THE

LAW OF PATENTS

For Inventions

FAMILIARLY EXPLAINED

FOR THE USE OF INVENTORS AND PATENTEES

BY

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PREFACE

TO

THE 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 recompence 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 knowledge of the loss of many valuable inventions, from the inventor 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 intrust the drawing of their specifications.

It has been the desire of the Author briefly to explain the essential points to be observed in securing inventions by Letters Patent. 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.*

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THE

LAW OF PATENTS

FOR

INVENTIONS.

CHAPTER I.

OF LETTERS PATENT FOR INVENTIONS.

We find from the earliest history of the manufactures of this country, that it has ever been considered part of the prerogative of the Crown to reward individuals, who have been the first to introduce manufactures into this country, by the grant of privileges conferring the sole right of producing the manufactures so introduced. These grants may be regarded as the origin of the practice of granting patents for inventions, and it may be safely stated, that we are indebted for the commencement of many of our manufactures to the "privileges" thus offered to foreigners bringing their arts to this country, for at the early period

now spoken of, few manufactures originated in England.

So long as exclusive privileges were granted only to persons introducing from abroad or otherwise originating manufactures in this country, these rewards from the Crown tended materially to the advancement of trade. A practice however of another character was by degrees engrafted on this branch of the Crown's prerogative, that of granting to favorites and others, exclusive rights to make, import, and sell 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 fast sinking under its baneful influence. When the subject was brought to the notice of the House of Commons in that reign, salt, iron, powder, cards, train oil, sea coal, brushes, pots, bottles, indeed very many branches of trade were carried on by virtue of monopolies granted by the Crown, to obtain money to replenish an exhausted treasury. The examination into these improper grants in the House of Commons called forth so strong an expression of opinion by several members as to induce her Majesty to send a message to the House to the effect, that all monopolies should be cancelled; and many of them were accordingly terminated; but it was not until the reign of James I. that such grants were declared

void by Statute (21st James I., c. 3); at the same time, the King's prerogative in respect to this description of grants was defined, and it was enacted that patents for inventions, which had theretofore been granted for twenty-one years, should not in future be granted for more than fourteen years. This Statute at once eradicated the system which had been so long and so prejudicially pursued.

Having thus given a concise outline of the origin of the 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 definition of a grant of this nature. A monopoly may be defined as "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*;" * hence it is evident, that the grant of a patent for a new invention is not a monopoly, as no persons are by such a grant restrained from any freedom they *had before*. It is essential that this distinction should be borne in mind, as upon it depends the whole law of patents. Some writers have been of opinion that even the exercise of the

* Sir Edward Coke.

royal prerogative as now defined and shorn of the abuses previously alluded to is prejudicial to trade, preventing the rapid strides of improvement which they imagine would be made, supposing every invention at once became the property of the public at large. Such propositions as these do not require very deep arguments to set them aside. Let the additional cost which is consequent on bringing any new invention to bear, and the anxiety to the inventor, be but for a moment considered, and it will be obvious that no one would venture to expend a large sum of money in realising 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, then, can be more consistent, and at the same time more advantageous to the State, than to grant for a term of years to the first inventor, or to the first introducer, of any valuable and new manufacture, an exclusive privilege, provided he give such a full description of the invention as will enable the public at large to enjoy the same at the expiration of the term of the grant: the grant of letters patent for inventions is such a reward to the first inventor of any new and useful manufacture.

The term "first inventor" has always been understood to include the first introducer of any new manufacture from abroad; thus, *Sergeant Hawkins* says*, "It seemeth clear that the King may for a reasonable time make a grant to any one, of the sole use of an art invented or first brought into the realm by the grantee;" and in *Sheppard's Abridgement*†, it is laid down that the King may make such a grant to any man, who at his own charge wit or invention shall bring a new trade or device into the realm; and *Lord Chief Justice Tindal*, in *Beard* v. *Egerton*‡, said, that "a person who has learned an invention abroad and imported it into this country, where it was not used or known before, is the first and true inventor within the Statute. The cases decided before the Statute prove that grants by the Crown to persons who had brought any new trade into the realm, were good at common law." It was also held in the same case that the patentee may be merely an agent for a foreigner, and therefore have no personal interest in the patent.

It has, until within a short period, been a com-

* Hawk. P. C. Bk. i. c. 79, s. 20.

† Part iii. tit. Prerog. p. 61.

‡ Carrington and Kirwan's Rep. vol. 2, 667; Law Times, vol. 7, 228; Rep. Arts, vol. 8, E. s. 47.

mon 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 in patents as to the requirements of the law; hence specifications of valuable inventions were frequently enrolled, from which no certain or definite knowledge could be obtained of what was really the invention of the patentee.* It therefore followed, that when patents came into a Court of Law having such specifications, that 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, it has often been impossible to support the patents; and this in almost every case arose from the patentee not defining, and at the same time, clearly and honestly explaining his invention. The extensive publication of the decisions in the Courts

* See *Macfarland* v. *Price*, 1 Stark. 199; Carp. R. vol. 1, 309; *Hill* v. *Thompson et al.*, 2 B. Mo. 433; 8 Taunt. 382; Webs. R. 239; Carp. R. vol. 1, 381; *The King* v. *Arkwright*, Dav. P. C. 61; Webs. R. 64; Carp. R., vol. 1, 53; *Bovill and others* v. *Moore*, Dav. P. C. 361; 2 Marsh. 211; Carp. R. vol. 1, 320.

of Law in patent cases, has, however, for the most part, removed all doubts as to the security of patent property, provided the patentee takes the ordinary precaution of making a clear and explicit specification; hence patents at the present time are taking that position amongst the various descriptions of property in England, which they ought long ago to have attained; 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 larger portion of the specifications of modern times.

It must be assumed *that an inventor knows where his invention commences and where it ends*—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 generally, cannot know how much is secured by a particular patent; on this point they have a right to be informed, and it is partly for this purpose the specification is required. *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 a great expense, upon an invention upon which the patentee might afterwards come with his specifi-

cation, 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.

By the Act of James I. the Crown is declared to have the power of granting letters patent for "*any manner of new manufactures*;" the Crown, in exercising this power, grants the privilege on condition that a full description of the invention shall be enrolled for the benefit of the public; at the same time it assumes 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, claims more than is new and useful, the patent is void, for the Crown has not the power of granting the exclusive use of that which is old; but by the Statute 5 & 6 Will. IV. c. 83, commonly known as Lord Brougham's Act, a patentee has the right of disclaiming parts of the invention claimed by his original specification: hence it will be clear to every one who examines

* Ex parte *Koops*, 6 Ves. 599; Carp. R. vol. 1, 175.

the law as at present construed, that if an inventor be honest in describing his invention for the benefit of the public, and at the same time restricts his claims of novelty to that which is new and useful, the law will afford him every protection.

CHAPTER II.

ON THE CONSTRUCTION OF THE STATUTE 21 JAMES I. c. 3.

In the former chapter the Statute of Monopolies* as it is called was spoken of in general terms, it will now be desirable that so much of it as relates to patents for inventions should be examined more closely. The Statute in the first place, declares that all "*grants of monopoly*" are contrary to the laws of the realm; it then directs that such grants shall be tried by the common law, and disables all persons from practising or setting up such grants, and directs that all parties grieved by pretext of a monopoly shall recover treble damages and double costs. It then goes on to declare that it shall not extend to patents which had been granted for new manufactures, and as to grants to be afterwards made for new inventions, it enacts as follows:—"Provided also, and be it declared and enacted, that any declaration before mentioned, shall not extend to any letters patents and grants of privilege, for the

* Appendix, p. i.

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

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 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 be of such force as they should be if this Act had never been made.*" It has already been stated, that the earliest grants of privileges were to foreigners, and for imported inventions; it follows from what has been just stated, that the custom existing previously to the passing of the Statute of James I., should be still upheld, and it has been upheld in all modern decisions; patents taken out by persons in this country for inventions communicated from or learnt abroad having 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 urged that the words, "*any manner of new manufactures*," do not give such a clear expression of what may be the subject of a patent as is desirable. On a close examina-

* *Beard* v. *Egerton*, Carrington and Kirwan's Rep. vol. 2, 667; Law Times, vol. 7, 228; Rep. Arts., vol. 8, E. S. 47.

tion 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 "*the process of making anything by art;*" and these are the constructions which have always been put on the word as it occurs in 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."

Lord Eldon also 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 of such new combination or application, and of that only, and not lay claim to the merit of original invention in the use of the materials."†

And in another case *Lord Chief Justice*

* 2 H. Bl., 463; Dav. P. C. 162; 3 Ves. Jun. 140; Carp. R. vol. 1, 117.

† *Hill* v. *Thompson and Forman*, 3 Meriv. 622; Webs. R. 229; Carp. R. vol. 1, 377.

Abbott said, "Now the word '*manufacture*' has been generally understood to denote either a thing made which is useful for its own sake, and vendible as such,—as a medicine, a stove, a telescope, and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or for some other useful purpose,—as a stocking frame, or a steam engine for raising water from mines. Or it may, perhaps, extend also to a new process to be carried on by known implements or elements acting upon known substances, and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner, or of a better and more useful kind. But no merely philosophical or abstract principle can answer to the word '*manufacture.*' Something of a corporeal and substantial nature — something that can be made by man from the matters subjected to his art and skill, or, at the least, some new mode of employing practically his art and skill, is requisite to satisfy this word." * Again, in the case of *Crane* v. *Price*†, where it was contended that the invention for which the letters patent were granted was not

* *The King* v. *Wheeler*, 2 Barn. and Ald. 345; Carp. R. vol. 1, 394.

† Webs. R. 377; 4 M. & G. 580; Carp. R. vol 2, 669.

a manufacture within the meaning of the Statute, *Lord Chief Justice Tindal*, in giving the judgment of the Court said, "The question therefore becomes this,—whether admitting the using of the hot air blast to have been known before in the manufacture of iron with bituminous coal and the use of anthracite or stone coal, to have been known before in the manufacture of iron with cold blast, but that the combination of the two together (the hot blast and the anthracite) were not known to be combined before in the manufacture of iron, whether such combination can be the subject of a patent. We are of opinion, that if the result produced by such a combination is either a new article, or a better article, or a cheaper article to the public, than that produced before by the old method, that such combination is an invention or manufacture intended by the Statute, and may well become the subject of a patent."

