteracted by the pressure on the seat, by which the person sitting or reclining could by the merest impulse vary the position and yet be well sustained not only after the change of position, but also during the movement. The construction of the chair therefore was old, the lever action was old, but it was new so to apply the lever action to a chair, and therefore the patent was supported.*

Thirdly, *Where the vendible substance is the thing produced, whether by chemical or mechanical process, such as a new description of fabric*; for instance, felts for covering the bottoms of ships,—for making hats, &c.—sailcloth—elastic fabrics, by the introduction of threads of caoutchouc (India rubber), a waterproof fabric, by the introduction of a thin layer of caoutchouc between two surfaces of cloth; and a great variety of others.

* Minter *v.* Wells; 1 *Co. M.* & *R.* 505; 5 *Tyr.*; 4 *Ad.* & *E.*; 5 *Nev.* & *Man.*; 1 *Har.* & *Wol.* 585.

A few instances may be given of cases which have occurred under this head.

The felt for covering ships' bottoms under the sheathing had for many years been made in sheets by hand, by the ordinary process of felting; other sheets had been made by simply pressing an even layer of fibre with adhesive material into a sheet by hand. A patent was taken for making a similar substance by machinery in a continuous length; this new fabric was made by spreading the fibres evenly on a travelling surface of wire cloth, and the layer of fibres was pressed together by another moving surface of wire cloth, and in this state the continuous layer of fibres was submitted to melted tar and pitch and subsequently pressed by rollers; by this means a sheet of felt of any required length might be obtained. This patent was supported in a court of Equity.*

A patent was taken for a mode of making an elastic fabric by the aid of India rubber. Before the date of the patent, threads of India rubber had been made, and they had been covered with silk and cotton, by winding or braiding those fibres around the threads of India rubber, and threads of such covered India rubber had been woven into elastic fabrics by using them alone

* Abbott *v.* Williams and others; 9 *Rep. Invent.* N. S. 103.

as the warp; other elastic fabrics had been woven by using uncovered India rubber threads as the warp, and in other cases as part of the warp, the remainder of the warp being of cotton or other non-elastic yarn. The patent was taken, amongst other things, for making elastic fabrics, consisting of a warp composed partly of *covered* India rubber threads, and partly of non-elastic threads of cotton or other fibres, and the weaving was performed in the same manner as ordinary weavings when making other elastic fabrics. It was shewn to be a useful fabric and the patent was held to be good.*

The patent for a water-proof fabric called mackintosh, may also be mentioned under this head, that patent stood on very narrow grounds. It simply consisted of joining two fabrics together by dissolved India rubber, and it was proved at the trial that dissolved India rubber had been spread on a surface of one fabric, the other surface of the India rubber having flock sifted over it, thereby making a water-proof fabric; it was also a common practice before the patent to cement two fabrics together by other water-proof materials. The patent did not therefore claim the use of India rubber for making fabrics water-proof, but for a particular mode of using that material, the invention in fact being

* Cornish *v.* Keene; 6 *Rep. Invent.* N. S. 102.

confined to sticking two fabrics together by a layer of dissolved Indian rubber.*

Fourthly, *Where an old substance is improved by some new working; the means of producing the improvement, in most instances, is patentable, whether chemical or mechanical.*

A great variety of patents might be given under this head:—A patent was taken by Mr. Hall, for passing lace through the flame of gas, in order to singe off the loose fibres and produce a more clear appearance to the lace, the operation being facilitated by the application of an artificial draft, by means of flues placed over the flame. The patentee simply claimed the right of using gas for such process, other flames and also heated surfaces having been before used for like purposes on lace as well as on other fabrics.† It was objected to this patent that the invention claimed was no new manufacture, that the simple using of the flame of one lamp for the same purpose as the flame of another lamp had before been used was not the subject of a patent. "Who," said Lord Tenterden, "could tell when you applied gas, whether there might not be something peculiar in the application of gas which would prevent it succeeding, though oil succeeded." His lordship also said,—"the man

* Macintosh *v.* Everington; 6 *Rep. Invent.* N. S. 317.

† Hall *v.* Boot (printed short hand notes of trial).

who makes an experiment with a new material that is successful, though it is for a purpose that is old, though it be with a view to produce that which has been produced before, is entitled to the protection of the Crown and to the thanks of the public."

A patent was taken for a mode of making welded wrought iron tubes for gas and other purposes; it described the means to consist of using external pressure by dies or such like tools without internal support; before the patent, the making of tubes by external pressure with internal support had been practised and was well known. There were considerable advantages gained by leaving out the maundril or internal support: amongst others, tubes could be made longer and with much less difficulty. This patent was very strongly contested at law, the parties infringing saying that there was no invention, no new manufacture, under the statute; it being simply the leaving out a troublesome instrument; but the judges all supported the patent and expressed themselves gratified in being able to do so.*

A case of a chemical character may be given under this head: a patent was taken for water-proofing fabrics by first saturating them in a solution of alum and lime, and then submitting the fabrics so saturated to a solution of soap, by

* Russell *v.* Cowley; 4 *Car. M.* & *R.* 864; 1 *Rep. Invent.* N. S.

which a water-proof compound was produced within the fabrics so treated. Before the patent the same materials—alum, lime, and soap, had been formed into one solution and fabrics dipped into it, this had the effect of water-proofing to a certain extent on the surface, but not internally of the fabric, this patent was simply for the different mode of using the same materials for the same purposes. In an action for infringement the patent was sustained.

Fifthly, *The application of a known substance or material to a new purpose, when there requires art to adapt it, is the subject of a patent.*

A patent was obtained for a method of discharging fire arms, &c., in the name of Forsyth, which consisted in the application of detonating or fulminating mixtures as a priming.* The patentee, in his specification, fully described the nature of such substances, and also several descriptions of locks for discharging the detonating mixtures by a sudden blow. He stated that he wished it to be understood, that he "did not lay claim to the invention of any of the said compounds or matters to be used for priming;" and he adds, "My invention in regard thereto being confined to the use and application thereof to the purposes of artillery and fire arms as aforesaid." Several gun makers imagined that by

* Forsyth *v.* Rivier; *Chitt. Prerog. Crown*, 739.

merely altering the lock, and producing one of an entirely different construction to any shewn in the specification, they would be able to use the detonating mixtures for priming, such mixtures being well known before the date of the patent; but in actions brought by the patentee against infringements, the claim to the exclusive use and application of the detonating mixtures as priming, was held to the patentee, whatever the construction of lock by which they were discharged.

A patent was taken for improving the process of refining sugar by causing the syrups to be filtered through a layer or bed of charcoal; it also claimed other things. It was notorious to every person that before the date of the patent, almost every conceivable fluid had been filtered through charcoal, both vegetable and animal, but it could not be shewn that the syrups of sugar had been so filtered. It was not new to use charcoal as a purifying means in the refining of sugar, powder of charcoal having been stirred into syrup of sugar in the process of refining, and then allowed to precipitate, and the syrup was filtered by bags; hence Derosne's patent was confined to filtering syrups of sugar through charcoal, and for such process the patent was sustained.*

* Derosne *v.* Farie; 1 *Moo.* & *R.* 457; 4 *Rep. Invent.* N. S. 77.

In Watt's patent for the steam-engine, he claimed to apply a wood case or covering to the steam cylinder, in order to keep in the heat, and the patent was sustained.*

In a late case for improvements in the manufacture of covered buttons, the claim of invention was for applying certain descriptions of silk fabrics as the covering material for buttons made by dies and pressure, other fabrics of silk having been before used in the same manner. In this case the same tools were used as before, and the only difference in the button produced according to the patent, from another which had before been generally in use, was the covering materials, and the same class or description of fabrics claimed to be used by the patentee when working with dies and pressure, had been used in the making buttons by hand with a needle. The claim of the patentee was, in substance, the application of certain well known fabrics as covers to buttons made by dies and pressure, the specification stating that the fabric was not new, nor was it new in the manufacture of buttons generally, and further, that the mode of making by dies and pressure, when considered with reference to the use of other fabrics, was not new. The patent, therefore, rested on the

* Boulton & Watt *v.* Bull; 2 *H. Blackstone,* 463; *Dav Pat. C.* 3; *Ves. jun.* 140.

claim of using a known fabric by known means, producing a known manfacture, viz. buttons; the buttons, however, were improved in the nature of the fabric, introduced for the first time when working by dies and pressure.* On this last subject, it is desirable to remark, that many persons have supposed, by merely stating their invention to be the application of a particular substance to a new and useful purpose (without entering into a full account of how the same is to be carried into effect), they are thereby entitled to sustain a patent. This is incorrect; there must certainly be some art displayed, some invention discovered, in adapting the means to an end, in a new application of a known material to a new and useful purpose, otherwise a patent cannot be valid. Let it be supposed that Forsyth had merely stated in his specification, that he claimed the application of certain well known explosive mixtures as priming for fire-arms, without going into a detailed account of how that was to be done, there can be little doubt that the patent would not have been sustained.

The same observation would apply to the using of animal charcoal in the refining of sugar, supposing that to be now a new invention, whether by mixing it with the syrup, as in one case, or filtering through charcoal, as in the other

* Elliot *v.* Aston; 14 *Rep. Invent.* N. S. 285.

case; the mere statement that the thing is to be done is not sufficient; a manner of conducting the operation must be fully shewn, though the claim of invention might properly rest on the application of the known substance of animal charcoal in refining sugar.

In referring to the cases mentioned above, it has for the most part been preferred to select such instances as have offered very small quantities of difference between the new inventions and the old manufactures, in order that an individual having improved any manufacture, or branch of manufacture, may judge more readily whether what he has done may be made the subject of a patent.

If the above five propositions be carefully examined, they may be said to contain every description of invention which can be made for the advancement of trade, and it will be clear that, to produce an invention under either of these heads, *it must be the result of art*, and consequently "*a manufacture*" such as was contemplated by the statute of James the 1st.

CHAPTER III.

ON THE NEW APPLICATION OF KNOWN PRINCIPLES TO MECHANICAL AND MANUFACTURING PURFOSES.

In the preceding chapter the discovery of the existence of a philosophic principle was spoken of as not being a suitable subject for a patent. It is now proposed to give some few examples of the combining known principles with known instruments or machines, whereby new and useful combinations have been brought into action, which have very properly been secured by patents and upheld in courts of law. By this means a clear distinction will be drawn between the discovery of one of nature's laws, and of its application to some new and useful purpose. It will not be out of place here to remark that our best writers have ever held that "every man is proprietor of the fruit of his labour; and that to whatever extent he may have impressed additional value on any given thing by the work of his own hands, to that extent, at least, he should be held the owner of it," and such is the extent to which patent law protects new inven-

tions. It will be evident to the most moderate understanding, that an individual merely discovering the manner in which a principle or law of nature acts, does not in any way enhance the value of the principle: thus when Galileo discovered that the atmosphere had weight, and that it was by its pressure fluids were caused to rise into a pump on withdrawing the piston, and not, as before supposed, that that operation was the result of a sucking action, he did not thereby impress additional value on the law of nature, he only ascertained the correct manner of its action; had he gone on and invented the barometer*, such an application of the pressure of the atmosphere might have been the subject of a patent, supposing the invention to have taken

* "Torricelli, in consequence of the previous suggestion of Galileo, with regard to the ascent of water in a pump upon drawing up the piston, proceeded, in 1643, to fill with mercury a glass tube hermetically sealed or closed at one end, the other being open and immersed in a basin of stagnant mercury. Judging that, in the former case, the water was sustained in the pump by the pressure of the air on the water in the vessel in which its open end was immersed, and that it was the measure of this pressure; he hence concluded, that mercury would in like manner be supported by it in the tube, and at a height which was also the measure of the air's pressure, or about thirteen times less than water. His experiment was completely verified, for he observed that the mercury descended in the tube and finally settled at the perpendicular height of $29\frac{1}{2}$ Roman inches, whether the tube was vertical or inclined according to the known laws of hydrostatical pressure."

place at a time when the laws for encouraging inventions were similar to those of this country, and it would have been a good specification, if the inventor had described the inverted and vacuous tube to be filled with mercury from a cup of stagnant mercury; he might then have claimed the application of the known law of the pressure of the atmosphere forcing up the mercury and indicating the quantity of its pressure, thereby producing an instrument to measure the heights of mountains, to indicate the changes of the weather, and, indeed, for any use to which it might be applicable. The invention of such an instrument evidences a combination, by the mind of man, of a law of nature (the pressure of the atmosphere) with certain known instruments (the cup and the tube), with a well known fluid (mercury). Such an invention evidently stands contradistinguished from a philosophic principle, which is the work of the Creator of all things. And the inventor by claiming the right of using such barometer to whatever purpose it might be found useful, would not claim the principle of the pressure of air or atmosphere, but only the application thereof to a particular purpose to which it had never been so applied.

Steam may be said to possess three laws or principles, *first*, its elastic force; *secondly*, the

property of condensing or contracting itself into its original bulk by being exposed to bodies possessing less caloric; *thirdly*, its expansive force, by which it will go on attenuating itself, provided it be not resisted by a greater force. These, however, are all natural laws, and although any one or more of them might not be known at any particular period, the mere discovery of such properties existing in steam would not be an invention, there would be no adaptation, no new manufacture; but if an inventor had gone a step further, and used steam to press on the surface of water, contained in a vessel, having an ascending-pipe, and thereby have constructed a machine for raising water*, it would have been a good subject for a patent, had the inventor claimed the exclusive right so to use steam. Or an individual might have used the property of steam, by which it contracts itself by having its heat withdrawn, and thus have produced a vacuous vessel, into which water would be pressed by the atmosphere, such in reality were the first applications of steam, these two properties having been used conjointly by Savery.† This last combination of the two properties would have formed a good subject for

* The Marquis of Worcester's invention.

† Thomas Savery obtained a patent for his invention, July, 1698, which is the first patent on record for a steam-engine.

a patent notwithstanding each property separately, had before been commonly practised, and such would have been the case, if either or both those modes of using steam, had separately been the subject of a previous patent; but the last patentee would not have been permitted to use the new combination of the two means of using steam without licence under the previous patent or patents.* It is by such steps we ultimately arrive at perfection, and every additional value that is given to a thing becomes the property of him who produces it. The next step to improvement was the use of a piston in the steam cylinder together with the pressure of the atmosphere; then came Watt, who used the elastic pressure of steam in conjunction with the property of condensation; after him came Woolf, who used high-pressure steam expansively; all which inventions constituted suitable grounds for patent rights as new combinations and applications of known principles. In addition to these a very considerable number of patents have been taken for improvements in the various parts of the engine. Thus it will be seen that though the discovery of any of the laws natural to steam could not be the subject for a patent right, the different applications of those laws

* Ex parte Fox, 1 *Ves.* & *B.* 67. Lewis *v.* Davis, 3 *Car.* & *P.* 502.

to mechanical purposes have been the work of man, and consequently inventions such as should be protected, and should rightfully belong to the parties who first practically apply the principles under new combinations to the uses of man.