It has been a common practice in the Courts of Law, for the counsel engaged against a patent to urge that it has been granted for a principle, and not for a manufacture. This has been the course erroneously pursued in several instances * ; they having confounded a principle

* *Minter* v. *Wells and Hart*, 5 Tyr. 163; 1 C. & M. & R. 505; Webs. R. 134; Carp. R. vol. 1, 639; Rep. Arts, vol. 2, N. S. 354.

of action of the parts of a machine with a principle inherent in nature;—the former may properly be the subject of a valid patent, whilst the latter, it was laid down at a very early period of patent law, could 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 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. The next chapter will be found to be devoted, in great part, to the consideration of the word principle; 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 im-

proved, is an invention suitable to be protected by a patent.

Upon a careful examination of the numerous patent cases which have been published, it will be found that inventions capable of being secured by letters patent may be divided into the following classes:—

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 helical cutters acting in combination with 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, and the doing that by means of 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 this new combination of old mechanical parts, in fact for simply altering the direction in which cutters of an old form were made to cut.

Again, 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 like parts differently combined, and consequently not capable of fully producing the effect required, but the desired effect had before been fully produced in paddle-wheels by different means. It was contended that the parts of the wheel 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 granted for a new combination of the parts which only produced a known effect. This objection, however, was overruled by the whole Court.†

* *Lewis and another* v. *Davis*; 3 Car. and P. 502; Webs. R. 488; Carp. R. vol. 1, 471.

† *Morgan* v. *Seaward and others*; 2 M. & W. 544; Mur. & Hu. 55; Webs. R. 187; Carp. R. vol. 2, 96.

It may be stated that a large number of patents are taken out for similar combinations, and a great variety of instances of like patents having been supported might be given; but the previous examples will be sufficient for the present purpose.

Second. *An improvement on any known machine whereby such machine is rendered capable of working more beneficially.*

Under this head there cannot be given a better instance than Watt's improvement of the steam-engine. It is 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 great improvement was to use for the condenser a vessel separate from the steam cylinder, and to employ an air pump to maintain a vacuum in this separate vessel; by this simple arrangement the steam-engine became of such value as to realize a very large fortune to Mr. Watt and to Mr. Boulton his partner, though they had repeatedly to take legal proceedings to protect themselves against infringements: in all these proceedings they were successful, and the patent was supported during the term for which it was originally granted, and also during a period

of extension granted by Act of Parliament.* This patent may be said to be the first for simply an addition to an old engine, which was successfully tried, though many such patents have since been sustained—indeed such inventions form now a large proportion of those by which our manufactures are constantly being improved.

Another similar instance may be given. 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, so that the person sitting or reclining could by the merest impulse vary the position and yet be firmly supported not only after the change of position, but also during the movement. The construction of the chair therefore was old, the lever action was also old, but it was new so to apply the lever action to a chair, and therefore the patent was supported.†

* The specification of this patent was badly drawn, it giving no practical directions but simply stating certain propositions to be worked out by the workman; fortunately the propositions were so simple that he could not fail to realise them; had the specification been well drawn it would probably have saved the larger portion of the expenses of litigation, and the patentee would not have had to go so often to a Court of Law.

† *Minter* v. *Wells and Hart*; 1 C. M. & R. 505; 5 Tyr. 163; Webs. R. 134; Carp. R. vol. 1, 639; Rep. Arts, vol. 2, N. S. 354.

Third: *The manufacture of a new vendible substance, whether produced by a chemical or mechanical process*; for instance, a new description of fabric such as felt, for covering the bottoms of ships, for making hats, &c.—a new description of sail-cloth—an elastic fabric, improved by the introduction of threads of india rubber,—a waterproof fabric produced by the introduction of a thin layer of india rubber between two surfaces of cloth; a great variety of examples might be given in which patents granted for inventions falling under this head have been supported in the Courts of Law.

It may be useful shortly to explain one or two of the inventions referred to:—the felt for covering ships' bottoms under the metal sheathing, had for many years been made in sheets by hand by the ordinary process of felting; in other cases sheets had been made by simply pressing an even layer of fibre, sprinkled 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, the layer of fibres was then pressed together by another moving surface of wire cloth, and in this state the continuous layer of fibres was submitted to melted pitch and tar, and subsequently pressed between rollers; by this means a sheet of felt of any required length might be

obtained. The patent for this invention 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 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. This was shewn to be a useful fabric, and the patent was held to be good.†

The patent for the water-proof fabric called '*Macintosh*,' also falls under this head; this pa-

* *Abbott* v. *Williams and others*; Carp. R. vol. 2, 381; Rep. Arts, vol. 9, N. S. 103.

† *Cornish* v. *Keene*; 3 Bing. N. C. 570. Webs. R. 513; Carp. R. vol. 2, 314; Rep. Arts, vol. 6, N. S. 102.

tent stood on very narrow grounds. The invention simply consisted of joining two fabrics together by means of dissolved india rubber. It was proved at the trial that water-proof fabrics had before been made by spreading dissolved india rubber on the surface of a fabric, and then sifting flock over it, thereby making a water-proof fabric; it was also a common practice before the date of 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 confined to sticking two fabrics together by a layer of dissolved india rubber.*

Formerly ships were sheathed with copper, and the advantage of using copper is, that it poisons the barnacles or prevents them adhering to the ship's bottom. Sir H. Davy, in order to preserve the copper from being slowly dissolved in the sea-water, proposed to place zinc in contact with it so as to create a galvanic action. A trial was made on a man-of-war and it perfectly succeeded in preserving the copper, but it was found that the barnacles stuck as freely to the preserved copper as they did to wood, and the ship quickly became so covered that its sailing powers were

* *Macintosh* v. *Everington*; Carp. R. vol. 2, 186; Rep. Arts, vol. 6, N. S. 317.

materially interfered with and the invention failed. The late Mr. Muntz some years afterwards thought it was possible that there was a point to which the copper sheathing of a ship might be preserved, and yet allow of sufficient oxidation to poison the barnacles: he tried many compounds of copper and zinc, and at last discovered that sheathing made of a compound of sixty parts copper and forty parts zinc, supposing both metals were very pure, would destroy the barnacles, and produce a sheathing cheaper and more durable than copper; for this he took a patent, and it was supported both at Law and Equity. *Lord Chief Justice Tindal* stated, that it did not signify whether the compound of copper and zinc was new in itself, the law only required that it should be new as a sheathing for ships.*

Fourth. *When an old manufacture is improved by some new method of working; the means of producing the improvement, whether chemical or mechanical, are in most instances patentable.*

A great variety of examples might be given under this head:—A patent was taken by Mr. Samuel 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

* *Muntz* v. *Foster*, Dowling and Lowndes, vol. 1, 737.

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, and applied to lace as well as to 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, could not be the subject of a patent. "No one," said *Lord Chief Justice Abbott*, "could know that gas would answer the purpose till he tried, and a man who tried and succeeded in so improving a manufacture, is entitled to a patent."* His Lordship also said, the man who makes an experiment with a new material that is successful, though it is for a purpose that is old, and 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.

Formerly, the usual mode of manufacturing iron was by means of a blast of air at the ordinary temperature of the atmosphere. Mr. Neilson discovered that the manufacture of iron might be greatly improved by employing atmospheric air in a highly heated state, and he took out a patent for

* *Hall* v. *Boot*, Webs. R. 100; Carp. R. vol. 1, 423; and Printed Case.

heating the blast of air before it entered the furnace. This patent was also supported.* During the period this patent was in force, another patent was granted to Mr. Crane, for combining the hot blast with the use of anthracite coal, in the manufacture of iron. This patent was also supported.†

A patent was taken for a mode of making welded wrought iron tubes for gas and other purposes; the specification described the means to consist of using external circumferential pressure by dies or such like tools without internal support. Before the patent, the making of tubes by like external pressure but with internal support had been practised and was well known. There were considerable advantages gained by leaving out the mandril 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 alleging 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.‡

* *Neilson* v. *Harford*, 8 M. & W. 806; Webs. R. 331.

† *Crane* v. *Price and others*, Webs. R. 377; 4 M. &. G. 580; Carp. R. vol. 2, 669.

‡ *Russell* v. *Cowley and Dixon*, 1 C., M. & R. 864; Webs. R. 463; Carp. R. vol. 1, 532; Rep. Arts, vol. 1, N. S. 166.

A case of a chemical nature may be given under this head; a patent was taken for water-proofing fabrics by first saturating them with a solution of alum and lime, and then submitting the fabrics so saturated to a solution of soap, by which a water-proof compound was produced within the fabrics so treated. Before the date of 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 purpose. In an action for infringement this patent was sustained.

Fifth. *The application of a known substance or material to a new purpose, and also the application of old machines in manufactures to which they have not before been applied, when a beneficial result is obtained, is the subject of a patent.*

A patent was taken by Forsyth, for a method of discharging fire-arms, &c., which consisted in the application of detonating or fulminating compounds as a priming. The patentee, in his specification, fully described the nature of such compounds, and also several descriptions of locks for discharging them 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;" but added, "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 thought that by 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 compounds for priming, such compounds being well known before the date of the patent; but in actions brought by the patentee for infringements, the claim to the exclusive use and application of the detonating compounds as priming, was held to be secured by the patent, whatever might be the construction of lock by which they were discharged.*

A patent was taken by Mr. Derosne for improving the process of refining sugar, by causing the syrups to be filtered through a layer or bed of charcoal. It was notorious to every person, that before the date of the patent almost every conceivable liquid had been filtered through charcoal, both vegetable and animal, but it could not be shewn that the syrups of sugar had been so filtered. Nor was it new to use charcoal as a purifying agent in the refining of sugar, powdered charcoal having been stirred into the syrups of sugar in the process of refining, and then allowed to pre-

* *Forsyth* v. *Riviere*; Chitt. Prerog. Crown, 182; Carp. R. vol. 1, 401.

cipitate, and the syrups filtered through bags of fabric, hence this patent was confined to filtering syrups of sugar through charcoal, and for this process the patent was sustained.*

In Watt's patent for the steam-engine previously referred to, he claimed to apply a wooden case or covering to the steam cylinder, in order to keep in the heat; this patent was also sustained.†

In a patent 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, consisted in the covering material; 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 of buttons by hand with a needle. The claim of the patentee was, in substance, the appli-

* *Derosne* v. *Fairrie*; 1 M. & R. 457; 2 C. M. & R. 476; 5 Tyr. 393; 1 Gale, 109; Webs. R. 154; Carp. R. vol. 1, 664; Rep. Arts, vol. 4, N. S. 77.