It had been long well known that the boiling point of fluids depended on the quantity of pressure to which they were submitted at the time of applying heat, thus the boiling point of water under the ordinary pressure of the atmosphere, is said to be 212°, but if heat be applied to water placed considerably above the ordinary level of the earth, that is on a high mountain, the water will boil at several degrees below 212°, according to the height. The discovery of this law or principle, though not in itself a suitable subject for a patent, became, when practically applied, a very valuable invention. A patent was taken for evaporating syrups, in vacuo, in the process of refining sugar. By the application of this known principle, a very material improvement took place in that branch of our manufactures, owing to the low degree of temperature at which the aqueous parts evaporated, thus preventing the destructive effects of high temperatures, formerly so injurious in sugar refining.

The principles or laws natural to the lever were known at a very early period, though if

such were not the case, and the correct manner of its action were now discovered for the first time, it is evident that such discovery would not enhance the valuable properties really existing, consequently such a discovery could not be the subject matter for a patent right; yet, on the other hand, any new combinations whereby these principles or any of them could be brought into more extensive use, would unquestionably become subjects for patents; such, for instance, as cranes, windlasses, capstans, or, as in a late instance, a new combination of levers to the back and seat of a chair, whereby a self-adjusting of the weight was produced to the back and seat.*

In this manner the discoveries of the known laws of the pendulum, gravitation, and, indeed, almost every law or principle of nature, might be gone through to show that such discoveries should not become the objects of patents, supposing the correct manner of their action to be now ascertained for the first time. An instance from more modern times may be given.

Mr Faraday discovered that carbonic acid gas when under a pressure of several atmospheres, was reduced from an æriform to a liquid state; this was a law or principle consequent on the matter being so circumstanced. Sir H. Davy, when informed of this principle, made a dis-

* Minter *v.* Wells. 2 *Rep. Invent.* N. S. 80.

covery of a further principle in this liquid ; he found that it was quickly acted on by heat, which produced great expansive force, and readily gave off such heat when brought in contact with cold surfaces ; this led him to observe that probably at no distant period the fluid might be used as a power for working machinery. Here then are two principles discovered to exist in a particular matter by two individuals ; let it be supposed that each had taken letters patent for their respective discoveries, up to this point nothing further than philosophic truths would have been obtained but no practical application thereof. Mr. Brunel invented an engine to be worked by the expansive force of condensed carbonic acid gas, by alternately bringing heat and cold to act, by a peculiar apparatus, on that fluid, thus taking up the two principles discovered by Faraday and Davy. Now, for the sake of argument, let it be supposed that this engine has been matured, and that it has become of public utility in superseding the steam-engine, in consequence of the smallness of space occupied, and other benefits the inventor anticipates. Before he could proceed he must satisfy the two prior patentees, otherwise he would be liable to an injunction from the Court of Chancery, by either or both the discoverers of the two principles *natural to the*

matter employed by the inventor of the engine. It may here be asked, what man would venture on making efforts to produce an engine, thereby subjecting himself to great anxiety and expense, and more particularly to the payment of dues for patent right to others, before he could even enter on the production of his invention, and liable (if he could not agree with these persons) to law suits? thus would the public and the inventor be deprived of all practically useful discoveries. The case would have been very different had the previous parties produced practical and useful results by an application of the principle, and had taken patents for the same; the public would then have been benefitted, and had Mr. Brunel required the practical results of either of the said parties, then he would very properly be required to purchase the products of the previous patents, to apply them in a new manner. Let it not however be supposed that the minds of the individuals making such discoveries of principles are underrated, on the contrary, the highest respect is due to both, but it will be evident that their discoveries are not of that kind which should secure to them the right of toll on all future practical applications of such principles; such a course would lead to endless difficulties, and tend to prevent those rapid strides to improvements by which the existence of the present law has been marked.

The minds of individuals constantly engaged in experimental philosophy, however successful in tracing nature's workings to their source, are seldom found making any practical application of nature's laws to the uses of man; they leave this department to minds of another order. There are some instances to the contrary of this position, but they may be said to form the exception rather than the general rule.

It has been thought desirable to go thus at length into this part of the subject, and incur the hazard of appearing prolix to some readers, rather than that any of those interested should not clearly understand what is meant by the judges who have constantly held that no patent can be supported for a merely philosophic principle. The words of a justly celebrated writer, who most clearly draws the distinction between the discovery of one of nature's laws and an invention, may very properly close this chapter; he says, "We do not accredit man with the establishment of law for matter. He does not give to matter any of its properties, but he arranges it into parts, and by such arrangement alone does he impress upon his workmanship the incontestable marks of design, not that he has communicated any power to matter, but in that he has intelligently availed himself of these powers, and directed them to an obvious and beneficial result."

CHAPTER IV.

OF A CAVEAT.

THERE is, perhaps, no part of the Law of Patents which has been less understood than that which relates to a Caveat. In the present chapter it is proposed to give a clear account of the object of, and the advantages to be derived by, entering Caveats.

A Caveat* is an instrument, lodged at certain offices, requesting to have notice of any party applying to secure a patent for a similar invention to that named in the Caveat. Let it be supposed that A has made an invention relating to a particular branch of manufacture; for instance, improvements on machinery used for spinning cotton: before he takes out his patent, he is desirious of having machinery for the invention made, that he may put it to the test of practical experiment; and in the event of failure, he may avoid going to the expense of a patent. In getting the invention made, he has to confide

* A Caveat lasts twelve months and may be renewed from year to year.

to workmen: to prevent such confidence being taken advantage of, he enters a Caveat against any application which may be made for improvements in machinery for spinning. Should any person apply for a patent for an invention relating to such branch of manufacture, A receives notice to that effect, and is allowed seven days to say whether he considers that the invention of B will interfere with his Caveat. If A considers that it is possible the invention of B may interfere, he returns for answer that he opposes the application.

The opposition being thus entered, the patent is stopped, and A applies to the Attorney or Solicitor General to issue a summons, calling all parties before him, on a day named.* A, first explains his invention; after him, B does the same: each person being heard separately; the Attorney or Solicitor General, taking care that neither party shall know the nature of the invention of the other.

The Attorney or Solicitor General being thus in possession of the two inventions, decides whether they are alike or interfere with each other. In case they are not alike, separate patents may be obtained by each party; but in case the inventions are alike, and each party have

* Usually seven days notice of such appointment is given, and never less, but by consent of both parties.

come honestly by the invention, then no patent would be granted, unless A and B agree to take out a patent for their joint benefit; but if it appears that the party applying for the patent, or the opponent has abused confidence reposed in him, or has otherwise dishonestly possessed himself of the invention, the attorney or solicitor-general will give the patent to the party to whom the invention rightly belongs. This is the whole object and effect of a Caveat; and it will be necessary to guard inventors against imagining that this instrument possesses more power than it really has. A Caveat does not entitle an inventor to publicly use or sell his invention; and it should be fully understood, that if A enter a Caveat, and B put the invention into public use after the Caveat has been entered, A could not prevent B or any other person making or selling the invention; and, further, in case A take out a patent after B had put the invention into public use, though the invention was communicated from A to B, such a patent would be void. It will therefore be seen, that great care should be observed in confiding to workmen the nature of a new invention; the better way is, to employ more than one person, where the nature of the machinery will allow of the parts being made separately. It should, however, be understood, that the working and using the in-

vention by A and his workmen for the purpose of experiment, so long as it is not published to the world by sale or common use, does not injure a patent: thus, in a late instance, at a trial of a patent cause, several witnesses spoke of having seen the invention at the workshop of the plaintiff's workman some months before the sealing of the patent: this was not considered such a publication as to injure the validity of the grant.

It has been often remarked, by persons unacquainted with the practice and particulars of this part of the progress of a patent, that Caveats are useless; that a petitioning party might, by explaining a different invention from that he intends to secure, get the advantage of an opponent having the identical invention. To prevent the possibility of such an occurrence, the opposing party has only to raise reasonable doubts in the mind of the Attorney or Solicitor-General, by shewing grounds for such a suspicion, and the Attorney or Solicitor-General will then impound the drawings and description produced, and confine the petitioner to claim only the invention shewn to him. Such is the attention paid by these officers, that it is scarcely possible for any party to make a false move without its leading to his own prejudice. This practice of retaining documents produced by the petitioner is often pursued; and Mr. Attorney and Mr. Solicitor-General have

note-books in which they record the nature of the invention described to them; thus a complete check is raised against designing parties; and it may not be out of place here to remark, that such is the regularity and diligence observed on these occasions, that the oldest practitioners can scarcely call to mind an instance of malpractice being successful, or of an injury arising out of the rules which govern the working of a Caveat, though attempts have often been made by a certain class of individuals, to make a false step to gain particular ends.

Caveats are entered at the Attorney and Solicitor-General's offices, and it is the duty of the clerks of those offices to give notice to all parties having Caveats for like subjects, immediately on receiving the petition referred from the Home Secretary of State. The Caveats entered at the above mentioned offices, obtain notice on the first stage of a patent, and in case of opposition, the opposing party has to lodge the costs of the hearing before the Attorney or Solicitor-General, on entering the opposition.*

* This is a rule of modern date, which has effectually put an end to those vexatious oppositions which often took place for the purpose of delay. This regulation has, therefore, proved highly beneficial. Formerly a patent might be delayed a week or more, yet the opposing party never appear. It was generally considered that the Attorney or Solicitor-General had the power to direct the opposing party to pay costs, yet it was never resorted to.

Caveats are also entered against a patent at other stages; but in these instances they are what are called Specific Caveats, as they are entered against a particular patent, the name of the petitioner being mentioned; and this description of Caveat does not extend to any other patent for a like subject, but only the one particularly mentioned.

The second stage where a patent can be opposed is on what is called the bill, which is prepared at the Patent Office; and in case of entering opposition, it must be by a Specific Caveat, setting forth the petitioner's name, as well as the object of the invention. In opposing a Patent after it has passed the report, the practice is to charge the opponent with all the expenses of the hearing before the Attorney or Solicitor-General, and in order to ensure this, 30*l*. are lodged with the clerk of the Patent Office, to meet the expenses of the hearing. The object of lodging such a sum of money is to meet the costs of the hearings of both parties; and in case the inventions are declared to be alike, the remainder of the money goes to pay the extra fees which the petitioner has been put to in consequence of the opposition taking place after the report has been granted. Should the inventions not interfere the one with the other, then, after paying the expenses of the hearing of both

sides, the remainder of the 30*l.* is returned to the opposing party.

The last stage of opposing a patent is at the Great Seal. There has been no instance, I believe, of the Lord Chancellor refusing to pass a patent under the great seal, when petitioned so to do; and the costs incurred depend on the decision of the Chancellor; but in most instances of modern times, these expenses have been thrown on the opponent, for it is usually held that the petitioner ought not to be permitted to go on spending his money, and then be stopped in the last stage, but that the proper time for entering opposition to any patent is before the Attorney or Solicitor-General, either when the patent is on the Report or Bill.

CHAPTER V.

THE CARE TO BE OBSERVED IN OBTAINING PATENTS FOR INVENTIONS.

In addition to the statute law by which a patent is tried, there are certain rules laid down by the courts of law, that require the fullest consideration in order to render a patent valid: amongst others, and the first to be inquired into by an inventor, is the "title," or general description which is to be given to his invention on presenting a petition to Her Majesty.

An inventor having sufficiently matured his invention to satisfy his mind that it is worth the expense of being protected by a patent, makes application to Her Majesty by petition*, setting forth that he has invented a certain something, stating in general terms the object thereof, and, at the same time, praying that the sole use, benefit, and advantage may be granted to him, his executors, administrators, and assigns, for the term of fourteen years, according to the statute.

* For the proper form of petition and declaration, and all other of the documents necessary in the progress of a patent, see Appendix.

The petition is supported by a declaration, in which the "*title*" of the invention is set forth, the petitioner solemnly declaring that he is, to the best of his knowledge or belief, the first and true inventor thereof, or that he has become possessed of the invention from abroad, and that it has never been practised in this country.* So essential is correctness of the title, that several patents have been set aside in consequence of the inaptness of the description thereby conveyed; it therefore becomes the more desirable that every inventor should fully comprehend what is required to be understood by the word "title." This part of my subject, though exceedingly simple when a little consideration is brought into action, has been thought to be very difficult. The title should be such a description of the invention that the public may know the object of the invention. Thus if it be "*Improvements in the slides of steam-engines,*" every person having a Caveat relating to steam engines,

* There are separate patents for England, Scotland, and Ireland, and they are in every respect distinct from each other. A patent would be valid in England, Scotland, or Ireland, even though the invention had been used in either of the other countries prior to the date of the letters patent, provided it could not be shewn that it was publicly known in the country for which the patent was granted. The laws in each country are alike, and the decisions of one country are quoted in the courts of the other; but there was no statute law in Ireland, until Lord Brougham's Act.

and therefore interested, will readily understand that a certain well known part of the steam-engine is proposed to be improved; but let it for a moment be considered, that, if under such a title, a patentee were to claim improvement in other parts of a steam-engine, in addition to his improvements of the slides, this would evidently be a marked disagreement between the title and the specification, and the patent would be bad. Many will probably remark, that such is too palpable a case ever to occur in practice; yet it will be found that although this particular case may not have taken place, there have been others, equally clear, which have occurred, and on which patents have been declared void. Of these it is proposed presently to speak more fully, the present object being, in the first place, to draw attention to this important branch of the law, in order to impress on the minds of inventors the absolute necessity for a little thought and due care in every part of the business, bearing in mind that the Crown grants the patent on condition that a fair and clear statement of the invention shall be made. In selecting a title for an invention, the precise point—the nature and extent of the invention—should be accurately determined; whether it be a manufacture which has not

heretofore been made or used, or for an improvement of a known manufacture, or for a new combination of old mechanical parts for producing an old manufacture in a more advantageous manner, by improving the quality or producing the article of an equal quality but at less cost, or for a new or an improved process or manner of working, to produce some advantageous effect in the material acted on; or whether the invention be for improvement of a known engine or machine whereby the same may be made to work more beneficially, or produce an useful result which has not been before obtained by it: this should be first clearly ascertained, because either, correctly pursued, may be made subject of, and secured by, letters patent.

In order more readily to come at a knowledge of what should be the title given to a particular invention, it will be necessary to instance some patents which have been set aside, from having had improper titles, and by this means to point out the rocks upon which others have split, and thus produce a chart for future guidance. In a patent, the title of which was "*An improved method of lighting cities, towns, and villages,*"* the specification described an improved lamp for lighting cities, towns, and villages; the patent was

* Cochrane *v.* Smethurst, 1 Stark., 205.

declared void, in consequence of the title in the patent and the description of the invention in the specification not conforming to each other. In the first instance, the lamp was described as being applicable to lighting lighthouses, harbours, shipping, &c., which was beyond the extent of the title, which only named cities, towns, and villages; this would have been a hard case supposing it to be the only objection to the validity of the patent, but, in addition to this, there was a more important objection, it was evident that there was no "*improved method of lighting cities, towns, and villages;*" lamps, of a slightly different construction had been used for that purpose prior to the granting of the patent; therefore, had the title of the patent been for "*an improved lamp,*" or for "*improvements on lamps,*" there is no doubt that the patent would have stood, and have been of great value to the patentee, and either of those titles would have protected the patentee *in every application of his invention*. It will be desirable that this title should be more closely considered: it is for "*an improved method of lighting,*" &c. A lamp maker receives notice on his caveat, and his invention being perhaps precisely the same as that for which the patent was applied, the individual, knowing that his invention was an improvement in ordinary lamps, would naturally

say, this application for a patent has no relation to mine,—I have no *improved method of lighting*, but only an improvement on a lamp which is in common use. The patent would therefore be permitted to proceed, and be granted in favour of the petitioner and to the prejudice of the party holding the caveat; thus would great injury be done if disguised titles were permitted. The law considers any disguise or mis-leading, either in the title or in the description of the invention, to be a fraud on the Crown, the condition of the grant being, that the public may have the benefit of the invention after the expiration of the patent; also, the public is to be protected against parties taking out letters patent by the titles of which it would appear to be for one object, whilst in the specification other matters are described; were such permitted, there would be no protection to others who may be proceeding with similar inventions; for, if disguised or indefinite titles were allowed, inventors (pursuing similar discoveries) having a riglrt of notice*, would be misled, and would permit patents to pass without opposition, from not imagining that the application was for an invention which

* All persons entering caveats for any invention, have notice given them, on application being made for a patent for a similar invention to that named in the caveat.

would interfere with their own, and thus would constant injustice be done to others.

In a patent granted for "*a new or improved method of drying and preparing malt*,"* the specification described that the invention consisted in submitting *malt* to a high degree of temperature, thus producing a material which was to be used for colouring beer, &c.: there was no new means of drying such malt described; but the same might be done by any of the known methods used for making malt; the only difference was, in raising the same to a considerably higher degree of temperature, thereby making it applicable as a colouring matter, to be used, not for the purposes of making beer, but for colouring it. This patent was also declared void, for the want of agreement of the specification with the title, the invention not being in reality the article known by the name of malt, but a colouring matter produced from malt; and for such process and application the patent should have been taken; this patent should, therefore, have been taken for "*an improved colouring matter for beer and other liquids;*" under such a title the patent would undoubtedly have stood. The consequences which would arise if the title first mentioned had been held sufficient to cover the invention as specified,

* R. *v.* Wheeler, 2 B. and Ald., 349.

will become manifest on asking what would have been the case had a caveat been entered for "any improvements in the materials used for colouring beer and other liquids." No notice would have been given. But let us suppose the party having the caveat, by some accident, did receive notice, could he for a moment imagine that an improved colouring matter was behind such words as "a new and improved mode of drying and preparing malt." The law only uses common sense in adjudicating on these subjects. The common sense of this title is, that there was some new mode of drying the article called malt, and the result to be produced was malt, not a *new substance* to be obtained by old means from malt. There are other instances of a similar kind, but the above will be sufficient; and it has been clearly pointed out by the judges, that to attempt, by the title or the specification, to claim more than is the actual invention of the patentee is fatal to the patent; this is also the case where the title and the description contained in the specification are not in conformity with each other.

"The Lord Chancellor (Lyndhurst)* in giving judgment, said in respect to a *title*, that the description in the patent must unquestionably

* Sturtz v. De la Rue, 5 Russ., 322.

give some idea, and, so far as it goes, a true idea, of the alleged invention, though the specification may be brought in aid to explain it. The title in this patent is for '*certain improvements in copper and other plate printing*.' Copper-plate printing consists of processes involving a great variety of circumstances; the paper must be of a particular description, before it is used it must be damped, it must remain damp a certain time and must be placed in a certain temperature, the plate must be duly prepared and duly applied, and various processes must be gone through before the impression is drawn off and brought to a finished state. An improvement in any one of those circumstances,—in the preparation of the paper for instance, or the damping of it, &c., may truly be called an improvement in copper-plate printing."

The title, then, should be such a statement that the public may know the object of the invention; the specification should describe the manner of producing the invention, and distinctly point out that which is new and claimed by the patentee, from that which has been before used. The title must be neither greater nor less than the invention, but must be such as to give a general knowledge of the invention, and the specification must define the same.

CHAPTER VI.

OF THE SPECIFICATION OR DESCRIPTION OF THE INVENTION.

HAVING, in the previous chapters, given an account of the means of obtaining patents, and having more particularly pointed out the care to be observed in drawing the title to be given to the invention, the next and most important point to be considered by the patentee is the proviso contained in the patent which requires that a specification should be enrolled, fully setting forth the nature of the invention and the manner in which the same is to be performed. It has been before remarked that the title is to state, in general terms, the nature of the invention; the specification, on the other hand, must not only fully describe the manner of performing the invention, but must also define the precise point which the grant is intended to secure. A badly drawn specification will court opposition, whilst a clear, definite, and decided description, will be the best preventive to infringement.

In drawing up a description or specification

of an invention, there are three things to be carefully attended to:—

First.—That the specification be so clear that a workman, or other qualified person, shall be able to realize the invention by pursuing the description and course pointed out in the specification.

Secondly.—That the invention claimed as new shall not be greater nor less than what is indicated by the title contained in the patent.

And, Thirdly.—The extent of the invention claimed must be new and useful, and the invention of the patentee, or that he is the first importer of the same.* What is meant by *new and useful*, is, that should there be two or more points claimed as new in the specification, and either of them be old, or fail to produce the beneficial result described by the specification, the patent would be bad in law.

It is evident, that so much having been done in the arts and manufactures, there will at times be found considerable difficulty in ascertaining what is new in some branches of manufactures; yet it will be equally evident, that when a beneficial result is obtained and a manufacture brought into the market of a better quality, or produced at a less cost, there must be some point

* There have been patents granted to the executor of an inventor.

of novelty, and this point of novelty in most instances may be the subject of a patent. If the specification describe clearly the means of producing the beneficial result, and claim only for the point of novelty, which is the cause of improving the manufacture, or of reducing the price, such a patent would unquestionably stand. An instance may be given:—a patent was granted for "*certain improvements in evaporating sugar, which improvments also are applicable to other purposes.*"* The invention consisted of an apparatus for introducing streams of air into fluids to be evaporated; the air, as it forced its way through the fluid (which was kept heated), carried off the aqueous part, and concentrated the matter which was contained in it. The specification set forth and described a series of small tubes, descending nearly to the bottom of the boiler or pan, they being connected above to main pipes, which were placed over the fluid to be evaporated. The small descending tubes were numerous, and placed at equal distances, over the surface of the bottom of the pan, thus was an equal distribution of streams of air obtained throughout the whole of the fluid, which rapidly carried off the aqueous part, and at a considerably lower temperature than what is necessary for boiling and evaporating in the usual manner. In an action

* Hullett *v.* Hague, 2 B. and Ald., 370.

brought by the patentee against a party for an infringement, it was proved in court, that the forcing air into fluids to facilitate evaporation was not new, but had been practised in the year 1754; a publication of some experiments having been made at that time in the Transactions of the Royal Society; in addition to which, a patent had been granted in 1822 (which was some years before the plaintiff's patent), wherein the principle was described, amongst other things, to be applicable to sugar: in both these instances the means employed were the same, and consisted of a perforated coiled pipe, placed at the bottom of the pan or boiler.* By a series of extensive experiments, it was found that the air would only pass through a few of the first holes of a coiled pipe, but no even distribution could be made to take place; the coil of pipe, therefore, failed to produce the desired effect, and was wholly inefficient. The patentee of the

* This patent of 1822 must have been bad in law owing to the publication of Hale's experiment of 1754; it did not, therefore, interfere with the second patent. If, however, there had been no previous publication, and the patent, in 1822, had been the first application of the principle of introducing streams of air into fluids to facilitate evaporation, and the apparatus useful, then the second patent would have been an infringement, notwithstanding the means described in the last patent were far more effective, and the second patentee must have taken a licence under the first patent before he could use his improved mode.

last invention fully described, and distinctly claimed, a particular apparatus, made up of the descending tubes, from main pipes, placed above the surface of the fluid, by which an even distribution of the air was obtained. The judge (Lord Tenterden) at the trial, in giving his opinion, said, although the principle of the invention—that of blowing air into fluids to facilitate evaporation—was not new in itself or in its application, yet, as there could not be a patent supported for a *principle*, there could consequently be patents granted for any number of means for carrying the known principle into effect, "*so long as there is a distinct and essential difference in each of the means*." In an application for a new trial, the judges confirmed this judgment, and the patent was held to be good. Now, had the patentee claimed generally the introduction of streams of air into fluids, and not confined his claim to the particular means or apparatus described in the specification, the patent would have been bad. It will generally be found, that the great object of patentees is so to word their specification as to claim every means of producing a certain result, with a view to shut out all future improvement by other persons: thus are patents made weak by over-claiming, and, consequently, are declared void when they come into a court of law. Such a

course of claiming is correct when it is certain that the principle has never before been applied to the same purpose; but when it is known to have been before used, the only subject matter open for a new patent, is a better combination of mechanical or other means for bringing about a more useful result. The chief care of a patentee should be, so fully to describe the means which he knows to answer, that a workman may make the invention by following the description, and he should claim such means, or only such parts of them as are his invention, leaving any future invention, for producing a similar result, to be judged of when it comes out, whether it is or is not an infringement of the original patent; if it be proved to be essentially different in the means, although on the same principle, and that principle has been before known and applied, it would be no infringement, even though the original patentee had claimed every means of producing the result. If, on the contrary, the last means of producing the desired object be proved not to be an essential change, but only a variation, then the same would be an infringement of the original patent, though the patentee had only claimed the particular means specified. In the instance just given, the infringement was an apparatus, having but one main pipe, for introducing the air to the descending tubes; whereas, the patentee had

described, and shewn by drawings, three main pipes; this was a variation, but no new invention; all the essential properties of the patent were retained; there was no substantial change, but it was in reality the same apparatus, and it was so considered by the court.

A patent was granted for an apparatus for measuring gas, by the revolution of a peculiar wheel, partly immersed in water, the spokes or vanes forming chambers for measuring the gas, *which, according to the patent, was introduced through the axis.* After the patent was specified, another person made a similar apparatus, varying only in the means of introducing the gas into the chambers of the wheel, thus simplyfying the apparatus. The patentee afterwards found it desirable to use the means last discovered for introducing the gas. In an action brought for an infringement, the circumstance of the patentee using an improvement discovered by another person was brought against the validity of the patent; but it was proved that the improvement could not exist without the original invention of the patentee, and therefore the patent was held to be good.* From this decision it may be drawn, that where an improvement to a patent is made after the enrolment of the specification, it becomes the property of the

* Crosley *v.* Beverly, 3 Car. and P., 513.

patentee, provided that the improvement cannot be used by itself, but, to be useful, must be superadded to the patented invention. This is but doing justice to the original inventor, for every one must feel that few inventions can be brought to such a state of perfection in a few months as to defy improvement; it would be hard indeed if a person, by merely making an improvement, were to have the right of taking the originally patented invention, without the previous existence of which, his improvement would never have been suggested. Had the party who made the important improvement in the gas-meter, taken a patent for such improvement, the original patentee could not have used the same without a license under the second patent. Thus a patent offers no real stop to the progress of invention, and it is of great importance in most cases to the original patentee, to have his invention rendered more valuable by subsequent improvements, and a patent to another person for an improvement of his invention can in no way injure his right, but it may hasten the bringing of the original invention into general use. In such cases it has often been the interest of original patentees to become interested in such second patents; and amongst others there is this important advantage resulting from such a course of proceeding,—the original patentee be-

comes interested in the best means of carrying out his invention, for a more or less considerable period beyond the grant of the original patent. In these cases the improver of a previous patent simply obtains a share of the advantages brought about by his improvements, therefore the original patentee must necessarily be a gainer.

Another error which patentees very often fall into, is, when describing the materials of which certain parts of their machinery or apparatus are to be composed, they use the following, or similar expressions: "*or any other fit and proper material or materials,*" after naming one which is known to answer.

In a patent granted for drying paper, by passing it against rollers heated by steam*, the patentee described a machine, the point of invention being the drying the damp paper by passing it against heated cylinders or rollers. In the machine there was an endless fabric, which conveyed the paper against the heated rollers, and in the specification the patentee, after having described the nature and the description of the fabric used, went on to state, that *any other fit and proper material might be used.* It was proved in court, that no other description of fabric would answer the purpose. The judge held the specification to be bad, as it tended to

* Crompton *v.* Ibbotson, Dan. and Lloyd, 33.

mislead the public, for any description of fabric, other than that described, spoiled the paper, by what is called cockling it. It should be understood, that the fabric described in the specification formed no part of the claim of invention; therefore, had the patentee confined his description to that which he knew would answer, the patent on that ground would not have failed; at the same time, had any other fabric been found to answer, it could not have been used by others, without the essentials of the patent invention, that invention being an arrangement or combination of known materials, to produce a beneficial result, as described, the materials themselves forming no part of the claim of invention, they being old.