† *Boulton & Watt* v. *Bull*; 2 H. Bl. 463; Dav. P. C. 3; 3 Ves. Jun. 140; Carp. R. vol. 1, 117.

cation of certain well-known fabrics as a covering material for buttons made by dies and pressure; the specification stating that the fabrics were not new, nor were they 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 claim of using known fabrics by known means, producing a known manufacture, viz. buttons; the manufacture, however, was improved by the application of this particular fabric to buttons made by dies and pressure. This patent was also sustained.*

It is desirable to remark, in respect to patents taken for new applications of materials and machines, that many patentees suppose that security is obtained by merely stating the invention to be the application of a particular substance or machine to a new and useful purpose, without entering into a full account of how the same is to be carried into effect. This is incorrect; there must be full instructions given in the specification of the manner in which the means are to be adapted to the desired end, otherwise a patent cannot be valid; and, in fact, it will generally be found that this class of invention requires more care in preparing the title and specification than any other. Let it be

* *Elliot* v. *Aston*; Webs. R. 222; Rep. Arts, vol. 14, N. S. 285.

supposed that Forsyth, in the case previously mentioned, 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 the one case, or filtering it through charcoal, as in the other case; the mere statement that the invention consisted in the refining sugar by means of animal charcoal would not be sufficient; the best manner of conducting the operation known to the patentee in all such cases must be fully described and shewn, though the claim of invention might properly rest on the application of the known substance, newly applied in the particular manufacture; and the same is the case when machines are, for the first time, applied in manufactures different from those in which they have before been employed.

In referring to the cases previously mentioned, 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 a person having improved any manufacture, or branch of ma-

nufacture, may judge more readily whether what he has done may be properly made the subject of a patent.

If the above five propositions be carefully examined, they will be found to contain every description of invention which can be made, 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.

In short, any invention is patentable which either produces a new and useful article or manufacture, or which improves a previously existing manufacture—the improvement being either in the article produced by the process of manufacture, or in the process of manufacture by which it is produced. It matters not in law however small is the change made by an invention, or how apparently obvious the change may be, it is still patentable if it improves either an article of manufacture, or a process of manufacture.

CHAPTER III.

ON THE NEW APPLICATION OF KNOWN PRINCIPLES TO MANUFACTURING PURPOSES.

In the preceding chapter, the discovery of the existence of a philosophic principle was spoken of as not being the proper 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 produced, which have been secured by patents and upheld in the Courts of Law;—by this means a clear distinction will be drawn between the discovery of one of nature's laws, and 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 this is the extent to which the patent laws protect, for a limited period, new inventions. It will

be evident that a person merely discovering the manner in which a principle or law of nature acts, does not in any way enhance the value of that principle: thus when Galileo discovered that the atmosphere had weight, and that it was by its pressure liquids were caused to rise into a pump on withdrawing the piston, he did not thereby impress additional value on that law of nature, but only ascertained the correct principle of its action; had he gone on farther and invented the barometer*, such an application of the pressure of the atmosphere might properly have been the subject of a patent, supposing the invention to have been made at a time when the laws for encouraging inventions were similar to those at present

* "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 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."

in force in this country, and it would have been a good specification if the inventor had described the method of constructing the instrument, namely, by filling a glass tube, of sufficient length and closed at one end, with mercury, and immersing the open end of the tube in a cup containing mercury; he might then have claimed the application of the known law of the pressure of the atmosphere forcing up a liquid into a tube, from the interior of which the air has been removed, to the production of an instrument for indicating the varying pressure of the atmosphere, and applicable to the measurement of the heights of mountains, and to the indication of the changes of the weather. The invention of such an instrument is a combination, devised by the mind of man, of known mechanical instruments (the cup and the tube), with a known material (mercury), in such a manner as to call into action a law of nature, so as to produce a useful result not before obtained. The inventor, by claiming the sole right of constructing a barometer, would not therefore claim the principle of the pressure of the air or atmosphere, but only the application of this principle in a particular manner to produce a new and useful instrument.

Again, steam may be said to possess two principles of action: *firstly*, its elastic force; and, *secondly*, its property of condensing or contracting

itself into its original bulk as water, by being exposed to bodies of a lower temperature. These, however, are natural laws, and although either 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 farther, and used steam to press on the surface of water contained in a vessel, having an ascending-pipe, and thereby had constructed a machine for raising water*, it would have been a good subject for a patent had he claimed the exclusive right so to use steam. Or an inventor might have claimed the exclusive use of the property of steam, by which it contracts itself into water by having its heat withdrawn, in order to produce a vacuous vessel into which water would be pressed by the atmosphere—such, in reality, were the first applications of steam; and a valid patent might have been obtained for the use of these two properties conjointly in the same machine.† This last combination would have formed a good subject for a patent, notwithstanding that machines involving each property separately had before been com-

* The Marquis of Worcester's invention.

† Thomas Savery obtained a patent for this invention in July, 1698, and it is the first patent on record for a steam-engine.

monly employed; and such would have been the case if either or both those modes of using steam had separately been previously patented, but the last patentee would not have been permitted to use the machine involving 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 may therefore become the property of him who produces it.

The next step of improvement in the use of steam was the use of a piston in the steam cylinder, together with the pressure of the atmosphere; then came Watt, who with the cylinder and piston used the elastic pressure of steam in conjunction with the vacuum produced by its condensation; after him came Woolf, who used high-pressure steam expansively in two or a series of cylinders; all these 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 granted for improvements in the various parts of the engine.

* Ex parte *Fox*, 1 Ves. & B. 67; Carp. R. vol. 1, 274; *Lewis* v. *Davis*, 3 Car. & P. 502; Webs. R. 488; Carp. R. vol. 1, 471; *Crane* v. *Price*, Webs. R. 377; Carp. R. vol. 2, 611.

Thus it will be seen that although the discovery of any of the laws natural to steam could not be the subject of a valid patent, the different applications of those laws to manufacturing purposes, being the work of man, are inventions such as should be protected, and should rightfully belong, for a time at least, to those who first practically apply the principles under new combinations to the uses of man.

It had long been well known that the boiling point of fluids depends on the pressure to which they are subjected at the time of applying heat; thus the boiling point of water under the ordinary pressure of the atmosphere, is 212° of Fahrenheit's thermometer; but if heat be applied to water placed considerably above the ordinary level of the earth, as on a high mountain, it will boil at several degrees below 212°, according to the height. The discovery of this law, though not in itself a suitable subject for a patent, gave rise, when practically applied, to a very valuable invention, viz. the evaporating syrups in vacuo in the process of refining sugar; and this was the proper subject of a patent.* By the application of this known law, a very material improvement took place in that branch of our manufactures, owing to the low degree of temperature at which, when the pressure of the atmosphere is removed, the aqueous

* Howard's invention.

parts of the syrup are carried off by evaporation, thus preventing the destructive effects of high temperature so injurious in sugar refining.

The principles or laws natural to the lever were known at a very early period, but if such had not been the case, and the laws of its action were now discovered for the first time, it is evident that such a discovery would not enhance the valuable properties really existing; such a discovery could not be the subject matter of a patent; yet, on the other hand, any new combinations whereby these principles or any of them could be brought into more beneficial use, would unquestionably be proper subjects for patents; as for instance, when applied to cranes, windlasses, capstans, or as in the instance previously given, when applied to the back and seat of a chair, so as to obtain a self-adjustment of the weight between the back and seat of the chair.*

In this manner, the discovery of every law or principle of nature might be examined, to show that such discoveries could not become the subjects of patents.

The minds of persons constantly engaged in experimental philosophy, however successful in

* *Minter* v. *Wells and Hart*; Crompton, Meeson and Roscoe's R. vol. 1, 505; Tyrwhitt's R. vol. 5, 163; Webs. R. 127; Carp. R. vol. 1, 622; Rep. Arts, vol. 2, N. S. 80.

tracing nature's workings to their source, are seldom found making any practical application of its laws to the uses of man; they leave this department to minds of another order. There are some instances to the contrary of this, but they form the exception rather than the rule.

It has been thought desirable to go thus fully into this part of the subject, in order that those interested should clearly understand what is meant by the judges who have constantly held that no patent can be supported for a mere philosophical 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 laws 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.

ON THE PRACTICE OF GRANTING PATENTS FOR INVENTIONS.

By the Statute 15 and 16 Vic. c. 83*, the mode or practice of granting patents for inventions was materially altered, the first cost was also greatly reduced, but the law in other respects was altered only in a few particulars. Formerly separate grants were made for England, Scotland, and Ireland, but since the passing of this Act only one grant is issued, which extends to the United Kingdom. Another important change was, that in place of the invention being protected only from the date of the sealing of the patent, as under the old law, it is now protected from the day of application, so that a patent cannot now be invalidated by reason of the use or publication of the invention subsequent to this date, and the Lord Chancellor has the power under this Act to seal, and in practice does seal the patent as of the day of application. In order to obtain protection for an invention, the Statute requires that a petition to the Queen, supported by a

* Appendix, p. xxvii.

declaration, and accompanied by a statement in writing of the nature of the invention, called a provisional specification, shall be lodged at the office of the Commissioners of Patents, which documents are then referred to one of the law officers of the Crown (either the Attorney or Solicitor-General), who if he is satisfied with the title and statement of the invention, gives a certificate according to the Statute; the invention is thereupon provisionally protected for six months from the date of the application, during which period the invention may *be used and published* without prejudice to the validity of any letters patent subsequently granted for the same. It will be desirable here to guard inventors against placing too much confidence in this provisional protection, as the granting of the letters patent is still open to opposition; and, therefore, if an inventor, confiding in the provisional protection, should bring his invention fully before the public before he has secured his grant, he may possibly, when he proceeds with his patent, meet with such an opposition as to prevent his ever obtaining it; the safer course, therefore, is to obtain the grant with all speed, and before the invention is made known to the public; by which course of proceeding, although the application may be opposed by any person who may think that he has made a similar discovery, yet a successful opposition can only take place when an-

other person has actually made a like invention previous to the date of application for the patent, as the opponent will, if the petitioner has not disclosed his invention, know nothing of the nature of his claim, but will, so to speak, be opposing in the dark, and can therefore, only bring forward and describe an invention which he has made independently of any knowledge of the petitioner's: in fact it will be an honest opposition, prompted only by a desire to stop a patent being granted to the petitioner should the inventions prove to be similar.