It would be difficult to point out what quantity of invention is required to support a patent, supposing the specification to be well drawn; yet it may be stated, with some degree of confidence, that the smallness of the quantity of invention is not an objection to a patent, provided it is new and useful; more depends on the utility than the extent of invention. In the case of Lewis and Davis's patent for shearing cloth, before mentioned, there were three improvements claimed, one in the following words: "The described method of shearing cloth *from list to list by a rotatory cutter*;" having, in the speci-

fication, fully described a machine for that purpose. It was proved that a rotatory cutter had been used in machines to shear cloth in the *way of its length*, the plaintiffs having put in a former patent of their own containing such a machine.* It was also proved by the defendants, that, before the date of the patent, a model of a machine to shear cloth from list to list by a rotatory cutter was brought from America and shewn to several manufacturers. A machine had also been commenced to be constructed, but was destroyed by the Luddites. It was further proved that shearing cloth from list to list by hand, and also by other descriptions of cutters, was well known. Lord Chief Justice Tenterden said, "it appears that a rotatory cutter to shear from end to end was known, and that cutting from list to list by means of shears was also known. However, if before the plaintiffs' patent *the cutting from list to list, and doing that by means of a rotatory cutter, were not combined*, I am of opinion that this is such an invention as will entitle them to maintain the present action." On an application for a new trial, it was argued that the novelty of the invention was properly the sub-

* Where a second patent is taken for an improvement on a former patent, as was the case in the above instance, the first patent and specification must be noticed in the pleadings, although the infringement is only on the second patent.

ject for the verdict of the jury, and that his Lordship had not so put the question. Lord Tenterden remarked, "I told the jury that if it could be shown that the plaintiffs had seen the model or specification, that might answer the claim of invention; but there was no evidence of that kind, and I left it to the jury to say whether it had *been in public use and operation before the patent:* they found that it had not, and I think there is no reason to disturb their verdict." Mr. Justice Bailey concurred with Lord Tenterden, and observed, "If I discover a certain thing for myself, it is no objection to my claim to a patent that another also has made the discovery, *provided I first introduce it into public use.*"* There was another point of great importance decided in this case; the patentees stated one of the improvements to be "the application of a proper substance fixed on a cylinder to brush the surface of the cloth to be shorn." In the specification a method of performing that operation was described. This

* Immediately a patent is sealed the invention is considered to be in *public use*, even before the enrolment of the specification. This is important to be known, as many persons, having patents of later dates than others, have imagined by enrolling their specifications first, they thereby obtain the first publication of their inventions. This is incorrect, the priority of the date of the patent itself is the point to be considered; priority of date in the specification is immaterial.

part of the invention was afterwards found to be unnecessary, and was abandoned. It was held that that circumstance was not injurious to the patent, the inventors having thought the improvement serviceable at the time of obtaining their patent. This case strongly supports that of Dollond's patent*, where the invention had been made and *privately* used by another person long before the patent. No actual public use or publication could be shewn; the patent was, therefore, held to be valid.

It may be desirable here to remark, that if it had been found, on coming into court, that the specification of Lewis and Davis's patent, just mentioned, had omitted to define the extent of their claim,—*that of cutting from list to list by rotatory cutters*,—the judge could not have ascertained the extent of the invention intended to be secured, and the patent would not have been supported. The patentees having, however, confined their claims of novelty to that which could not be shewn to have been in public use, the patent was sustained. A patent was taken out for a machine for making bobbin-lace or twist-lace: in the specification the patentee fully described the machine, but did not in any way point out how much was to be considered as new, and claimed under the patent. The

* Dollond's Case, 2 H. Bl., 470 and 487.

judge*, in his charge to the jury, said, "If you think Brown (the patentee) has invented a perfectly new combination of parts from the beginning, though all the parts separately might have been used before, his specification would be good; but if you should be of opinion that a combination of a certain number of those parts had previously existed up to a certain point, and that Brown took up his invention from that point, only adding other combinations to it, then his specification, which states the whole as his invention, is bad." Lord Eldon, in another case, states the law in similar terms; he said, "There may be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of applying such materials; but in order to its being effectual, the specification must clearly express that it is in respect to such new combination or application, and of that only." A patent was taken in the name of Minter for "an improvement in the constructing, making, or manufacturing chairs." The patentee, in the outset, described generally the nature of his invention, he then explained the nature and use of each of the parts shewn in a drawing, disclaiming all parts of a chair known and in use, and concluded his specification with the following

* Gibbs, Lord Chief Justice, Bovill *v.* Moore, Dav. Pat. C.

words :—" What I claim as my invention is the application of a self-adjusting leverage to the back and seat of a chair, whereby the weight on the seat acts as a counterbalance to the pressure against the back of such chair as above described." The patentee having obtained a verdict against parties for infringement, an application was made to set aside the verdict. It was argued by Mr. Godson, in behalf of the defendants, that they did not use the same arrangement of parts as those described in the specification. Lord Chief Baron Lyndhurst asked whether it was not a colourable evasion.

His lordship remarked, that any application of the self-adjusting principle to the back and seat of a chair producing this effect, that the one acts as a counterbalance to the other, would be an infringement of this patent, but nothing short of that.

Mr. Godson. Yes, my Lord, and therefore every application of a lever to the back of a chair would be an infringement.

The Lord Chief Baron. No, a self-adjusting lever.

Mr. Godson. He has claimed by the specification the use of the lever for fourteen years to the backs of chairs.

The Lord Chief Baron. It is not a leverage only, but the self-adjusting leverage; and it is

not the self-adjusting leverage only, but it is the self-adjusting leverage producing a particular effect, by means of which the weight on the seat counterbalances the pressure against the back." Their lordships refused the application, and sustained the patent. From what has been said in respect to the construction put on the various specifications mentioned, a tolerably correct judgment may be arrived at as to what ought to be the style in which any invention should be claimed. It is true that there may and do often arise cases of considerable difficulty, where great progress has been already made in any particular branch of our manufactures,—where, from a slight improvement, very considerable results are found to be obtained, and yet, from the simplicity of the change, the cause of the improvement can scarcely be pointed out in the way of a claim to invention, except by those who have constantly made the drawing of specifications their particular study and profession. The case of *Galloway* v. *Bleaden** may be instanced (for paddle-wheels), the case of *Elliott* v. *Aston*† (for buttons), the case of *Russell* v. *Cowley*‡ (for gas tubes), and the case of *Derosne* v. *Farrie*§ (for sugar), where the inventions were of the smallest extent, yet they were accurately defined and

* *Repertory*, N. S. vol. 15.
† Ibid. vol. 15.
‡ Ibid. vol. 1.
§ Ibid. vol. 4.

proved to be useful, and the patents were sustained.

According to the law, patents are granted to persons at their own risk, whether or not the inventions will be beneficial to the public; and exclusive rights are given to individuals for any new inventions which they have made, or first introduced into this kingdom from abroad, on condition that such inventions shall be so described, that the public at large may, from the specifications, be able to make and use the inventions after the expiration of fourteen years: and patents are granted as a matter of course, should there be no opposition by caveats. The whole responsibility of making a patent valid is thrown on the patentee. It will be almost unnecessary, after what has been already said, as to the fully describing the invention, to state, that any hiding, or keeping secret an essential part of an invention, is fatal to the validity of a patent.*

The time allowed for specifying an invention is two, four, or six months, which depends on the attorney or solicitor-general. In case the patent be only for England, two months are allowed for specifying; but if the declaration state it to be the intention to take a patent in Scotland, then four months will be allowed; and if

* Sturtz. *v.* De la Rue, 5 Russ., 322.

for Scotland and Ireland, then six months are allowed, after the sealing of the patent, for specifying the invention; the patentee being secure from the date of the grant, he may make and sell his invention prior to the enrolment of the specification. The reason for allowing the length of time for drawing up the specification, is to give the patentee full opportunity to try his invention, that he may call in the aid of practical men and make a perfect description. In the case of the gas-meter patent, before spoken of, there was an objection taken to the validity of the patent, that the inventor (after the sealing the patent, and before the enrolment of the specication) made some changes in the arrangement of the parts of his invention; these he put in his specification as part of the invention secured by the patent. Lord Tenterden said, "the objection really is, whether a patent is void, when the inventor, having had in his mind at the time of applying for it, an invention capable of producing the effect he represented it to be capable of producing, but having brought that invention to a greater degree of perfection within the time allowed by his patent for making the specification, he introduces into that specification a different species of mechanical parts from those he first conceived. No case has ever decided that, and I think it would be extremely dan-

gerous to lay down any such doctrine; I do not see why time is allowed to prepare a specification, except upon the idea, that the inventor has not, at the time of obtaining his patent, brought his invention to the degree of perfection that he may be thought capable of doing, and therefore he is allowed further time to do it. If, in the interval, the invention is perfected, so as to approach a perfect accomplishment of the object originally in view, I do not see that it can be any objection to the patent." It has also been decided that an inventor may call in the aid of scientific men to complete his invention.

The specifications, when enrolled, are open to the inspection of the public, and copies may be had. The best means of ascertaining whether a patent has been granted, is to examine the books kept at the office*, for which no charge is made. Here may also be ascertained the date of the grant, by which much trouble will be saved, as well as expense otherwise incurred for examining the books at each of the Enrolment Offices.

* 4, Old Square, Lincoln's Inn.

CHAPTER VII.

AN ACT TO AMEND THE LAW TOUCHING LETTERS PATENT FOR INVENTIONS.*

HAVING, in the preceding portion of this work, treated of the Law of Patents for Inventions according to the construction which has been put on the statute of James I, it now becomes desirable to speak of the law as amended by Lord Brougham's Act.

Before the passing of this measure the specification must ever remain in the precise form in which it was originally enrolled; if that deed contained any flaw which injured the validity of the patent, in that state it must be judged.† In case of infringement the patentee, with a specification bad in part, could not safely proceed against the parties, and where proceedings have been instituted under such circumstances the objections taken to the specification have prevailed

* 5 and 6 William 4, c. 83.

† Clerical errors only could be altered with the the sanction of the Master of the Rolls.

against the validity of the patent. If we examine into the various patent causes which are reported, it will be found that, in the larger portion of the cases where the patentees have not been successful in keeping to themselves the absolute right of their inventions, the cause of failure, is to be attributed to the patentees claiming more than was new at the time of sealing their patents, or, otherwise, that they had not properly specified the invention. The number of these instances which are published, do not exhibit more than a very small part of those patentees who have suffered great injury by the strictness of the old law, which declared the whole of a patent invalid if it were found to be bad in part. A very few of the many patents so circumstanced, however, have come to the knowledge of the public, by far the larger number of patentees in former times, having been advised not to attempt to defend their patents. That a patentee should be restricted in his specification to claim and have secured to him only so much as is actually new, is highly necessary to the prótection of the public; at the same time, that a patentee should lose every part of his invention from his having been anticipated in any, and, in some cases, a very small portion thereof, is a severity in the law which ought to be and has been mitigated, by permitting a patentee, at any period of his

patent, to disclaim parts of the invention contained in his specification. This, it should be observed, applies to patents sealed before, as well as those passed after, the statute.

In thus giving more security to patent property, the rights of the public have not been overlooked. The permission to amend the title of the invention, or the specification of a patent, is very properly guarded with the necessity of obtaining the sanction of the law officers of the crown before any alteration or disclaimer can be made ; and, further, the disclaimers or alterations must not extend the quantity of invention previously contained in the specification. The words of the statute are,—"Any person who, as grantee, assignee, or otherwise, hath obtained or who shall hereafter obtain letters patent, for the sole making, exercising, vending, or using of any invention, may, if he think fit, enter with the clerk of the patents of England, Scotland, or Ireland, respectively, as the case may be, having first obtained the leave of His Majesty's Attorney-General or Solicitor-General in case of an English patent, of the Lord Advocate or Solicitor-General of Scotland in the case of a Scotch patent, or of His Majesty's Attorney-General or Solicitor-General for Ireland in the case of an Irish patent, certified by his fiat and signature, a disclaimer of any part

of either the title of the invention or of the specification, stating the reason for such disclaimer; or may, with such leave as aforesaid, enter a memorandum of any alteration in the said title or specification, not being such disclaimer or such alteration as shall extend the exclusive right granted by the said letters patent; and such disclaimer or memorandum of alteration, being filed by the said clerk of the patents, and enrolled with the specification, shall be deemed and taken to be part of such letters patent or such specification in all courts whatever."

This clause of the new act will doubtlessly prove of the highest value to the patentee, or the holders of a patent. By it he has an opportunity of striking out any part of the invention ascertained to be bad in law, in consequence of want of novelty, and which would otherwise be fatal to the validity of the patent itself; he has also the power of making any alteration in the description of the invention, which may be thought incorrect or wanting in clearness.

It may be stated, with some degree of confidence, from what has already been done in amending specifications* and titles of patented inventions, under the above clause, that there

* For the form of documents, and other information requisite in making application to the attorney or solicitor-general to enrol disclaimer or alteration, see Appendix.

will be no doubt of obtaining the consent of the law officers of the crown, unless there should appear to have been a fraud on the part of the patentee, by his knowingly enrolling a specification which did not fairly and fully explain his invention, and clearly point out what he conceived to be new; hence arises a necessity for a patentee being equally careful in drawing up the title and also the specification of his invention, otherwise the application to amend will be refused: the patent would then be liable to the same strict construction which has heretofore been the practice, and the patentee or holder of the patent would fail to recover against infringement. In addition to the necessity of obtaining the sanction of the attorney or solicitor-general to an amendment of an English patent, the first clause of the statute states that caveats may be entered against alterations or disclaimers, and the parties entering the same may be heard in opposition; thus is another guard raised to prevent a patentee intentionally enrolling a specification deficient in description or with too extensive claims, merely with the hope of being able at any time to amend the same, which would unquestionably have often been the case, had not the legislature very properly put such checks as are contained in the first clause of the new statute. And it has been decided that a patentee having had a bad specifi-

cation, can only recover damages for such infringements as are made after enrolling a disclaimer and alteration, and not for any infringements, however extensive*, committed before making the specification good in law. In a late case the jury found that one part claimed was not useful, and the judges held that the patent was thereby rendered void altogether; at the same time they expressed great pleasure in knowing that the patentee could, by entering a disclaimer, set up all the useful part of the patent; and a disclaimer was afterwards allowed. In the same case considerable doubts were raised as to the sufficiency of the description of the specification, but the jury found, after contending evidence, that it was sufficient. The patentee, subsequent to the trial, was permitted to enter a memorandum of alteration, more fully explaining the mode of performing the invention, by giving a fresh drawing and description; and this was allowed, after the strongest opposition, by the defendants in the original cause†, as well as by other manufacturers,—counsel being heard on both sides by Mr. Solicitor-General Rolfe.

In another case, where the patentee at a trial obtained a verdict‡, there was considerable

* Perry *v.* Skinner, 2 Mee. and W., 471.

† Morgan *v.* Seaward & others, *Rep.*, N. S. vol. 7, p. 182.

‡ Derosne *v.* Farrie.

doubt whether the specification should not have set forth, how iron was to be separated from the schistus employed in the process; the mode of doing so was not known to chemists or sugar refiners in this country, and on application to the court, the judges granted a new trial. But the patentee was advised to make certain alterations and disclaimers, and no new trial was had, because there was then no doubt of the validity of the patent, and it has never again been questioned. Several other patents have been sustained in a court of law, after having been amended by disclaimer and by alteration under the statute.

The second clause of the new law gives to the crown the power of re-granting or confirming a patent in the event of its being discovered that the invention had been in slight previous use. The words are,—"If in any suit or action it shall be proved or specially found by the verdict of a jury that any person who shall have obtained letters patent for any invention or supposed invention was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same, or some part thereof, before the date of such letters patent, or if such patentee or his assigns shall discover that some other person had, unknown to such patentee, invented or used the same, or

some part thereof, before the date of such letters patent, it shall and may be lawful for such patentee or his assigns to petition His Majesty in council to confirm the said letters patent or to grant new letters patent, the matter of which petition shall be heard before the judicial committee of the privy council; and such committee, upon examining the said matter, and being satisfied that such patentee believed himself to be the first and original inventor, and being satisfied that such invention or part thereof had not been publicly and generally used before the date of such first letters patent, may report to His Majesty their opinion that the prayer of such petition ought to be complied with, whereupon His Majesty may, if he think fit, grant such prayer; and the said letters patent shall be available in law and equity to give to such petitioner the sole right of using, making, and vending such invention as against all persons whatsoever, any law, usage, or custom to the contrary thereof notwithstanding: Provided, that any person opposing such petition shall be entitled to be heard before the said judicial committee: Provided also, that any person, party to any former suit or action touching such first letters patent, shall be entitled to have notice of such petition before presenting the same."*

* For the rules of practice before the judicial committee of the Privy Council, see Appendix.

This clause was evidently inserted to meet several cases which have heretofore occurred, such as Arkwright, for spinning, where the patent was declared void in consequence of some of the mechanical parts described in the specification, and not disclaimed, being on the trial proved to have been in previous use. There was also, amongst other cases, that of J. C. Daniells for dressing or finishing woollen cloths. At the trial of this patent slight previous use was proved; in both these instances the inventions were of the greatest possible benefit to the public, owing to the perfection to which the patentees had brought the respective manufactures. In speaking of these cases, it is taken for granted that the evidence on which the patents were set aside was the truth; but their are instances in which perjury has been more than suspected. Under such circumstances, it is highly desirable the crown should have the power contained in the new law, more particularly as it is in no way to be feared that the public will be injured by the privy council advising the crown to re-grant letters patent, without a strong and equitable case being made out in behalf of the patentee or his assigns. There have been only two applications under this clause of the statute, the first* was in consequence of the invention having been

* Baron Heurteloup's Patent.

published in a foreign scientific work, which was to be found at the British Museum, and other libraries and places in this country, their lordships thought that that would not in law invalidate the grant, but confirmed the patent. In the other case* the application was made, because of a previous publication in an English scientific work; but it was further proved that a description of the invention was to be found in the specifications of previous patents; their lordship refused to advise the crown to confirm the letters patent.

By the fourth clause the crown has now the right, with the advice of a judicial committee of the privy council, to extend the grant seven years beyond the original term of fourteen years, for which patents are in the first instance granted. This clause was inserted to enable the patentee or his assigns to obtain such an extension without the expense of an act of Parliament, (which it was formerly necessary to obtain) in cases where fourteen years could be proved not to be sufficient for giving a just recompense for the benefit derived by the public from the improvements brought about by an invention. The term of several patents has been extended under this clause, and in all cases, however opposed, where the parties have not benefitted in a

* Westrop and Gibbons's patent, 5 *Rep. of Arts*, N. S. 227.

manner commensurate with the benefits the public have obtained by the use of the patent. In a late case*, where the parties holding the patent had made a very large sum of money, but where it was shewn, that for four or five years the patentees had had to contend at law and in equity to defend the patent against infringement†, Lord Brougham in giving judgment, expressly stated, in granting an extension of six years, that it was not because the patentees had not derived large profits, but because other manufactures had unfairly attempted to obtain possession of the invention before the patent expired, and that they ought to be taught to respect the rights of others.

In this, as well as in the other clauses of the new statute, will be found all necessary guards against improper grants being advised by the council.

There are other clauses in the new law of great value to the holders of patent property, but the consideration of which will be found in the chapter where the law proceedings to be taken under a patent are explained. The only other part of the statute to which attention need be called in this chapter is the last clause, which is to the intent that all persons are restrained

* Whitehouse's Patent for tubing.

† Russell v. Cowley.

by penalty from using any words with a view to have it supposed that they are the patentees of some patented inventions, when in reality they have no such grants. Thus it will be seen that the legislature, in making alterations in the Law of Patents for Inventions, has with great care insured to the patentee every possible protection, at the same time they have secured the public against being injured, by a patentee having a grant to which he is not strictly entitled; and it may be stated, with some degree of confidence, that if a patentee has in his specification described a really new and useful invention, should he have had the misfortune to have described it badly, or to have claimed more than was new and useful at the date of his patent; if he be subsequently well advised, he will be able to retain full and exclusive right to so much of the invention contained in his specification as is justly due to him. Indeed it appears next to impossible to upset a patent containing a new invention.

CHAPTER VIII.

ON THE CLAUSES AND PROVISOS CONTAINED IN LETTERS PATENT.

HAVING given information as to the means to be employed in obtaining letters patent for an invention, and the care to be taken in drawing a title, and the description or specification of an invention, it will be desirable next to consider the clauses and provisos contained in the patent, they forming part of the law by which these grants are judged. The form of the patent being given in the Appendix, it will not be necessary to repeat the clauses here; and it will only be requisite to refer to them according to the numbers with which they are marked, so that the reader may be able readily to refer to each particular clause.

(No. I.) The first part of the patent recites the petition, and sets forth the *title* which has been given to the invention.

(No. 2.) The second part relates to the granting of the sole use of the invention to the inventor for fourteen years, whereby all other persons

are restricted from using the invention, without the licence, in writing, first had and obtained from the patentee; and persons are restrained from counterfeiting or imitating the invention, and from making any addition thereunto, or subtraction from the same. This clause directs justices of the peace, and other officers, not to interfere with the inventor in the performance of his invention.

(No. 3.) The third part directs, that the patent shall be void, if contrary to law, or prejudicial and inconvenient to the public in general, *or not the invention of the patentee, or not first introduced into this country by him.*

(No. 4.) The fourth part declares, that letters patent shall not give privilege to the patentee to use inventions for which patents have been already obtained by others.*

(No. 5.) The fifth part relates to the manner in which letters patent may become void, when divided into more than five shares. The object of the clauses which have already been mentioned may be clearly understood by reading them over: but great attention is required to the present clause, there having been but few decisions

* In the event of a new patent requiring the use of a previously patented invention, or any part thereof, the new patentee must obtain leave, in writing, of the previous patentee; otherwise he cannot work his invention till the previous patent has expired.

which directly relate thereto, it is therefore necessary to be more particular in guarding patentees in the sale of any part of their right, which, if done without great caution, might render the patent void. It will be found, that the patent is declared void if it become divided into more than five shares, or if more than five persons are directly interested in the benefits and profits of the invention, or if it become vested in, or in trust for, more than the number of five. This clause has given rise to great inconvenience to patentees.

It was introduced in conformity with the Act of George I., which prohibited joint-stock companies, and was intended to prevent the jobbing in a patent right, by making and selling transferable shares, as it was considered that a large number of persons, having a monopoly of such a description in their hands, might work it to the prejudice of the public, by holding out attractive schemes for the investment of money. The words of this clause are so special, that if taken to the letter, might almost be deemed capable of rendering any patent void where more than five persons are interested, whether directly or indirectly; yet it has generally been considered, that permissive licences to use or sell an invention to any extent, may be granted by a patentee, provided that the consideration for such licence

is a sum certain, either received in the whole at the time of granting the licence, or in the form of a sum paid annually during the continuance of the grant. But most lawyers have considered that a permissive licence to use an invention, the patentee receiving part of the profits, would be a division of the letters patent, and if such licencees, including the patentee, exceed the number of five, the patent would be void. There is another description of licence, which is very commonly granted by patentees, and that is, a licence of an exclusive character to certain persons in trade to make or use the invention. Most lawyers are of opinion, that a licence which grants to any number of individuals the right of using or making an invention, such licence setting forth that the patentee will not license others within a given district, or that the patentee will only grant licences to a certain number, would give a direct interest in the letters patent, to each of such individuals, and if the number of such persons exceeded five, the patent would thereby be rendered void. Thus, it will be seen that great care must be observed in granting licences, or selling a share of an invention.

It has been decided in a court of law, that the passing of a patent to assignees, in case of bankruptcy of the patentee, even though they work it for the benefit of creditors, does not

destroy the validity of the patent, for it is considered that the assignees represent the patentee, it being to pay his debts. What has here been said with reference to the selling of shares, or licensing to use or sell an invention relates to patents which were granted prior to May, 1832, the clause having been revised at that time. It has been said that this restrictive clause was introduced in conformity with the Act to prevent joint-stock companies; that Act was repealed by two Acts passed in the fifth and sixth years of the reign of his Majesty George the Fourth; yet the subject not having been before brought fully before the Attorney-General, there was but a slight alteration made in the clause at the time the repealing acts were passed.* In all

* The author having been acquainted for many years with the difficulties which have from time to time been experienced by patentees in making general any new invention, by reason of the restricting the number of persons interested in letters patent, took an opportunity of bringing the subject before Sir T. Denman, then his Majesty's Attorney-General, who was of opinion—that the restricting the number to five persons was prejudicial to inventors, the more particularly from the very special language of the clause, certain description of licences might be construed into such an interest as would give a direct right in the letters patent.

Under the circumstances, the Attorney-General wrote his opinion, that he saw no reason for retaining the clause in its present form, and expressed his willingness to make such alteration as might be desirable, on the one hand, to secure the public, and, on the other hand, to make it most beneficial to the patentee, provided the consent of the Board of Trade was

patents granted since May, 1832, a new clause has been inserted, on the principle, that the number of persons actually claiming as partners in the invention should be restricted to *twelve*, whilst there should be no limit to the granting of licences to any number of persons to make, use, or sell, the invention. By this changing of the clause, the doubts and difficulties which formerly existed have been removed.

The following are the words which are inserted in place of the part* No. 5:—"*Provided likewise, nevertheless, and these our Letters Patent are upon this express condition, that if at any time hereafter these our Patent Letters, or the liberty and privileges hereby by us granted, become vested in more than the number of twelve persons, or their representatives, at any one time, as partners, dividing, or entitled to divide, the benefit or profit obtained, by reason of these our Letters Patent, 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 these our Letters Patent, and all liberties and advantages,*

obtained; this opinion was handed to the Board of Trade for its sanction, and the most prompt attention was given to the subject by Lord Auckland, then President of that Board, and it was ultimately agreed that the clause should be struck out, and another substituted.

* See Form of Letters Patent, in Appendix.

whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. Provided that nothing herein contained shall prevent the granting of licences, in such manner, and for such considerations, as they may by law be granted.

The object of this clause is to prevent an extended partnership, at the same time to give as much facility as possible to the sale and licensing of useful inventions. This is a boon to patentees, as an inventor may now have the assistance of a sufficient number of persons to enable him to mature an invention, however intricate it may be, whilst the public is protected from injury from any specious projects, the patentee being limited in making shares of the direct interest in his patent, to a number too small to produce any very seriously bad consequences.* Under this clause it has lately been held that an exclusive licence forms no part of a patent, in fact that a patentee may grant licenses in any form he may think fit, and to any number of persons.

(No. 6.) The next clause in the patent relates to the specification, which has been already explained.

(No. 7.) The last clause directs, that the patent

* Protheroe *v.* May, 5 *M.* & *W.* 675.

shall be construed in the most favorable manner for the patentee; it also declares, that the patent shall be valid, in case the same, from inadvertency of the clerk of the crown, be not enrolled. It will be desirable to observe, that this last clause has sometimes been construed to relate to the enrolment of the specification, which is erroneous. It is the duty of the Great Seal Clerk to enrol the Privy Seal bill, from which the patent is copied; the clause, therefore, relates to that document, and has no reference to the specification, which the patentee is bound to enrol within the time named in a prior clause, otherwise the patent becomes void.

CHAPTER IX.

ON THE LEGAL PROCEEDINGS TO BE TAKEN TO PROTECT LETTERS PATENT.

It has been before remarked, that a well drawn specification is the best preventive to infringement, whilst the contrary is the greatest inducement to those who are desirous of pirating an invention, to do so. It is constantly the practice, as soon as a new and useful invention comes out, for persons in the particular branch of trade to which it relates, to get copies of the specification, with a view to take the opinions of scientific individuals acquainted with the law of patents, to ascertain whether the specification is so drawn as safely to secure the invention, or whether the same might be infringed, with the possibility of setting up a good defence, in case of proceedings being taken by the patentee. Many instances might here be stated were a whole trade have expressed themselves determined to use a particular patent, and have only waited for the enrolling of the specifica-

tion, to judge whether it might be infringed with impunity. In a late instance, a patent was obtained, and the trade had generally intimated that they were determined to use the invention without the consent of the patentee, unless he came into such terms as they might offer for their working under the patent. The patentee was naturally alarmed, and took every advice to make the patent secure; as soon as the specification was enrolled, a number of copies were obtained by persons in the trade, and opinions taken; but the specification being considered good, the trade found that their only course was to come into the terms of the patentee, or be prevented manufacturing the invention; and this would be the case with the largest portion of patents, were the patentees to take proper care in securing themselves, by fully and actually describing their inventions and by claiming only that which is new and useful; and on no consideration to include in the specification an invention of another person, or an invention other than that for which the patent was granted. Some persons imagine that they may put any invention into a specification which will come within the title of the patent, whether such invention was originally contemplated or not, this is erroneous, and it should be fully understood by patentees, that the introduction into a

specification of any new invention, other than that for which the patent was granted, would be a fraud on the crown, and would render the patent void. The time allowed for enrolling the specification to a patent, is for maturing the invention under protection of the patent, and, if necessary, to allow the patentee to call in the aid of scientific and practical men, in order to make the invention as perfect as possible, that the specification may be complete for the benefit of the public as well as for the patentee.

In case of infringement, the patentee may either at once proceed by action to recover damages, or he may apply to the Court of Chancery, to grant an injunction to restrain the parties from making, selling, or using the invention.

In bringing an action against a party for an infringement, the patentee should be prepared with proof of the grant of the letters patent, for which purpose the producing the deed itself, or proving an official copy, is sufficient; next there must be proof of the due enrolment of the specification which is usually done by an official copy, and it must be shewn that the invention is new and useful, that the description in the specification is such that a person might produce the invention by pursuing

the same, and the infringement must be clearly proved.*

Mr Justice Buller, in an action tried before him, stated—"Wherever a patentee brings an action on his patent, if the novelty or effect of the invention be disputed, he must shew in what his invention consists, and that he produced the effect proposed by the patent, in the manner specified. Slight evidence of this part is sufficient, and it is then incumbent on the defendant to falsify the specification." The patentee having proved his case, the defendant may call evidence to shew that he has not infringed the patent, or he may put in evidence to prove that the invention is not new, or that the patentee was not the first inventor, or the first who introduced the invention into this kingdom, or that the title in the patent, and the description in the specification do not conform to each other, or that the specification is otherwise defective. If the defendant succeed in establishing either of these positions the patentee will not support his action; on the other hand, should the defendant fail, then such damages will be awarded by the jury as they may

* Circumstantial Evidence will be sufficient to prove an Infringement. Hall *v.* Boot and others.

think just.* By the fifth clause of Lord Brough-ham's Act, a very important alteration has been made in the law, so far as regards the pleadings to be resorted to by a defendant. Formerly, in an action for infringement of a patented inven-tion, the defendant, under a plea called the "general issue," that is by generally denying the infringement, as well as every other right, might give evidence against the validity of the patent in every way in which a patent is vulner able; nor could the plaintiff ascertain on what points the defendant intended to ground the defence; but now he will be obliged to give the plaintiff notice of the description of objections on which he intends to rely, and evidence will not be received at the trial which is not strictly within the notice so given. By this means the patentee will be in a position to judge at once as to what evidence it will be desirable for him to call, in order to anticipate the defence. Be-fore this act was passed, a plaintiff was obliged to prepare himself with evidence and argument on every point.