In place of depositing a provisional specification on making application for a patent, the petitioner may, under the ninth section of the Act, file a complete specification of his invention, by which, in addition to obtaining protection for six months, as in the other case, he will have the right of at once proceeding at law against any person who may infringe his patent, even before the grant is actually made, and which in fact may never be issued. This privilege, which is but of questionable utility, is obtained too at this cost, namely, that the specification is at once open to the public, and consequently what has before been said as to the publication of an invention upon obtaining provisional protection, applies still more strongly to this mode of proceeding: in fact, a petitioner by lodging in the first instance a complete, in place

of a provisional specification, places himself, in this respect, at great disadvantage; and it is only under very special circumstances that this course should be adopted; indeed in most cases the invention will at the period when the patent is commenced be in a more or less crude condition, and the preparing a sufficiently detailed and accurate complete specification will be almost impossible. There is also this very great disadvantage in filing a complete specification in the first instance, namely, that the patentee precludes himself from subsequently obtaining valid patents in foreign countries, as it is a very general rule abroad, that if the invention has been published in any country before the date of the patent the subsequent grant is invalid, and it has been held that the filing of the specification is a publication of the invention. It is true that this difficulty may be overcome by obtaining foreign patents before applying for a patent in England; this course, however, cannot be recommended, as the validity of the English patent will then be dependent on the construction which may hereafter be put on the 25th section of the Act, the meaning of which is not entirely clear as respects inventions made by British subjects. If the invention be made by a foreigner, however, there is no doubt that the English patent will lapse when any of the foreign patents cease to be in force from any cause whatever; the same also pro-

bably applies to inventions made by British subjects if the invention be first made in a foreign country. An inventor, therefore, when he has realized in his mind what he considers to be a valuable invention, and feels himself in a condition to describe its general nature in the shape of a provisional specification, should at once petition for letters patent, and having obtained provisional protection, should, without disclosing his invention, proceed to obtain his grant, and then, and not till then, put the invention into public use, and he may then take advantage of the time allowed by the letters patent for testing his invention thoroughly, in order to be the better able to file a proper complete specification.

Every application for a patent, on provisional protection being granted, is advertised in the "London Gazette," and so soon after as the petitioner may think fit, he can give notice to have the patent proceeded with; this notice is also advertised, and persons may then enter an opposition to the granting of the patent. When the time allowed for entering opposition, which by a rule of the Commissioners is twenty-one days from the date of the second advertisement, has expired, the petition is again referred to the law officer, together with the notice of objections (if any); and if on hearing the opposing parties, the inventions are not found to be similar, the patent is allowed

to proceed; but should the invention produced by the opposing party prove to be similar to that described in the petitioner's provisional specification, the law officer will still allow the patent to proceed, unless it can be shown that the opposing party was rightly possessed of the invention before the date of the petitioner's application, or that the petitioner is applying for the patent in fraud, or that the invention was in public use, or had been patented previous to the date of the petitioner's application, otherwise the warrant for the sealing of the patent is, on the application of the petitioner, prepared and signed by the law officer, and forwarded to the Commissioners; the patent is then prepared and sealed by the Lord Chancellor. The patent is required to be sealed within six months of the day of application, that is during the continuance of the provisional protection: the Lord Chancellor, however, has the power under a subsequent Statute (the 16th and 17th Vic. c. 115*), to extend this time for any period not exceeding one month, provided the delay in such sealing has arisen from accident and not from the neglect or wilful default of the applicant.

A patent may also be opposed at the Great Seal; the Lord Chancellor seldom, however, refuses to seal a patent when petitioned so to do;

* Appendix, p. lxviii.

and in most cases of modern time the expenses of the opposition have been ordered to be paid by the opposing party, as it is generally considered that a petitioner should not be allowed to go on expending his money in obtaining a patent, and then be opposed at the last stage. There cannot, however, be any reason to doubt, that if a petitioner should be opposed at the Great Seal by the real inventor, when the petitioner has falsely represented himself to be so, that the Lord Chancellor would stop the grant: in most of the cases, however, which have come before the Lord Chancellor the opposing party has, on investigation, been found to possess a different invention to that of the petitioner, and, therefore, the opponents have had no good reason for opposing at the last stage of the grant. The Lord Chancellor in some cases, when Caveats are entered against the sealing a patent, refers the parties back to the law officer to whom the petition was originally referred, to ascertain if he would have allowed the patent to proceed had the opposition been entered at the proper time. If the sealing of a patent be delayed by opposition at the Great Seal, the Lord Chancellor has power under section 20, of the Act, of extending the time for sealing for any length of time he may think fit.

CHAPTER V.

ON OBTAINING PATENTS FOR INVENTIONS — THE TITLE — THE PROVISIONAL SPECIFICATION — AND THE COMPLETE SPECIFICATION.

In applying for a patent the first thing to be considered is, what is a proper *title* to be given to the invention. So essential is correctness in this respect that several patents have been set aside in consequence of obscure or bad titles;* it therefore becomes very desirable that every inventor should fully comprehend what is required in the title of a patent. This part of my subject, although it has been thought difficult by some, is exceedingly simple when a little consideration is given to it. The title then should be such a description of the invention, that the public may understand the object of the invention:—thus if it be "*Improvements in the slides of steam-engines*," every person having an invention relating to steam-engines, and therefore interested in that

* *Cochrane* v. *Smethurst*, 1 Stark, 205; Dav. P. C. 354; Carp. R. vol. 1, 311; *The King* v. *Wheeler*, 2 Barn. and Ald. 349; Carp. R. vol. 1, 394; *The King* v. *Metcalf*, 2 Stark, 249; Carp. R. vol. 1, 392.

subject, will readily understand that a certain well-known part of the steam-engine is proposed to be improved; but if under such a title, a patentee were to claim improvements in other parts of the steam-engine, in addition to his improvements of the slides, there would evidently be a great discrepancy between the title and the specification, and the patent would be bad. In preparing a title for a patent, the precise nature and extent of the invention should be accurately determined; whether it be for 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 it 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 upon; or for the improvement of a known engine or machine whereby the same may be made to work more beneficially; this point being ascertained, the title should clearly indicate which of these several objects the invention is intended to attain.

In order to determine accurately the principles on which titles should be given to inventions, it will be desirable to instance some patents which have been set aside, from bad or improper titles, and by pointing out the rocks which have been fatal

to others, 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; this patent was declared void, in consequence of the title of the patent, and the description of the invention in the specification not being in conformity with each other.* In the first place, the lamp was described as being applicable to lighting light-houses, harbours, shipping, &c., which was clearly in excess of the title, which only named cities, towns, and villages. In addition to this, there was a still more important objection; it was evident that there was no "*improved method of lighting cities, towns, and villages,*" lamps of a different construction, having been used for that purpose prior to the date of the patent; the invention applied in fact to the lamp used for lighting cities, towns, and villages, so that had the title been for "*An improved lamp,*" or for "*Improvements in lamps,*" there is no doubt that the patent would have been upheld, and either of those titles would have protected the patentee *in every application of his invention.* The defective nature of this title will be very obvious when it is considered that being for "*An improved method of lighting,* &c.," another

* *Cochrane* v. *Smethurst*, 1 Stark, 205; Dav. P. C. 354; Carp. R. vol. 1, 311.

person having made a similar invention seeing this application for a patent, and knowing that his invention was merely an improvement in ordinary lamps, would naturally say,—"this application has no relation to my invention; I have no *improved method of lighting*, but only an improvement on a lamp which is in common use." The patent therefore not being opposed would be permitted to proceed, and would be granted in favour of the petitioner, and to the prejudice of the other party; thus would great injury result if vague or deceptive titles were allowed. The law considers any intentional disguise or misleading in the title of the invention to be a fraud on the Crown; the public also is to be protected against the granting of patents under titles which do not clearly state the object of the invention; were such titles permitted, there would be no protection to those who may be proceeding with similar inventions.

In a patent for "*A new or improved method of drying and preparing malt*," the specification stated that the invention consisted in submitting *malt* to a high degree of temperature, in order to produce a material which was to be used for colouring beer, &c.: there were no new means of drying or preparing malt described; any of the known methods of making malt might be used, but the temperature was to be raised higher than usual at the end of the process. This patent was

declared void, for the want of agreement between the specification and the title; the manufacture not being in reality the article known by the name of malt, but a colouring matter produced from malt*; the title should therefore have been "*An improved colouring matter for beer and other liquids;*" and under such a title the patent would undoubtedly have been supported. The consequences which would follow if the title first mentioned had been held sufficient to cover the invention as specified, will become manifest on asking what would have been the position of a person possessing an invention for improvements in the materials used for colouring beer and other liquids on seeing this application for a patent; could he for a moment have imagined that an improved colouring matter was concealed 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, and the evident meaning of this title is, that there was some new mode of drying and preparing the article called malt, and the result to be produced was malt, not a *new substance* to be obtained by old means from malt.

Again, it has been clearly pointed out by the Judges that to attempt, either by means of the

* *The King* v. *Wheeler*, 2 Barn. and Ald. 349; Carp. R. vol. 1, 394.

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 specification are not in conformity with each other.