In order as much as possible to prevent the vexatious infringements of patents which have

* It is not usual to ask more than nominal damages in a Court of Law, because the Court of Chancery will require the defendant to render an account of the quantity of infringement, and damages will be awarded accordingly.

so commonly attended every valuable discovery, the third clause of the new statute enacts, that in case "a verdict shall pass for a 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 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 suit or action whatever touching such patent, if a verdict shall pass, or a 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."* It has often been considered that, when a patentee has failed in obtaining a verdict in an action for an infringement, the patent is void: yet such is not the case; a patent is not legally void, unless it be declared so when tried by a writ of *scire facias*; consequently, if a patentee fail in an action for infringement (which may often happen for want of some particular evidence), he may proceed to bring other actions, and the former want of success would not injure any new cause of action.

* Since the passing of the act, many certificates have been given, and in one patent, the plaintiffs in three subsequent actions have recovered treble costs.

In many instances, it will be desirable to prefer proceeding in the Court of Chancery, which will often be found a more summary mode, more particularly where the object is rather to put a stop to the infringement than to seek damages. It will here be desirable to explain, in the words of Lord Eldon, the principle on which the Court of Chancery proceeds, in case of an application for an injunction. His Lordship said—"The principle upon which the court acts in cases of this description is the following;—where a patent has been granted, and an exclusive possession of some duration under it, the court will interpose its injunction, without putting the party previously to establish the validity of his patent by an action at law. But where the patent is but of yesterday, and upon an application being made for an injunction, it is endeavoured to be shewn in opposition to it that there is no good specification, or otherwise that the patent ought not to have been granted, the Court will not, from its own notions respecting the matter in dispute, act upon the presumed validity or invalidity of the patent, without the right having been ascertained by a previous trial; but will send the patentee to law, and oblige him to establish the validity of his patent in a court of law. It will, however, grant him the benefit of an injunction."

In applying to the Court of Chancery, a bill is filed, praying an injunction to restrain the infringement. In the bill, the patent and specification are set forth, and affidavits are filed in support of the application. The evidence to be contained in these affidavits should go to shew that a proper specification has been enrolled, that the patentee is the first inventor, and the infringement must be clearly pointed out, in which case the injunction is usually granted on an *ex parte* application.

The defendant, in putting in his answer, may shew that he has not infringed the patent; or he may attempt to shew that the invention is not new, or that the specification is not correct, or that the patentee is not the inventor or first introducer of the invention into this country. It will then be for the Chancellor to say whether the injunction shall remain in force, or whether there shall be an issue tried in a court of common law.

There have been cases were it was difficult to obtain evidence as to the actual infringement, in consequence of not being able to see the defendant's means of making a particular manufacture; in such cases, where good evidence is given in support of the application for an injunction, the court will direct an examination of the works, or will grant an injunction, leaving it to the defendant to shew that he does

not use the patentee's invention; but this course has only been pursued where the article produced has been so similar in appearance to that made by the patented invention, that the natural inference was, that the means of manufacture were the same.

It has been shewn, that by the statute of James I. the validity of patents should be tried and determined by the common law of the realm, consequently a patent must not be considered void, unless it be declared so in a suit at law, expressly to try the validity of the grant; and the description or process of law proceedings is termed a writ of *scire facias;* it is prosecuted in the name of the King, it being considered, that as a patent cannot be declared void, except contrary to law; or that the King, as grantor, has been deceived either by the patentee being proved not to be the first inventor, or the first introducer of the invention; or that the patentee has not, by the specification, complied with the provisoes contained in the letters patent, or that the grant has been made for one object, whilst in the specification another object is described; or that the specification is in other respects imperfect. In any of these cases, the King is considered to have been deceived in making his grant of letters patent, and therefore the King's name is used in the inquiry, to ascertain whe-

ther the patent has been properly made; yet, although the name of the King is used in the proceedings, the party who originates such proceedings pays the costs of the action. that is, so much of them as fall to the share of the plaintiff in the cause.

It is considered in law, that all the King's subjects are injured by an illegal grant of letters patent, therefore any person may petition His Majesty to direct a writ of *scire facias* to try the validity of a patent. In a trial of this description, similar evidence in support of the novelty and utility of the invention, and that it is properly described, will be required by the patentee, as in actions for infringements.

In case the verdict is for the crown, the patent is void, and the court directs the patent to be cancelled; but if the verdict be for the defendant (the patentee), then the patent is declared valid. It may be desirable here to add, that patents are now treated with the greatest attention in all the courts of law and equity; and the Judges will not permit frivolous objections to be taken against the validity of a patent; but, on the contrary, they put the most favourable construction both on the grant and the specification.

Before a patentee takes any proceeding, either at law or in equity, to stop an infringement, he

should carefully consult his counsel, and also his scientific evidence, to ascertain whether the specification may not be amended under the statute (5 & 6 W. 4) by enrolling a disclaimer or memorandum of alteration, according to the first clause ; for should the specification contain a claim of more than was new at the sealing of the patent, or any other flaw, and there be no disclaimer or alteration enrolled before the commencement of proceedings in law, the patentee would be nonsuited, and have to pay the costs of the action. The first clause, amongst other things, enacts, "*that no 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.*"

In case a patentee should fail in any suit or action brought against an infringement, owing to its being proved at the trial that some part of the specification or the title given to the invention was bad in law, this would not destroy the validity of the patent ; on the contrary, the specification and title might subsequently be amended by disclaimer or memorandum of alteration, and the patent thereby rendered perfectly valid and good in law, provided the specification really contained a new and useful invention, and

in case the same defendant continued to infringe, fresh proceedings might be taken against him; thus will a defendant no longer be permitted to use a patented invention because he may be able in the first instance at a trial to prove a legal objection to some portion of the specification. A case of this description may with advantage be given. A Mr. Brunton took a patent, in which he specified an invention for improvements in chain cables, in capstans, and in anchors. At the trial it was proved that the anchors were not new, at the same time it was allowed by all parties that the invention, so far as it related to cables was not only new but highly useful. The patentee failed in supporting his patent, owing to the want of novelty in the anchors; thus was he deprived of the whole of his invention. According to the law, as it is now constituted, he might, even after the trial, have entered a disclaimer to so much of the specification as related to anchors, and the patent would then have been good for the remainder.

In drawing up disclaimers and memoranda of alteration great care must be observed, as on the wording of such documents much will often depend. A patentee should not, therefore, be induced hastily to pursue such a course, but should have the advice of those best acquainted with patent law, before he determines on any alteration.

CHAPTER. X.

OBSERVATIONS ON THE PATENT LAWS AND ON THE MANNER OF TRYING PATENT CAUSES.

THERE have been, at various times, objections raised to the laws relating to patents, and many propositions have been made for amending those laws. One objection against them, is, that the knowledge of science being possessed by only a few, a patent right ought not to be tried by a judge and jury, as is the present practice; but in place thereof, it has been recommended that such causes should be tried by a commission of scientific persons, chosen according to the particular object of the invention.

When it is found, which has often been the case, that a large number of persons engaged in a particular trade or manufacture combine together with a view to upset a patent, in consequence either of their profits being lowered, or their business taken away altogether, unless they obtain a licence from the patentee to use

the new invention; knowing that this has ofter occurred, it would not be from persons engaged in the particular branch of manufacture, that a commission should be chosen for trying a patent right; they are interested in the result, and, though parties might be highly honourable, yet it would be against the general principles of the laws of England to place persons, so situated, in the judgment seat.

It would generally be supposed, that persons engaged in any manufacture, would be the first to estimate the value of a new invention which related to their particular branch, yet this is not the case; on the contrary, it will be found, that in many instances, where extensive change has been introduced, it has been by persons before unconnected with the particular branch of manufacture; old customs and prejudices have such an effect on the mind, that it will be generally found that those before engaged in the particular manufacture are often the last to conform to an improvement in the means of production, and hence is the great difficulty which is found in making general any new invention. Had the case of Watt's steam engine been tried by the engineers of the day, such was their jealousy and prejudice, that it would inevitably have been thrown open to the public;

even the great Smeaton, after having examined the engine, preferred, when constructing a large work, to build an engine on the old plan, rather than use Watt's engine, although the only payment demanded by the patentee for his engine, was a share of the profits made by saving a large quantity of fuel, which would be consumed by an engine of equal power on the old construction.

The manner of trying a patent right, according to the laws as they are at present constituted, will be found less objectionable than any of the projects for amending them; and it may be observed, that the same description of objections might be raised to every department of English Law, and the much and justly honoured trial by jury must be got rid of. The parties raising such objections forget that the duty of the jury is to give a verdict on the evidence brought before them, and under no circumstances are they required to know the law of the case; a jury might as well be expected to examine and understand the goodness of materials in an action brought on a contract for building a house, as that it is necessary that they should understand the value or goodness of a patented invention, from their own knowledge of the previous state of a particular manufacture. The evidence pro-

duced in a patent cause consists of scientific men who are open to any question from the counsel, who are aided by scientific persons, and thus may be elicited and shewn to the jury any prejudice which a witness may entertain on the subject in question; and by such means may twelve persons, before unacquainted with the matter, be able to come to a just verdict, and which in most instances would not be the case if the scientific men were made judges, in place of witnesses. At present the duty of the judge is equally clear; nor does it require that he should possess more extensive scientific knowledge than falls to the share of those who are generally found on the bench. The judge has to give his opinion of the language of the specification, whether the same has complied with the provisoes contained in the letters patent, as to whether the title given to the invention in the patent, and the claim of originality in the specification are in conformity with each other; and it will be for the jury to say, from the evidence, whether the invention is new and useful, whether an infringement has been proved; and also whether the invention may be performed, from the description given of it in the specification; consequently, evidence should always be given in support of the patent, by persons who, having read the specification, could

make the invention from the specification without other aid. There may at all times arise questions where it will be for the jury to say whether or not, by the evidence, the specification is so clear as is required by law; when the evidence on that head is conflicting, the judge will leave such points to the jury to say whether or not the parties concerned have conformed to certain provisoes.

There have also been objections raised to the manner of granting letters patent, more particularly that part which is the province of the Attorney and Solicitor General: and, as a substitute, it has been recommended, that there should be a board of commissioners of scientific persons to examine inventions, to say whether patents should be granted. There are so many objections to such a course of proceeding, that it may by some be thought unnecessary to enter into a refutation of such propositions; yet, as there should at all times be confidence in the power of the laws, that they are capable of giving to every one his equitable and just right, it follows, that any doubt raised as to the possibility of the laws having such power, must weaken that confidence which it is desirable every one should feel, otherwise parties would permit an injury in preference to submitting

their claim to a tribunal whose power they doubt.

The observations which have been made with respect to the appointment of a scientific commission for trying the validity of patent rights, apply, but with considerably greater force, to a similar commission being appointed, to decide whether a patent should or should not be granted for any new invention. Such commissioners would be chosen from manufacturers, engineers, or individuals, directly or indirectly, concerned in constructing or working engines and machines for producing the various manufactures, at present known: now, in case a patent should be applied for, it would follow that it might be for some new invention or discovery, by which a new and cheaper means of producing a known manufacture would be brought about, or for a new manufacture, which, if brought fully into use might supersede some known manufacture; should such a case come before a commission so constituted, it is evident there might and probably would be some one or more of the commission who would give an interested judgment, or be obliged to give an award, whereby a patent might be granted, and a monopoly given to some individual which would lead to the destruction of the profits of the trade or manufacture in

which such commissioners were directly or indirectly interested. Besides which, there are often cases of patents applied for, where the inventions are so different from all others heretofore known that the commissioners would become incompetent to decide, and patents for important inventions would probably be refused. That of a means of lighting street with gas might be instanced; had a patent been applied for some time prior to its first introduction for that purpose, it might have been refused by a commission so constituted; for, so great was the prejudice against the possibility of beneficially using gas for lighting streets, that the scientific world ridiculed the idea of such an application. Watt's engine may be again named, the prejudice was equally strong against its being capable of superseding the old fire-engines, as they were called. These, with many other instances which have occurred, and are constantly taking place, will be sufficient to show that a scientific commission is not the means of judging whether a patent should be granted. The expense, also, of a commission, would be far greater than the whole sum paid for patents, of which sum upwards of two-thirds go into the public purse.

By the present practice it is impossible an

inventor can be injured by a refusal to grant letters patent, from a supposition that he is mistaken as to the utility of his invention. The Queen, when petitioned, grants Her letters patent as a matter of course, and at the hazard of the petitioner, whether the invention will be new and useful, and produce the desired effect.

APPENDIX.

Form of Declaration to be made by the Petitioner.

I, A. B. of in the county of (profession) do solemnly and sincerely declare that I have invented*
that I am the first and true inventor† thereof, and that the same have never been practised by any other person or persons whomsoever, to my knowledge or belief. *And‡ I further declare that it is my intention to obtain patents in Scotland and Ireland.* And I make this declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the 5th and 6th years of the reign of His late Majesty, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra

* Here the title given to the invention is to be inserted.

† In case the invention be a communication from abroad, that circumstance is stated, and it is declared that the same has never been practised in this kingdom, to the knowledge or belief of the party making the declaration.

‡ The words in italics are to be omitted when such is not the intention, and they are also to be omitted when the declaration is for Ireland or Scotland.

judicial Oaths and Affidavits, and to make other provisions for the Abolition of unnecessary Oaths.'"

A. B. { Declared at this day of 1842
Before me
A Master in Chancery.*

Form of Petition to be presented to Her Majesty.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

The humble petition of *A. B.* of
in the county of

Sheweth,

That your petitioner hath invented†
that he is the first and true inventor thereof, and that the same hath never been practised by any other person or persons whomsoever, to his knowledge or belief.

Your Petitioner, therefore, most humbly prays, that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, Your Royal Letters Patent, under the Great Seal of Great Britain, for the sole use, benefit, and advantage, of his said invention, within England and Wales, and the town of Berwick-upon-Tweed‡, *and also in the Islands of Guernsey, Jersey, Alderney, Sark, and Man,*

* Or, a Master Extraordinary in Chancery, or Justice of the Peace when in Scotland.

† Here the title given to the invention is to be inserted in the same words as are set forth in the declaration.

‡ The words in italics are to be omitted when the patent is not to extend to those places.

and also 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 will ever pray, &c.

Form of Reference of the Petition to the Attorney or Solicitor-General.

Whitehall, 1842.