In the case of *Kay* v. *Marshall* * the title of the patent was as follows, "New and improved machinery for preparing and spinning flax, hemp, and other fibrous substances, by power." The patentee, after fully describing the invention in his specification, said,—"*What I claim as my invention in respect of new machinery for preparing flax, hemp, and other fibrous substances, are the macerating vessels marked B, and trough of water marked C; and that which I claim as my invention in respect of improved machinery for spinning flax, hemp, and other fibrous substances, is the wooden or other trough marked D, for holding the rovings when taken from the macerating vessels, and the placing of the retaining rollers e, e, and the drawing rollers c, c, nearer to each other than they have ever before been placed, say within two and a half inches of each other for the purpose aforesaid.*" The invention described under this patent was entirely new, and one of the most valuable which has ever been introduced into the manufacture; and yet, in consequence of the form of the title and specification, the patent could not be supported at

* 5 Bing. N. C. 492; Carp. R. vol. 2, 127.

law. It appeared that there was no novelty in the machinery for spinning, when separately considered, neither was there any novelty in the use of macerating vessels as claimed. Had the patent been taken for "*An improvement in spinning flax, hemp, and other like fibrous substances*," and had the patentee in his specification disclaimed any novelty in macerating such fibrous substances, and also all right to the placing the retaining and drawing rollers of spinning machinery within two and a half inches of each other, and claimed only the spinning of flax, hemp, and other like fibrous substances when in a macerated state, by machinery having retaining rollers within two and a half inches of each other, there is no reason to doubt that the patent would have been sustained. The only evidence brought against the patent was, that machinery for spinning cotton in a dry state had, to a large extent, been previously made and used with adjustable lengths of "*ratch*," and capable of being worked with drawing rollers within two and a half inches of the retaining rollers; and it was also proved, that the spinning of macerated flax and other fibres at a long ratch, that is when the rollers were several inches apart, was old, but did not produce the highly beneficial results of the new invention. The foundation of Mr. Kay's invention was the discovery of the fact that the ultimate fibres into which flax

can be separated are less than two and a half inches in length, and that flax and hemp when in a macerated state would spin far finer and more valuable yarn if the retaining rollers and drawing rollers were set to a short ratch ; he did not invent the maceration, neither did he invent the short ratch, but what he did invent, and what he described in his specification, was the joint or combined use of maceration and short ratch, when spinning flax, hemp, and fibrous substances of a like character. At the trial it was shown that the long fibres of flax and hemp have a stratified structure, and consist of shorter fibres, less than two and a half inches long, which when well wetted and when a sufficient tension is put on the long fibres will without fracture slide on each other ; hence by using drawing rollers, about two and a half inches from the retaining rollers, the long fibres will be drawn out or elongated to an extent dependent on the degree in which the surface speed of the drawing rollers exceeds that of the retaining rollers, and this elongation will result from the sliding the one on the other of the shorter fibres of which the long fibres are composed—hence the value of Mr. Kay's invention.

Lord Chancellor Lyndhurst, in giving judgment in the case of *Sturtz* v. *De la Rue and others**, said in respect to a *title*, that "the description in

* 5 Russ. 322; Carp. R. vol. 1, 467.

the patent must unquestionably 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 these circumstances,—in the preparation of the paper, for instance, or in the damping of it, &c.—may truly be called an improvement in copper-plate printing."

In the case of *Cook* v. *Pearce and another**, the title of the patent was "*Improvements in Carriages.*" The specification described the invention to be applicable only to carriages where German shutters were used. The cause was tried in the Court of Queen's Bench, when a verdict for the plaintiff was returned, except in regard to one plea, which stated that the invention was not applicable to all carriages, and that the title was vague and uncertain. On this

* 8 Queen's Bench R. 1044; 7 Jur. 499.

question the jury found that the invention was not applicable to carriages generally, and the Court ultimately decided that the patent was bad. The cause was then carried into the Exchequer Chamber, and the judgment of the Court of Queen's Bench reversed. *Lord Chief Justice Tindal*, in giving the judgment of the Court, said "the words 'improvements in carriages' do not necessarily import improvements in *all* carriages, but may be held to apply to some carriages only. Mere vagueness appears to us to be an objection that might be taken on the part of the Crown to the grant of the letters patent, but not after they are granted. If any fraud had appeared to have been practised on the Crown in obtaining it, the patent might be held void. There is no evidence of fraud in this case, but the patent is held bad in the Court below, merely on the ground that the title is so large as to be capable of importing a different invention from that in the specification. We think it unsafe, without farther authority, to lay down a rule so large as that laid down in the Court below, but consider it would be doing an injury to many patents, if we were to hold this void merely because the title is in the same terms as are capable of application to some other invention than that in the specification, and that, too, without any grounds of fraud."

The title then should be such that the public

may clearly understand the object of the invention, and the specification should describe the manner of carrying the invention into effect and distinctly and clearly distinguish that which is new and claimed by the patentee, from that which is old and has been previously used. The title, too, must not be less comprehensive than the invention, but must be such as to give a general knowledge, and, as far as it goes, a correct knowledge of the object of the invention, and the specification must accurately define the same.

In addition to giving a *title* to the invention, the law requires that the petitioner shall, in the first instance, lodge a provisional specification, setting forth the nature of the invention. This provisional specification is a most important document, and upon its correctness depends the validity of the patent. The Courts of Law will, doubtless, treat this document as an expansion or enlargement of the title. The complete specification to be afterwards filed must be found to agree not only with the title, but also with the provisional specification—this will be better illustrated by an example: supposing the law to have been as at present when Watt made his great invention, he should in applying for his patent have given to his invention the title of "*Improvements in steam-engines*," and in his provisional specification, he might properly have stated what those improve-

ments were in the following words :—"Heretofore the steam used in a steam-engine has been condensed in the cylinder in which it has been used, by which the cylinder and piston are necessarily alternately heated and cooled, which cooling is very prejudicial; now my invention consists in causing the steam to pass out of the cylinder, to be condensed in a separate vessel or condensing apparatus, by which arrangement the cylinder may at all times be kept hot. I use an air-pump to remove incondensible gases from the separate vessel or condensing apparatus. Loss of heat by radiation from the cylinder may be prevented by the use of a jacket or casing, between which and the exterior of the cylinder steam may be admitted." The great object of the law in requiring a provisional specification is to prevent a patentee putting any other invention into his complete specification than that for which the patent is granted; it is not intended to prevent a patentee introducing all the practical improvements into his complete specification which grow out of, and are dependent on, the invention set forth in the provisional specification. Thus, to continue the supposed case of the invention for steam-engines, the patentee might properly describe, in his complete specification, the best mode of condensing known to him, together with the mode of connecting and working the air-pump, also the means to be resorted to for keeping the cylinder hot, and also

the mode of working the valves and other apparatus employed; under such a provisional specification, however, no valid claim could be made for a new construction of steam boiler, seeing that no boiler is mentioned in the provisional specification.

The inventor, in preparing his provisional specification, should clearly point out the nature of the change he proposes to make in the particular manufacture to which it relates, leaving the manner of performing the invention to be described in the complete specification. The law in requiring merely a provisional specification when the patent is applied for, assumes that the invention is not then in a state of practical maturity, time is therefore allowed for carrying out the invention, and it is required that all the practical knowledge obtained by the inventor between the time of granting the patent and the filing of the complete specification should be found in that specification.* To introduce into the complete specification a claim for any new invention independent of, and separate from that which is set forth in the provisional specification, is a fraud on the Crown, and will no doubt be so treated by the Courts of Law. The law officers of the Crown have in several instances stated their determination not to allow patentees to amend their

* *Crossley* v. *Beverley*, 3 C. and P. 513; M. & M. 283; 9 B. & C. 63; 1 Russ. & My, 166; Carp. R. vol. 1, 480.

patents by disclaiming parts of their specifications introduced under such circumstances, and in one case the Attorney-General absolutely refused to allow a patentee to file a disclaimer where it was clearly proved that he had claimed an invention beyond that for which the patent was granted.

The complete specification already mentioned is required both by the Statute and by a proviso contained in the letters patent to be filed within six calendar months of the date of the application for the patent; and the object of this specification is to explain fully the manner in which the invention is to be carried into effect. Exclusive rights are given to inventors for any new inventions which they have made, or which they have first introduced into this kingdom from abroad, on condition that such inventions shall be so described, that the public generally may, from the specifications themselves, be able to make and use the invention after the expiration of the term of the patent. The whole responsibility of making the patent valid, by properly describing the invention, is thus thrown on the patentee. It has been before stated that the title and provisional specification are required only to state the nature of the invention; the complete specification, on the other hand, must not only fully describe the manner of performing the invention, but should also define the precise point of novelty which the patent is intended

to secure. The proviso in the letters patent, requiring the filing of a complete specification, declares that the letters patent shall become void if the patentee, or his executors or administrators, "*shall not particularly describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his or their, or one of their hands and seals, and cause the same to be filed in the Great Seal Patent Office within six calendar months next and immediately after the date of these Our letters patent.*" Under this proviso it is not enough, therefore, that the patentee should describe the manner in which his invention is to be performed, but he must also ascertain the nature thereof; for it has been held that although a patentee had most fully and accurately described the manner in which his invention was to be performed, yet as he had omitted to ascertain the nature of the invention, so as to separate it from old matters necessarily described in the specification, the patent was void.* A badly drawn specification invites opposition, whilst a clear, definite, and decided description is the best preventive of infringement.

In preparing a specification of an invention, there are two things to be carefully attended to:—

* *Bovill et als.* v. *Moore*, 2 Marsh, 211; Dav. P. C. 361; Carp. R. vol. 1, 320; *Macfarland* v. *Price*, 1 Stark, 199; . Carp. R. vol. p. 309.

Firstly.—That it shall be so clear that a workman, or other qualified person, shall be able to realize the invention by following the description given of it in the specification.

Secondly.—That the invention claimed as new shall not be greater than what is indicated by the title of the patent and the provisional specification.