Her Majesty is pleased to refer this petition to Mr. Attorney or Mr. Solicitor-General, to consider thereof, and report thereon: whereupon Her Majesty's further pleasure will be declared.

Signed by the Secretary of State
for the Home Department.

Form of Caveat.

Caveat against any person taking out letters patent for *any improvement relating to spinning*, without notice being first given to A. of, &c.

Form of Notice of an An Application for a Patent to those who have entered Caveats.

4, Old Square, Lincoln's Inn, 1842.

SIR,

I beg to inform you that B. of in the county of , is applying for a patent for
[*here the title of the invention is inserted.*]

* There have been several acts of Parliament for extending the duration of a patent, which may now be done by application to the Privy Council.

Should you consider that the above will interfere with your caveat, an answer, post paid, is requested within seven days from the date hereof, otherwise the patent will proceed.

We are your obedient servants,

POOLE & CARPMAEL.

Form of Report.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

In humble obedience to your Majesty's commands, signified to me by the Right Honourable , one of your Majesty's principal secretaries of state, referring to me the petition of A. B. of , to consider thereof, and report my opinion what may be properly done therein, which petition sets forth that the petitioner hath invented [*here insert the title of invention*], that he is the first and true inventor thereof, and that the same hath not been made or used by any other person whomsoever, to his knowledge or belief.

The petitioner, therefore, most humbly prays that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent under the Great Seal of your United Kingdom, for the sole use, benefit, and advantage of his said invention, within England, Wales, and the town of Berwick-upon-Tweed, *and in the Islands of Guernsey, Jersey, Alderney, Sark, and Man, and also in your Majesty's colonies and plantations abroad**, for the term

* The words in italics are omitted when the application does not extend to those places.

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

I humbly beg leave to certify unto your Majesty, that in support of the allegations contained in the said petition, a declaration of the petitioner hath been laid before me, whereby he solemnly declares that he hath invented [*title of invention to be inserted*], that he is the first and true inventor thereof, and that the same hath not been made or used by any other person or persons whomsoever, to his knowledge or belief.

Upon consideration whereof, and as it is entirely at the hazard of the petitioner whether the invention is new or will have the desired success, and as it may be reasonable for your Majesty to encourage all arts and inventions which may be for the public good, I am humbly of opinion that your Majesty may, by your royal letters patent under the Great Seal of your United Kingdom, grant to the petitioner, his executors, administrators, and assigns, the sole use, benefit, and advantage of his said invention within England, Wales, and the town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark, and Man, and also 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, if your Majesty should be graciously pleased so to do, with the usual proviso, requiring the petitioner within the space of calendar months, to be computed from the date of such letters patent, to cause a particular description of the nature of his said invention, and in what manner the same is to be performed, by writing under his hand and seal, to be enrolled in your Majesty's High Court of Chancery, otherwise the said letters patent to be void.

All which I humbly submit to your Majesty's royal wisdom.

Temple, 1842.

(Signed by the Attorney or Solicitor-General.)

Warrant from the Queen.

VICTORIA.

Whereas A. B., of , in the county of , hath by his petition humbly represented unto us, that he hath invented [*here insert title of invention*], that he is the first and true inventor thereof, and that the same hath not been made or used by any other person or persons whomsoever, to his knowledge or belief. The petitioner, therefore, humbly prays we will 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 working, constructing, making, selling, using, and exercising of his said invention, and all other benefits and advantages thereof, within that part of the United Kingdom 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 all our colonies and plantations abroad**, for the term of fourteen years, according to the statute in that case made and provided.

We, being willing to give encouragement to all arts

* The words in italics are left out when the patent is not intended to extend to those places.

and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request. Our will and pleasure, therefore, is, that you prepare a bill for our royal signature, to pass our Great Seal of our United Kingdom of Great Britain and Ireland, containing our grant unto him the said A. B., his executors, administrators, and assigns, of the sole use, benefit, and advantage of his said invention, within that part of Great Britain 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 the colonies and plantations abroad,* for the term of fourteen years, pursuant to the statute in that case made and provided; provided that the petitioner does within the space of calendar months, to be computed from the date of our said intended grant, cause a particular description of the nature of his said invention, and in what manner the same is to be performed, by writing under his hand and seal, to be enrolled in our High Court of Chancery, otherwise our said intended letters patent to be void; and you are to insert in the said bill all such clauses, prohibitions, provisos, as are usual and necessary in grants of the like nature, and as you shall judge requisite; and for so doing, this shall be your warrant. Given at our court at St. James's, the day of 1842, in the year of our reign.

By Her Majesty's command.

To our Attorney or Solicitor-General. } *Countersigned by the Secretary of State for the Home Department.*

Form of Letters Patent.

(No. 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.

(No. 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, ad-

ministrators, 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 discretions seem meet; and that he the said A. B., his executors, administrators, and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage, from time to time, coming, growing, accruing, and arising by reason of the said invention, for, and during the term of years herein mentioned. To have, hold, 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 complete and ended according to the statute in such case made and provided; and to the end that he the said A. B., his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention, according to our gracious

intention hereinbefore declared: We do by these presents, for us, our heirs and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within that 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 substraction 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 what-

soever, of us, our heirs and successors for the time being, that they or any of them do not, nor shall at any time hereafter during the said term hereby granted, in any wise molest, trouble, or hinder the said A. B., his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or any thing relating thereto.

(No. 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, any thing hereinbefore

* In case it be for an invention communicated from abroad, then the patent is as follows,—"*or not first introduced therein by the said,*" &c.

contained to the contrary thereof in anywise notwithstanding.

(No. 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.

(No. 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 number of persons exceeding the number of five*, or shall open, or cause to be opened, any book or books for public subscriptions to be made by any number of persons, exceeding the number of five, in order to the raising any sum or sums of money, under pretence of carrying on the said liberty or privilege hereby granted; or shall by him or themselves, or his or their agents or servants, receive any sum or sums of money whatsoever of any number of persons, exceeding in the whole the number of five, for such or the like intents 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 times 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

* There have been acts of parliament granted for extending the number of persons interested in a patent right; the clause being meant generally to prevent corporate bodies having an exclusive monopoly to any branch of manufacture, but does not preclude the patentee licensing any number of persons to make, use, and sell the invention, so long as the right of patent remains vested in the patentee, or his assigns, not exceeding the number of five.

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.*

(No. 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, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

(No. 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

* This clause has been omitted in all patents applied for since May 1832, and another substituted, extending the exclusive right in the invention to twelve persons, acting as partners, with privilege to grant licences to any number of individuals. For the new clause see p. 92.

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.

Form of Specification.

To all to whom these presents shall come, I, the said A. B., of , in the county of , send greeting. Whereas Her most Excellent Majesty, Queen Victoria, by her letters patent, under the Great Seal of Great Britain, bearing date at Westminster, the day of , in the year of her reign, did give and grant unto me, the said A. B., my executors, administrators, and assigns, her especial licence, full power, sole privilege and authority, that I, the said A. B., my executors, administrators, and assigns, and such others as I, the said A. B., my executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times hereafter,

* The words in italics are left out when the patent is not to extend to those places.

during the term of years therein mentioned, should and lawfully might make, use, exercise, and vend, within England, Wales, and the town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark and Man, and also in all Her said Majesty's colonies and plantations abroad**, my invention of [*here the title set forth in the letters patent is inserted verbatim*]. In which said letters patent there is contained a proviso that I, the said A. B., shall cause a particular description of the nature of my said invention, and in what manner the same is to be performed, by an instrument in writing under my hand and seal, to be enrolled in her said Majesty's High Court of Chancery, within† calendar months next and immediately after the date of the said in part recited letters patent, reference being thereunto had will more fully and at large appear.

Now know ye, that in compliance with the said proviso, I, the said A. B., do hereby declare the nature of my invention, and the manner in which the same is to be performed, are particularly described and ascertained in and by the following statement thereof, *reference being had to the drawing hereunto annexed, and to the figures and letters marked thereon*‡; (that is to say), my invention consists [*here insert the description of the invention*]. In witness whereof, I,

* The words in italics are omitted when the patent does not extend to the colonies and Islands.

† A specification is duly enrolled if it be lodged in the Inrolment Office, any time before twelve o'clock P. M. of the day on which the number of months expire.

‡ The words in italics are omitted when drawings are not used to aid the description.

the said A. B., have hereunto set my hand and seal, this day of

A. B*. (seal)

Taken and acknowledged by
A. B., party hereto, the day of
1842, at

Before me—

A Master in Chancery.†

Form of Certificate of the due Enrolment of the Specification.

Enrolled in Her Majesty's High Court of Chancery the day of , in the year of our Lord, 1842, being first duly stamped according to the tenor of the statute made for that purpose.

Signed—

By the Clerk of the Enrolment.

An Act to amend the Law touching Letters Patent for Inventions.

Any person having obtained letters patent for any invention may enter a disclaimer of any part of his

* In the event of the patent being taken by two or more inventors, the acknowledgment and signature of one will be sufficient.

† Or, a Master Extraordinary in Chancery.

specification, or a memorandum of any alteration therein, which, when filed, to be deemed part of such specification. 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.] 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 to 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 who, as grantee, assignee, or otherwise, hath obtained, or who shall hereafter obtain letters patent. for the sole making, exercising, vending, or using of any invention, may, if he think fit, enter with the Clerk of the Patents of England, Scotland, or Ireland, respectively, as the case may be, having first obtained the leave of His Majesty's Attorney-General or Solicitor-General in case of an English patent, of the Lord Advocate or Solicitor-General of Scotland in the case of a Scotch patent, or of His Majesty's Attorney-General or Solicitor-General for Ireland in the case of an Irish patent, certified by his fiat and signature, a disclaimer of any part of either the title of the invention or of the specification, stating the reason for such disclaimer, or may, with such leave as aforesaid, enter a memorandum of any alteration in the said title or specification, not being such disclaimer or such alteration as shall extend the exclusive right granted by the said

letters patent; and such disclaimer or memorandum of alteration being filed by the said Clerk of the Patents, and enrolled with the specification, shall be deemed and taken to be part of such letters patent or such specification in all courts whatever: Provided always, that any person may enter a caveat, in like manner as caveats are now used to be entered, against such disclaimer or alteration, which caveat being so entered, shall give the party entering the same a right to have notice of the application being heard by the Attorney-General or Solicitor-General or Lord Advocate respectively: Provided also, that no such disclaimer or alteration shall be receivable in evidence in any action or suit (save and except in any proceeding by scire facias) pending at the time when such disclaimer or alteration was enrolled, but to every such action or suit the original title and specification alone shall be given in evidence, and deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: Provided also, that it shall be lawful for the Attorney-General or Solicitor-General or Lord Advocate, before granting such fiat, to require the party applying for the same to advertise his disclaimer or alteration in such manner as to such Attorney-General or Solicitor-General or Lord Advocate shall seem right, and shall, if he so require such advertisement, certify in his fiat that the same has been duly made.

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

tained letters patent for any invention or supposed invention was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same, or some part thereof, before the date of such letters patent, or if such patentee or his assigns shall discover that some other person had, unknown to such patentee, invented or used the same, or some part thereof, before the date of such letters patent, it shall and may be lawful for such patentee or his assigns to petition His Majesty in council to confirm the said letters patent or to grant new letters patent, the matter of which petition shall be heard before the judicial committee of the Privy Council; and such committee, upon examining the said matter, and being satisfied that such patentee believed himself to be the first and original inventor, and being satisfied that such invention or part thereof had not been publickly 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.] 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, on trying such second or other action, shall certify that he ought not to have such treble costs.

Mode of proceeding in case of application for the prolongation of the term of a patent.] 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 any thing made according to his specification, or near to, or in

which, he resides, in case he carried on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to apply to His Majesty in Council for a prolongation of his term of sole using and vending his invention, and shall petition His Majesty in Council to that effect, it shall be lawful for any person to enter a caveat at the Council Office; and if his Majesty shall refer the consideration of such petition to the judicial committee of the Privy Council, and notice shall first be by him given to any person or persons who shall have entered such 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 enquiring 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 authorised and empowered, if He shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary in anywise notwithstanding: Provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent.*

In case of action, &c. notice of objections to be given.] And be it enacted, that in any action brought against any person for infringing any letters patent, the

* This proviso has been altered by 2 & 3 Vict. See p. xxv in the Appendix.

defendant, on pleading thereto, shall give to the plaintiff, and in any scire facias to repeal letters patent, the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action, and no objection shall be allowed to be made in behalf of such defendant or plaintiff respectively at such trial, unless he prove the objections stated in such notice: Provided always, that it shall and may be lawful for any judge at chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant, respectively, to shew 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.] 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.] And be it enacted, that if any person shall write, paint, or mould, cast, or print 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 licence 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 any thing made, for the sole making or vending of which a patent before obtained shall have expired.

2nd and 3rd Victoria.

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." [24th August 1839.]

Whereas by an act passed in the fifth and sixth years of the reign of His 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 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 con-

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

II. And be it further enacted, That it shall be lawful

for the judicial 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 of 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 the least before the expiration of such term, nor in any case unless sufficient reason shall be shewn to the satisfaction of the said judicial committee for the omission to presecute with effect the said application by petition before the expiration of the said term.

III. And be it further enacted, That this act may be

altered, amended, or repealed by any act to be passed in the present session.

Rules to be observed in proceedings before the Judicial Committee of the Privy Council, under the act of the 5th and 6th of Wm. IV., entitled "An Act to amend the Law touching Letters-Patent for inventions" (cap. 83.)

Rule 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 any thing made according to his specification, or near to or in which he resides, in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to petition His Majesty under the said section, and shall in such advertisements state the object of such petition; and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette), and that on or before such day notice must

* The petition must be presented at least six months before the expiration of the letters patent; but the Privy Council have refused to hear a petition, in respect to a patent having several years unexpired.

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.

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.

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.

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 2d of the rules, and the matters in such affidavits may be disputed by the parties opposing upon the hearing of the petitions.

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 petition shall have been presented under section 2 of the said act, and all persons lodging notices of opposition under the first 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.

6. All parties served with petitions shall lodge at the council-office, within a fortnight after such service, notice of the grounds of their objection to the granting of the prayers of such petitions.

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

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, Nov. 18, 1835.

Rules of Practice laid down by Mr. Attorney and Mr. Solicitor-General.

Until further directions are given, the following is to be the mode of proceeding by a party in order to obtain leave to enter a disclaimer or alteration of any part, either of the title of his invention or of the specification pursuant to the 5th and 6th of W. 4, c. 83, s. 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.

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.

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 advertisement for resuming the consideration of the matter.

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.

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

Mode of proceeding before the Attorney or Solicitor under the first section of the act 5th and 6th W. 4, c. 83, in order to obtain a fiat to enrol disclaimers or alterations.

Form of Petition to Her Majesty's Attorney or Solicitor-General.

The petition of A. B. of
in the county of profession
Sheweth,

That your petitioner obtained Her Majesty's royal letters patent, bearing date at Westminster, the day of in the year of Her reign, for [*here is inserted the title of the invention*]: And whereas your petitioner duly enrolled a specification of his said invention.

[*here set forth some of the particulars sufficient to lead to the nature of the claims of invention, then set forth the disclaimer or alterations, and the reasons for the same.*]

Your petitioner therefore prays leave of Her Majesty's Attorney or Solicitor-General, certified by his fiat and signature, as by the said act provided, to enter with the clerk of the patents of England, the said disclaimer and memorandums of alteration, a copy of which signed by your petitioner is left herewith in the form in which your petitioner is desirous the same should be so entered as aforesaid.*

* In the event of the petition being in behalf of an assignee of a patent, that circumstance must be stated, and the petition be in his name.

Form of entry paper to be left with petition, and to be enrolled.

In the matter of a patent granted to A. B., of in the county of , for his invention of [*here set forth the title of the invention*,] bearing date at Westminster the day of 1842.

DISCLAIMERS AND MEMORANDUMS OF ALTERATIONS proposed to be entered by A. B. with the Clerk of the patents of England, pursuant to an act passed in the 5th and 6th year of the reign of His late Majesty, King William 4, entitled, "An Act to amend the Law touching Letters Patent for Inventions."

I, the said A. B. [*here follows the words of the disclaimer and alterations, and the reasons for the same.*] In witness whereof I, the said A. B., have hereunto set my hand this day of , 1842.

(Signed) A. B.

Form of Caveat under 1st section of the Act 5 & 6 W. 4, c. 83.

Caveat against any person entering a disclaimer or alteration in a specification relating to spinning without notice to

Form of Caveat to be entered under the 4th section of the Act 5 & 6 W. 4, c. 83.

Caveat against A. B., having any extension of his patent, dated the day of , 1842, for "certain improvements in spinning," without notice to C. D.

Form of Assignment of Letters Patent.

This indenture, made the day of , in the year of our Lord, 1842, between A. B., of , in the county of , of the one part, and C. D., of , in the county of , of the other part.

Whereas the said A. B. was the first and true inventor of [*here insert title of invention*], and the same had never been practised within England, Wales, and the town of Berwick-upon-Tweed, *nor in Her Majesty's colonies or plantations abroad:** in consideration whereof, Her Most Gracious Majesty was pleased to grant unto him the said A. B., his executors, administrators, and assigns, Her royal letters patent, bearing date at Westminster the day of , in the year of her reign, giving and granting unto the said A. B., his executors, administrators, and assigns, 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, should at any time agree with, and no others, from time to time, and at all times thereafter, during the term of fourteen years thereby granted, should, and lawfully might make, use, exercise, and vend his said invention within England, Wales, and the town of Berwick-upon-Tweed, *and in the islands of Guernsey,*

* The words in italics are to be omitted when the patent is not to extend to those places.

*Jersey, Alderney, Sark, and Man, and also in all her said Majesty's colonies and plantations abroad**, in such manner as to him, the said A. B., his executors, administrators, and assigns, 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, and advantage, from time to time, coming, growing, accruing, and arising by reason of the said invention, for and during the said term of fourteen years. In which said letters patent there is contained a proviso, that if the said A. B. shall not, within the space of† calendar months, enrol a full and particular description of the nature of the said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, that then the said letters patent and all liberties and advantages whatsoever thereby granted should utterly cease, determine, and become void. And whereas the said A. B. in pursuance of the said proviso, did particularly describe and ascertain the nature of his said invention, and in what manner the same was to be performed by an instrument in writing under his hand and seal, and did cause the same to be duly enrolled according to the said proviso.

NOW THIS INDENTURE witnesseth, that in consideration of the sum of £ of lawful money of Great Britain in hand, well and truly received by the said A. B., from the said C. D., at or before the signing and

* The words in italics are omitted when the application does not extend to those places.

† The number of months set forth in the letters patent are to be inserted.

sealing of these presents, the receipt whereof the said A. B. doth hereby acknowledge, and of and from the same and every part thereof, doth acquit, release, and for ever absolutely discharge the said C. D., his executors, administrators, and assigns: he, the said A. B., hath bargained, sold, transferred, and set over unto the said C. D., his executors, administrators, and assigns, all those the said letters patent hereinbefore mentioned, and all benefit, profit, and advantage whatsoever thereof and therefrom, and all right, title, property, claim, and demand whatsoever, both at law and in equity, of him the said A. B., his executors, administrators, and assigns, in or to the letters patent hereby assigned, or expressed and intended so to be assigned.

To have and to hold the said letters patent, and all and singular other the premises hereby assigned, or intended so to be, unto the said C. D., his executors, administrators, and assigns, for his and their absolute benefit, in as ample and beneficial a manner, to all intents and purposes, as the said A. B. might or could have held or enjoyed the same if these presents had not been made.

And the said A. B. doth, for himself, his executors and administrators, by these presents, irrevocably nominate and appoint the said C. D., his executors, administrators, and assigns, to be the lawful attorney or or attorneys of him the said A. B., his executors and administrators, with full power and authority, in his or their name, or in the name of the said A. B., his executors or administrators, to ask, demand, recover, and receive all and every sum and sums of money, profits, and proceeds, payable or to accrue by virtue or in respect of the said letters patent, and to give, sign, and

execute proper receipts, acquittances, and discharges for the same; and he, the said A. B., for himself, his executors, and administrators, doth hereby agree to ratify and confirm whatever acts and things the said attorney or attorneys shall lawfully do, or cause to be done in or about the premises, by virtue hereof.

And further, the said A. B. doth, for himself, his executors, and administrators, promise, covenant, and agree with and to the said C. D., his executors, administrators, and assigns, by these presents, in manner following; (that is to say,) he, the said A. B., now hath in himself good right and full power and authority to assign the said letters patent and premises hereby assigned, or intended so to be, unto the said C. D., his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, and that the said letters patent and premises shall and may be lawfully held and enjoyed accordingly, and that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by the said A. B., his heirs, executors, or administrators, being at all times well and sufficiently saved, defended, and kept harmless and indemnified from and against all charges and incumbrances whatsoever made, done, or willingly suffered by him, the said A. B., his heirs, executors, and administrators.

And moreover, the said A. B., his heirs, executors, and administrators, lawfully claiming, or to claim, through or under him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon the request, and at the cost and charges, of the said C. D., his executors, administrators, and assigns, make, do, and execute all such lawful acts, deeds, and things

in law whatsoever, for more effectually assigning and assuring the said premises in manner aforesaid, and according to the true intent and meaning of these presents, as by the said C. D., his executors, administrators, or assigns, or his or their counsel in the law shall or may be advised and required.

In witnes, &c.

A. B. (seal).

Received the day and year first above written, of and from the above-named C. D., the sum of £ being the consideration money above mentioned.

Witness A. B.

At the back of the deed is written :—

Sealed, signed, and delivered (being first duly stamped) by the within named A. B., in presence of

E. F.

Form of Licence to use Invention.

This indenture made the day of , in the year of our Lord one thousand eight hundred and forty-two; between A. B., of one part, and C. D., of the other part.

WHEREAS the said A. B. was the first and true inventor of [*here insert title of invention*], and the same had never been practised within England, Wales, and the town of Berwick-upon-Tweed, *nor in Her Majesty's colonies or plantations abroad :** in consideration where-

* The words in italics are left out when the patent is not to extend to those places.

of, Her Most Gracious Majesty was pleased to grant unto him the said A. B., his executors, administrators, and assigns, Her royal letters patent, bearing date at Westminster the day of , in the year of her reign, giving and granting unto the said A. B., his executors, administrators, and assigns, 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, should at any time agree with, and no others, from time to time, and at all times thereafter, during the term of fourteen years thereby granted, should, and lawfully might make, use, exercise, and vend his said invention within England, Wales, and the town of Berwick-upon-Tweed, *and in the islands of Guernsey, Jersey, Alderney, Sark, and Man, and also in all her said Majesty's colonies and plantations abroad**, in such manner as to him, the said A. B., his executors, administrators, and assigns, 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, and advantage, from time to time, coming, growing, accruing, and arising by reason of the said invention, for and during the said term of fourteen years. In which said letters patent there is contained a proviso, that if the said A. B. shall not, within the space of† calendar months, enrol

* The words in italics are left out when the patent is not intended to extend to those places.

† The number of months set forth in the letters patent are to be inserted.

a full and particular description of the nature of the said invention, and in what manner the same is to be performed by an instrument in writing under his hand and seal, that then the said letters patent and all liberties and advantages whatsoever thereby granted should utterly cease, determine, and become void. And whereas the said A. B., in pursuance of the said proviso did particularly describe and ascertain the nature of his said invention, and in what manner the same was to be performed by an instrument in writing under his hand and seal, and did cause the same to be duly enrolled according to the said proviso.

And whereas, the said A. B. hath agreed to grant a licence to the said C. D., his executors, administrators, and assigns to use the said invention to the extent of *two machines,* made and constructed according to the specification of the said letters patent.

Now, this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of pounds by the said C. D. to the said A. B., well and truly paid, the receipt whereof is hereby acknowledged, the said A. B., for himself, his executors, administrators, and assigns, hath granted, and by these presents doth grant to the said C. D., his executors and administrators, full power, licence, and authority to erect, have, and use *two machines**, made and constructed according to the invention aforesaid, for and during, and unto the full end and term of the letters patent aforesaid; subject, nevertheless, to the conditions and provisos hereinafter mentioned. And in

* In some instances the size or capacity of the machine should be fully stated, depending on the peculiar character of the invention.

consideration of the aforesaid privilege or licence, the said C. D., for himself, his executors, and administrators, doth promise and agree to erect two such machines in the factory, situate , and that in case, at any time hereafter, he or they, the said C. D., his executors and administrators, may find it desirable to move such machines as aforesaid, to any other factory in his or their occupation, that then the said C. D., his executors or administrators, shall and will give notice, in writing, to that effect, to the said A. B., his executors, administrators, or assigns, and that he, the said A. B., his executors, administrators, and assigns, shall and may, twice in every year, at seasonable times in the day, enter such manufactory, containing the aforesaid machines. And that the said C. D., his executors and administrators, shall not, nor will at any time or times hereafter, during the continuance of the aforesaid letters patent, set up or erect, or permit to be set up or erected, in any factory in his or their occupation, any other machines similar to those described in the specification of the said letters patent, nor any part or parts thereof which are claimed and form part of the said invention, without the licence and consent, in writing, of the said A. B., his executors, administrators, and assigns, first had and obtained in that behalf. And that the said C. D., his executors and administrators, shall not, nor will at any time hereafter, during the said term of fourteen years, either directly or indirectly, do, or cause to be done, any act, matter, or thing which would injure, or tend to injure, the validity of the said letters patent, or privileges thereby granted, but will at all times give every information that the said A. B., his executors, administrators, and

assigns, may support, uphold, and retain, the rights and privileges so granted as aforesaid.

And lastly, for the true and faithful performance of every covenant, article, matter, and thing herein contained, the said C. D., for himself, his heirs, executors, and administrators, doth bind each and every of them unto the said A. B., his executors, administrators, and assigns, in the penal sum of pounds of lawful money of Great Britain.

In witness, &c.

A. B. (seal).
C. D. (seal).

Received, the day and year within written, the sum of pounds, being the consideration-money within mentioned.

Witness A. B.

On the back of the deed is written :—

Sealed, signed, and delivered (being first duly stamped) by the within-named A. B. and C. D., in the presence of

E. F.

Cost of a Patent for England.

	£	s.	d.	£	s.	d.
Preparing Title of Invention, Petition, and Declaration				1	5	6
Secretary of State's Reference		2	2	6		
Warrant		*7	13	6		
Bill		*7	13	6		
				17	9	6
Mr. Attorney or Mr. Solicitor-General's Report		4	4	0		
Bill		*†‡15	16	0		
				20	0	0
Signet Office fees				†‡4	7	0
Privy Seal fees				†‡4	7	0
Great Seal Office Fees		5	17	8		
Stamps		30	2	0		
Boxes		0	9	6		
Gratuity		2	2	0		
Hanaper		7	13	6		
Deputy		0	10	6		
Recipi		I	11	6		
Sealers		0	10	6		
Office keeper		0	5	0		
				‡49	2	2
Passing the Patent				10	10	0
Letters, &c.				1	1	0
** Specification £ ———				£ 108	2	2

* If the patent include the colonies or the islands, the cost will be increased by *7l. 7s.* 6*d.*; and if there be two or more persons in the patent the fees are further increased.

† In the event of the patent being opposed there will be additional charges.

‡ If there be private seals and extra dispatch or journeys, these fees will be increased in amount depending on the circumstances.

Cost of a Patent for Scotland.

	£	s.	d.	£	s.	d.
Preparing Title of Invention, Petition, and Declaration				1	5	6
Secretary of State's Reference	2	2	6			
Warrant	15	7	0			
Stamp	1	10	0			
				18	19	6
Lord Advocate's Report				4	4	0
Director	15	0	0			
Clerk	7	10	0			
Translator	1	1	0			
Director	1	1	0			
Servant	0	2	6			
Livery	0	3	7½			
Extra	0	2	6			
				25	0	7½
Great Seal Lord Keeper	6	13	4			
Deputy	2	10	0			
Usher	2	4	5½			
Appendee	2	2	0			
Deputy	0	1	0			
Wax	0	7	6			
Extra	0	2	6			
Agency for Scotland	4	4	0			
				18	4	9½
Passing the Patent				10	10	0
Letters, &c.				1	11	6
** Specification £ ———				£ 79	15	11

* These fees are increased if the patent be taken in two names.

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	£	s.	d.	£	s.	d.
Preparing Title of Invention, Petition, and Declaration				1	5	6
Secretary of State's Reference.....	2	2	6			
Warrant.....	7	13	6			
Stamp.....	1	10	0			
———				11	6	0
Mr. Attorney or Mr. Solicitor-General's Report.....				31	10	0
Signet Office.....				3	3	0
Seal Office.....				2	14	6
Lord Licutenant's Fiat				5	5	0
Mr. Attorney-General's Clerk for Fiat ...				11	0	3
Clerk to Hanaper.....				8	9	2
Stamp to the Grant.....				21	13	4
Inrolling.....				1	1	8
Further Fees				21	2	6
Passing the Patent.....				10	10	0
Letters, &c.....				1	11	6
** Specification £ ———				£ *130	12	5

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A Caveat to have notice of all Patents applied for relating to a particular subject for England.....	1	1	0
Ditto for Scotland	1	13	8
Ditto for Ireland.....	1	1	0
A Caveat to oppose English Patent on the Bill.....	1	1	0
A Caveat to oppose English Patent at the Great Seal .	1	1	0

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** The cost of the specification to each Patent depends on its length, also on the difficulties of drawing that document, and the drawings necessary.

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