The invention, in addition to being new, must also in order that the patent may be supported, be useful, and by being new and useful is meant that should any part or parts of the invention described and claimed as new in the specification prove to be old, or fail to produce a beneficial result, the patent will be bad in law, not only as regards the old or useless part, but also as regards the parts which taken alone may be both new and useful. It will generally be found that the great object of patentees is so to word their specifications as to claim every means of producing a certain result, and this they do without sufficiently considering whether that result has not before been obtained: thus are patents made weak by claiming too much, and are consequently declared void when they come into a Court of Law. Such a mode of claiming is correct when it is certain that the principle has never before been applied to the same purpose; in which case a patentee who first conducts a manufacture, or constructs a machine, according to a particular

principle may claim for applying the principle to that manufacture, or to that machine; this is not claiming a principle, but only the application of a principle in some special manufacture or machine, and the principle itself will still be open to all the world to be applied to other manufactures or to other machines: but when the principle is known to have been already applied to a particular manufacture or machine, then the only subject matter open to a patentee is some different mode of applying that principle, some better combination of mechanical or other means for bringing about a more useful result. In this case the patentee should, after describing the means which he knows to answer, claim these means, or such parts of them as are of his invention, leaving it to be afterwards determined whether any subsequent invention, for producing a similar result, be or be not an infringement of the original patent; if the means employed prove to be essentially different there will be no infringement; if, on the contrary, the means of applying the principle are proved not to be essentially different, but only a variation of the first invention, then the same will be an infringement of the original patent, although the patentee may have only claimed the particular means specified.*

* *Hullett* v. *Hague*, 2 Barn. & Ald. 370; Carp. R. vol. 1, 501.

Another error into which patentees very often fall is, that when describing the materials of which certain parts of their machinery or apparatus are to be composed, they use the following or similar general 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 for effecting this object, the point of invention being the drying the damp paper by conducting 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 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 *mislead the public*, as any description of fabric, other than that described, spoiled the paper by what is called cockling it.* It should be understood that the particular fabric described in the specification formed no part of the claim of invention, therefore, had the pa-

* *Crompton* v. *Ibbotson*, Dan. & Lloyd, 33; Carp. R. vol. 1, 458.

tentee confined his description to that which he knew would answer, he would have given all the information necessary to support his patent, and had any other fabric been afterwards found to answer, no injury could have resulted, as the substitution of a fabric of one material for that of another would not have enabled other persons to use the patented machine without licence under the patent.

The smallness of the amount of invention secured by a patent is no objection to its validity, provided the invention claimed be new and useful, as more depends on the utility than on the extent of the invention. In the case of Lewis and Davis's patent for shearing cloth, one of the improvements claimed was: "The described method of shearing cloth across *from list to list by a rotatory cutter*;" the patentees having in their specification fully described a machine to be used for that purpose. It was proved, when legal proceedings were taken, that before the date of the patent a rotatory cutter had been used in machines to shear cloth in the *w* *of its length*; and also that shearing cloth from *e* to list by hand, as well as by machinery having 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. How-

ever, if before the plaintiffs' patent the cutting from list to list, and the doing that by means of rotatory cutters, were not combined, I am of opinion that this is such an invention by the plaintiffs as will entitle them to maintain the present action."*

It is desirable here to remark, that if it had been found, on going into Court, that the specification of the patent had omitted to define the extent of the claim, — *that of cutting from list to list by rotatory cutters*, — the Judge could not have clearly ascertained the extent of the invention intended to be secured, and the patent would not have been supported; the patentees having, however, confined their claim of novelty to that which could not be shown to have been in public use, the patent was sustained. This case is also instructive as showing what constitutes a previous publication of an invention, as at the trial it was 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 shown to several manufacturers. The construction of a machine of the same description had also been commenced, but before its completion it was destroyed by the Luddites. On an application

* *Lewis et al.* v. *Marling*, 3 Car. & P., 502; Webs. R. 488; Carp. R. vol. 1, 475.

for a new trial, it was argued that the novelty of the invention was properly the subject for the verdict of the jury, and that his Lordship had not so put the question. *Lord Tenterden* said, "I told the jury that if it could be shown that the plaintiffs had seen the model or specification, that might answer the claim of invention; but there was no evidence of that kind, and I left it to them to say whether it had been in public use and operation before the granting of the patent. They found that it had not, and I think there is no reason to find fault with their verdict." *Mr. Justice Bayley* concurred with *Lord Tenterden*, and observed,—"If I make a discovery, and am enabled to produce an effect from my own experiments, judgment, and skill, it is no objection that some one else has made a similar discovery by his mind, unless it has become public."* 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 or in a cylinder to brush the surface of the cloth to be shorn;" and in the specification a method of performing that operation was described. This part of the invention was afterwards found to be unnecessary, and was abandoned. It was held that that circumstance

* *Lewis and another* v. *Marling*, Webs. R. 495; 10 B. & C 22; 4 Car. & P. 57; Carp. R. vol. 1, 478.

was not injurious to the patent, the inventors having thought the improvement serviceable at the time of obtaining their patent.

Again, in the case of Dollond's patent, the invention had been made and used *privately* by another person long before the date of the patent, but as no actual public use or publication of the invention could be shown the patent was held to be valid.*

From what has been said in respect to the construction put on the specifications mentioned, a tolerably correct judgment may be arrived at as to the manner in which an invention should be claimed. It is true that cases of considerable difficulty may and often do arise, particularly where great progress has been already made in any particular branch of manufactures, and where, from a slight improvement, very considerable results are obtained, and although from the simplicity of the change the reason why such results are obtained can scarcely be pointed out, in such cases, the judgment of those only who have constantly made the drawing of specifications their particular study and profession, should be depended on.

Under the Statute 16 and 17 Vict. c. 115†, the Lord Chancellor has the power of extending the

* *Dollond's Case*, 2 H. Bl., 470 and 487; Webs. R. 43 Carp. R. vol. 1, 28.

† Appendix, p. lxviii.

time allowed for specifying an invention, for a period not exceeding one month beyond the six months allowed by the patent, provided the delay in filing the specification has arisen from accident, and not from the neglect or wilful default of the patentee.

The reason for allowing a length of time for filing the complete specification, is to give the patentee full opportunity to practically try his invention. In the case of *Crossley* v. *Beverley**, an objection was taken to the validity of the patent, that the inventor, after the sealing of the patent, and before the enrolment of the specification, had made some changes in the arrangement of the parts of his invention, and had put these in his specification in describing the mode of carrying the invention into effect. *Lord Tenterden* said, "The objection really would come to this—if at the time a person applies for the patent he has in his mind an invention capable of producing the effect which he represents it to be capable of producing, and has brought that invention to a great degree of perfection, and within the time allowed by the patent for exhibiting the specification, and before the arrival of that time he perfects his invention, and renders it more complete by the introduction of a different species of machinery, by the application

* Webs. R. vol. 1, 112; Carp. R. vol. 1, 487.

of that to different mechanical parts of the machine he first conceived, if so, whether that will make his patent void. No case has ever decided that, and I think it would be extremely dangerous to lay down any such doctrine. I do not see myself why time is allowed to prepare the specification, except upon the idea, that the person at the time he took out his patent has not brought his machine, or whatever he has invented, to that degree of perfection which it may be supposed he is capable of bringing it to, and therefore he is allowed further time to do it. If, in the interval, another person should have hit upon that which he has hit upon, that patent will not be for what in the meantime has been discovered by another person. He runs all these hazards by the delay; but if during that delay the invention was perfected, and approaches to a perfect accomplishment of the object which he had originally in view, I own I do not see that 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 the carrying out of his invention *; but a patentee must not claim the invention of another, although the *title* is large

* *Bloxam* v. *Elsc*, 6 B. & C. 169; 9 Dow. & Ry. 215; Carp. R. vol. 1, 437; *Minter* v. *Wells and Hart*, Webs. R. 127; Carp. R, vol. 1, 622; Rep. Arts, vol. 2, N. S. 80.

enough to include both inventions. The introducing the invention of another into the specification of a patent would be a fraud on the Crown, as it would not be the invention for which the patent was granted, and the patent would thereby be made void.

Patents being now sealed, as of the day on which the application for them is made, there can be no legal objection to making and selling articles, according to the invention, immediately after such application; it is not, however, always wise to do so, as the patent is still open to opposition, and, as previously mentioned, the publication of the invention may in such case be very prejudicial to the patentee. Again, if it is desired to obtain foreign patents for the invention, these patents should be applied for before the invention is made public by the sale of articles or otherwise.

The complete specifications, when filed, are open to the inspection of the public, and copies of them may be obtained. By a recent Statute*, however, there is an exception to this rule in respect to *inventions for improvements in instruments and munitions of war*. The preamble of this Statute recites that in some cases it may be important to the public service that the nature of inventions of this description

* 22 Vict. c. 13.

should not be published, and then it enacts that when the benefit of such an invention, and of all letters patent obtained or to be obtained for the same, has been assigned to the Secretary of State for the War Department, on behalf of Her Majesty, he may, if he see fit, certify to the Commissioners of Patents the fact that such an assignment has been made, and also that in his opinion it is for the benefit of the public service that the particulars of the invention and of the manner in which it is performed should be kept secret; upon receiving this certificate the Commissioners of Patents, if the application for the patent has been already made, are to cause the provisional specification and all the other papers relating to the patent, to be placed in a packet and sealed up by the Commissioners, and the complete specification, when it becomes due, is to be delivered at the office of the Commissioners, in a packet sealed with the seal of the said Secretary of State.*

* See Appendix, p. lxxxix.

CHAPTER VI.

ON THE STATUTE 5 AND 6 WM. IV. C. 83, RELATING TO DISCLAIMERS, ETC.

BEFORE the passing of this Statute*, the specification necessarily remained during the whole term of the patent in the precise form in which it was originally enrolled; if that document contained any flaw affecting the validity of the patent, in that state only could it be judged.† In case of infringement, the patentee, with a specification bad in part, could not safely proceed in support of his patent, and where proceedings have been instituted under such circumstances, the objections taken to the specification have prevailed against the validity of the patent. If we turn into the various patent causes which are reported, it will be found that, in the larger number of the cases where the patentees have not been successful, such failure has arisen from the patentee's having claimed more than was new at the date of his patent, or from his not having properly spe-

* Appendix, p. ix.

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

cified the invention. That a patentee should be restricted in his specification to claiming, and having secured to him, only so much as is actually new, is highly necessary to the protection of the public; but that a patentee should lose every part of his invention, because he has been anticipated in any, and in some cases, a very small portion thereof, was a severity in the law which required to be mitigated. By this Statute a patentee may, at any period during the term of his patent, disclaim any parts of his specification which may be found to be old or useless; and, in addition to disclaiming part of the specification, or of the title of the patent, he may also amend the same, where they are found to be defective.

In thus giving more security to patent property, the rights of the public have not been overlooked. The permission to alter or amend the title or specification of a patent, is very properly guarded by 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 invention previously contained in the specification. The words of the Statute relating to this part of the subject are as follows :—" Any person who, as grantee, assignee, or otherwise, hath obtained or who shall hereafter obtain letters patent, for the sole making, exer-

cising, 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."

The consent of the Law Officers is not, however, obtained as a matter of course, but on the contrary is in practice frequently refused; still, from the decisions which have been given relative to the amendment of specifications and titles of inventions, under the above clause, there need be no doubt of obtaining the consent

of the Law Officers, unless there should appear to have been a fraud on the part of the patentee, in knowingly enrolling or filing a specification which did not fairly and fully explain his invention and clearly point out what he conceived to be new; hence it is very necessary for a patentee honestly and carefully to prepare the title and also the provisional and complete specifications of his invention, otherwise upon application to amend them the permission may be refused, in which case the patent will remain liable to the same strict construction as if the Act had not been passed, and the patentee or assignee would fail to support the patent against infringement. The first section of the Statute enacts that Caveats may be entered against alterations or disclaimers, and the persons entering the same may be heard in opposition to the allowance of such disclaimers or alterations: thus is another guard raised to prevent a patentee intentionally enrolling a specification deficient in description or with too extensive claims in the hope of being able at any subsequent time to alter or amend the same, as would no doubt often have been done but for those checks. In the case of *Morgan* v. *Seaward**, the jury found that part of the invention claimed was not useful, and the Judges held that the patent was thereby rendered void; at the same time they

* Carp. R. vol. 2, 104; Rep. Arts, vol. 7, N.S. 182.

stated that the patentee could, by entering a disclaimer, set up all the useful parts of the patent; and a disclaimer was accordingly afterwards allowed. In the same case considerable doubts were raised as to the sufficiency of the description of part of the specification, but the jury found, after hearing much conflicting evidence, that it was sufficient. The patentee, however, 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, although strongly opposed by the defendants in the original cause, as well as by other manufacturers. Since this case several other patents have been amended by disclaimer and alteration, after an adverse verdict in a Court of Law.

In the case of *Derosne* v. *Fairrie**, where the patentee at the trial obtained a verdict, there was considerable doubt whether the specification should not have set forth how the iron was to be separated from the schistus employed in the process, the mode of doing so not being known to sugar refiners in this country, and on application to the Court, the Judges granted a new trial; but the patentee by disclaimer and alteration amended his specification, and no new trial was

* Webs. R. 154; Carp. R. vol. 1, 664.

had, as there was then no doubt of the validity of the patent, and it was never again questioned. It has been decided in the case of *Perry* v. *Skinner**, that a patentee having a bad specification, can only recover damages for such infringements as are committed after enrolling a disclaimer and alteration, and not for any infringements committed previous to making the specification good in law; but the law has since been modified in this respect by the Statute 15 and 16 Vict. c. 83, s. 39 †, so that actions for past infringements may now be brought, if the Law Officer so certifies in his fiat, notwithstanding the entry or filing of such disclaimer or memorandum of alteration. It has also been decided that a patentee after having entered one disclaimer and memorandum of alteration, may, even after an adverse verdict at law (from the still defective state of the specification), enter another disclaimer or alteration, in order more fully to correct the specification ‡; and such is the desire of the Judges to give the holder of a patent every proper support in the enjoyment of this exclusive right, that *Lord Chief Justice Tindal* stated,

* Carp. R. vol. 2, 403; 2 M. and W. 471; Webs. R. 250.

† Appendix, p. xliii.

‡ *Losh* v. *Hague*, Webs. R. 200; 7 Dowl. 495; Carp. R. vol. 2, 464; Rep. Arts, vol. 9, N.S. 224; *Rubery* v. *Barrs*, Rep. Arts. vol. 3, E.S. 246.

even after a verdict against the validity of a patent in a writ of *scire facias*, that the proper course would be, if the patentee "thinks that the judgment of the Court of Queen's Bench will be against him, to enter a disclaimer before such judgment is actually given, and pray the Court to suspend their judgment." *

The second section of the Statute gives to the Crown the power of re-granting or confirming a patent in the event of its being discovered that the invention was not entirely new. The words of this section are as follows:—"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

* *The Queen* v. *Bynner*, 9 Q. B. Rep. 529; Law Times vol. 7, 408.

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."*

This clause was evidently inserted to meet several cases which had occurred, of patents having been declared void in consequence of a very small amount of previous publication; as for in-

* For the rules of practice before the Judicial Committee of the Privy Council, see Appendix, p. lxxxvi.

stance in the case of Arkwright's patent for spinning, where the patent was declared void in consequence of some of the mechanical parts described in the specif...tion as part of the invention, being proved on the trial to have been in previous use. There was also the case of Daniells' patent for dressing or finishing woollen cloths; where at the trial a slight previous use was proved; — these instances have been given as both inventions were of the greatest possible benefit to the public, owing to the perfection to which the patentees had brought the respective manufactures. It is taken for granted that the evidence on which these patents were set aside was true; but there are instances in which perjury has been more than suspected. Under these circumstances, it is highly desirable that the Crown should have the power contained in this Act, 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 on behalf of the patentee or his assigns. There have been but few applications under this section of the Statute, the first, in the case of Baron Heurteloup's patent, was in consequence of the invention having been previously 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 this not to be such a publication as would in law invalidate the grant, but in case it might be held otherwise, confirmed the patent. In another case the application was made, because of a previous publication of the invention in an English scientific work; at the hearing it was further proved that a description of the invention was also to be found in the specifications of previous patents; their Lordships therefore refused to advise the Crown to confirm the patent.*

Previous to the passing of this Act patents for valuable inventions, but which had failed sufficiently to reward the inventors for the merit of their inventions, could only be extended by Act of Parliament, and such Act could only be obtained at great cost; but by the fourth section of this Statute the Crown has the right, with the advice of the Judicial Committee of the Privy Council, to extend the grant for *seven* years beyond the original term of fourteen years, for which patents are in the first instance granted, and by the subsequent Statute 7 and 8 Vict. c. 69†, this power of extension has been increased to *fourteen* years. In the case of Whitehouse's patent for tubes,

* *Westrupp and Gibbins's Patent*, Webs. R. 554; Carp. R. vol. 2, 219; Rep. Arts, vol. 5, N.S. 227.

† Appendix, p. xx.

where the assignees of the patent had made a very large sum of money, but where it was shown, that for many years they had had to contend both at law and in equity to defend the patent against infringement, *Lord Brougham* in giving judgment expressly stated, that in granting an extension of six years, it was not because the patentee or owners of the patent had not derived large profits, but because other manufacturers 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, and in several other cases, the new letters patent were granted to the assignees of the original patent, but doubts being raised whether the Crown under the Statute had power to grant extensions to assignees, the further Act (7 & 8 Vic. c. 69) was passed to settle this and other points.

The only other part of the Statute to which attention need be called in this chapter is the last section, which restrains persons from marking on articles made, used, or sold by them any words with a view to have it supposed that they are the patentees of some inventions, when in reality they are not; and it enacts that persons so fraudulently marking articles shall be liable to a penalty of fifty pounds, which may be "recovered by action of debt, bill, plaint, process,

or information, in any of Her Majesty's Courts of Record at Westminster or in Ireland, or in the Court of Session in Scotland," one half of such penalty to go to the Crown, and the other to the person who shall sue for the same.

CHAPTER VII.

ON THE CLAUSES AND PROVISOS CONTAINED IN LETTERS PATENT.

HAVING informed the reader as to the nature of patentable inventions, and the care and precaution to be taken in preparing the title, and the description or specification of an invention, it will next be desirable to consider the clauses and provisos contained in the letters patent, that is to say, the conditions on which they are granted. The form of the patent being given in the Appendix*, it will not be necessary to repeat the clauses here.

The first clause recites the petition for the patent, and the *title* of the invention.

The next clause grants to the patentee, his executors, administrators and assigns, the sole privilege of making, using, exercising and vending the invention for the term of fourteen years, and restricts all persons from either directly or indirectly making, using, or putting in practice the invention, without consent or licence first had and obtained from the patentee; and persons are also restrained from counterfeiting or imitating

* P. lvii.

the invention, and from making any addition thereunto, or subtraction from the same.

The next clause directs, that the patent shall be void, if contrary to law, or prejudicial or inconvenient to the public in general, or if the invention is old or not the invention of the patentee, or was not first introduced by him into this country.

The next clause declares, that the letters patent shall not give privilege to the patentee to use inventions for which patents have been already obtained by others.

The next clause relates to the filing the complete specification, and has been already explained, and it also requires that the patentee shall pay a stamp duty of 50*l*., and produce the letters patent stamped with a proper stamp to that amount, at the office of the Commissioners of Patents, before the expiration of three years from the date of the patent, and a further stamp duty of 100*l*. previous to the expiration of seven years from the date of the patent, and requires that such payments shall be certified by the Commissioners of Patents by indorsement on the patent. It is clear, both from the proviso of the patent and the clauses of the Statutes, that the patent will become void unless the stamps be impressed on the patent and it be produced at the office of the Commissioners, before the expiration of the third and seventh years respectively; the mere stamping of the patent within

the period required is clearly not sufficient, unless followed by its production at the office of the Commissioners.

Another clause requires that the patent shall become void if the patentee shall not supply, or cause to be supplied, to Her Majesty's service, such articles made according to the invention as may be required by the officers or commissioners administering the departments of such service, and on such reasonable terms as the said officers or commissioners may determine.

The last clause directs that the patent shall be construed in the most favourable and beneficial manner for the patentee.

CHAPTER VIII.

ON WHAT CONSTITUTES AN INFRINGEMENT OF A PATENT.

THE question, what constitutes an infringement of a patent, is one of fact, and one which it is the province of a jury to decide, subject, however, to the construction put on the specification by the Judge presiding at the trial. It may be stated generally, that if in constructing a machine, or in making any article, or in carrying on any process of manufacture, a person should be found to be using any part of an invention for which a patent has been obtained, and if the portion of the invention so used was in itself new at the date of the grant, then the patent will have been infringed. It is very common for persons to imagine that if there are material differences between what they are doing and that which is described in the specification of the patent, they are not infringing the patent, but such is not the law; on the contrary, if it be found that any part of what they are doing is the same, or substantially the same, as any portion of the invention described in the specification, and that that part was new at the

date of the patent, they will be infringing the patent, even though the differences materially improve the manufacture.

The question of infringement was very fully discussed in the case of *Newton* v. *The Grand Junction Railway Company*.* In that case the invention claimed under the patent, consisted in the use of a soft alloy of metal, of which tin is the basis, as a lining for axle bearings, the soft metal being made to adhere to the hard metal brasses when cast into them by first tinning the surfaces of such brasses, and using fillets, rims, or projections to prevent the soft alloy from being squeezed out by the pressure upon it when in use. The infringement complained of was that the brasses of the axle-boxes of the defendants were first tinned, and that a thick coating of tin was then produced thereon by rubbing them over with tin while they were sufficiently hot to melt the same, but they did not use fillets, or rims, or projections. *Mr. Justice Cresswell*, in addressing the jury, said: — "The question then would come to this, whether what the defendants have done is an adoption substantially of any portion of that for which the plaintiff obtained his patent, and whether that portion of the patent right is new; therefore, it will be whether they have by that process of

* 5 Exch. 331.

washing with tin, and afterwards rubbing the tin on, and if necessary smoothing it with a soldering-iron, obtained that benefit which the evidence shows results from the plaintiff's patent. Although they may not have obtained it to the same extent, or nearly to the same extent, yet if they have obtained some portion of the benefit they are responsible, if as to that portion they could not prove that it was in use before the patent was granted." The jury found for the plaintiff. An application was afterwards made to the Court of Exchequer for a new trial, and it was contended that the directions given by the Judge were wrong; their Lordships, however, supported the ruling of *Mr. Justice Cresswell*, and *Mr. Baron Alderson* said, — "I take it, in considering the question whether the patent was a new one, the proper mode of putting it to the Jury was to take the whole specification together, and see whether the whole matter claimed as a whole is new. Now the whole which may be new as claimed, may consist in some degree of old parts, and in some degree of new parts. The question of novelty, however, will depend on whether the whole taken together is new, though it may in part consist of old parts, provided the man who claims does not claim the old parts, but only claims the combination of them and the new. If that be so, then the learned Judge was quite right

in leaving it to the jury, and telling them they were to take the whole of the specification into consideration for the purpose of determining whether the invention was a novelty . . . Then comes the question of infringement; there undoubtedly the question is altered altogether, because there where the invention consists partly of what is old, and partly of what is new, the combination is the subject of the patent. Therefore, there you cannot infringe the part of the patent which is the old part, because the public cannot be prevented from using that which the public had in that state used before. If the invention consists of something new, and a combination of that something new with what is old, then if the individual infringes the patent by taking for his own, and using that which is the new part of the patent, that is an infringement of a part of the patent for which he is liable and responsible."

In the case of *Lister* v. *Leather*, where the invention of the plaintiff consisted in a combination of mechanism for combing fibre, all the parts of which were separately old, and were stated to be so in the specification, and where it was also stated that there was a subordinate combination which was old, namely, the combining of nipping apparatus with a comb in such manner that tufts of fibre were drawn away from the mass of fibre through and amongst the teeth of the comb, so as to clean

and comb out one end of each tuft: the peculiarity of the plaintiff's invention consisting in so arranging the machinery that the tuft of fibre combed or cleaned, as above described, was deposited into a comb with the uncleaned end in, amongst, and beyond the teeth of such comb. The defendant's machine had no nipping apparatus, and in fact consisted of an entirely different combination, excepting only that their machine having detached a tuft of fibres from the mass, and having caused such tuft to be combed or cleaned out at one end, it deposited such partly combed or cleaned tuft into a comb, with the uncleaned end in and beyond the teeth thereof. *Mr. Justice Erle* told the jury that the "plaintiff's patent was for the whole combination—for the whole process as specified, but that the defendant might be guilty of an infringement without using that whole combination for the process; that the combination as a whole might comprise subordinate parts of the whole, and that if the defendant had taken and used one of such subordinate parts which was new and material in the plaintiff's process, such user might be an infringement, although the other subordinate parts comprised in the plaintiff's patent were not taken or used by the defendant; and also that such user of one subordinate part which was new and material might be an infringement, whether the other subordinate parts forming the

whole were new or old." This ruling of the learned Judge was supported by the whole Court of Queen's Bench, and also by the Exchequer Chamber. *Lord Campbell*, in giving the judgment of the Court of Queen's Bench, cited the case of *Sellers and Dickinson**, and said,—"The patent was for improvements in looms for weaving. The specification was for an improved process for stopping power-looms when the shuttle stopped in the shed, by the combination of mechanism described in the specification. The process comprised two main operations, namely, the shifting of the driving-strap from the fast to the loose pulley, and the bringing of the break to the fly-wheel; the arrangement for shifting the driving-strap by a clutch-box and other means, could be distinguished from the arrangement for moving the break to the fly-wheel, but the whole combination was specified without any claim or disclaimer as to any part. The clutch-box for shifting the strap was old. The defendant made a combination for the same purpose, containing two arrangements; that for shifting the driving-strap was by a frog instead of a clutch-box, and was not the same as the plaintiff's, but that for applying the break to the fly-wheel was the same. The defendant contended that if the plaintiff's

* 5 Exch. 312.

patent was for the whole there was no infringement, and if it was for each part the clutch-box was old, and so the patent was void; but the Judge ruled that the patent was valid, if the whole combination was new and useful; that the defendant had infringed if he had taken a new and material part, that is, the arrangement for bringing up the break. The same questions were left to the jury as in the present case, and the jury found for the plaintiff, and that summing up was held to be right."

"That case was founded on *Newton* v. *The Grand Junction Railway*. . . . . *The Lord Chief Baron Pollock* in giving judgment, observed, it has been argued that the same criterion is to be applied to the question of infringement as to that of novelty, but it is not so. In order to ascertain the novelty, you take the entire invention, and if in all its parts combined together it answers the purpose by the introduction of any new matter, by any new combination, or by a new application, it is a novelty entitled to a patent; but in considering the question of infringement, all that is to be looked to is, whether the defendant has pirated a part of that to which the patent applies, and if he has used that part for the purpose for which the patentee adopted his invention, and the jury find the difference to be merely colourable, it is an infringement."

Their Lordships also cited the case of *Smith* v. *The London and North-Western Railway Company**, and said,—"The patent was for an improved wheel, the specification was for a boss, 'and arms, and rim welded into one solid mass in the manner therein described;' the defendant imitated the manner of joining the boss into one mass or piece with the rest of the wheel, but had a different mode of joining the arm and rim. The Judge ruled that the patent was for the whole, but if the defendant had imitated the mode of welding the nave or boss, and that was a material part of the invention, there was an infringement of part of a patent, which was actionable, and this Court held the ruling to be so indisputable that it refused a rule to show cause for misdirection.

"We cite these cases at length, because the principle in all is the same as that laid down to the jury in the present case, and they establish that a valid patent for an entire combination for a process gives protection to each part thereof that is new and material for that process, without any express claim of particular parts, and notwithstanding that parts of the combination are old. The reasons assigned in those cases are strong, to show that such an application of the law of patents is necessary to protect inventions

* 2 Ellis and Blackburn, 69.

from piracy, and leads to no practical difficulty in trying whether a part alleged to be pirated is new and material."

In a still later case, that of *De la Rue and others* v. *Dickinson and others*, the Court of Queen's Bench in giving judgment said, — "We would observe that, generally speaking, as the manufacture which is the result of the process invented and patented is the ultimate object in view, the purpose of the patent laws is to protect all that is new in this process, if it be described, although not expressly claimed."

From the preceding cases it will be evident that in order to ascertain whether a patent is infringed, that which has been done by the person complained of must be looked at simply with a view to ascertain whether anything has been employed which is similar to any part of that which is described in the specification, and if there be, then the questions arise, was that which is found to be similar, new at the date of the patent, and is it a portion of the invention for which the patent was granted; if these questions can be answered in the affirmative the grant is infringed, although the part so complained of constitutes only a comparatively small part of that which is described in the specification, and also of that which is used by the person complained of.

The object of the Patent Laws is to protect an

invention for which a patent is granted, not only in its entirety, but also as respects every part of it which was new at the date of the grant; and he is a wrong-doer who, without licence, uses any part, large or small, of that which is found to be described in the specification of a patent, provided that it forms part of the invention for which the patent was granted, and was in itself new at the date of the patent.

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 safeguard against infringement, whilst a badly drawn one is the greatest inducement to those who are desirous of pirating an invention to do so: patentees would far less frequently be compelled to go to law to substantiate their patents, if they would take care that their specifications fully and accurately described their inventions, and claimed no more than was new and useful. But if, as must sometimes be the case, a patentee is forced to take legal proceedings against infringers, he will find that the Legislature has provided him with ample remedies for that purpose. He can proceed either in the Courts of Law or Equity; and it will be a point requiring much consideration, though it is one that does not come within the scope of this work to discuss at length, whether it will be more desirable to proceed in equity or at law. It may, however, be stated that if the patent has been recently granted, and has never been contested

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at law, and if the infringement is by only one person, and there is reason to believe that it is unintentional, and that the infringer would desist if a verdict were found against him, then, unless there are any special circumstances, it would probably be advisable to bring an action in one of the Courts of Law; but if, on the other hand, the patent has been granted many years, or has been already contested at law, or if the infringement is by many persons or wilfully carried on in secret, it would then probably be advisable to commence the proceedings in a Court of Equity, because the machinery of those Courts is better adapted for prosecuting the inquiries that would be necessary in such a case.

In the Courts of Law both plaintiff and defendant had formerly very great difficulties to contend with, and more especially the plaintiff; for the defendant, by pleading the "general issue," that is to say, by denying the infringement and all rights of the patentee, might give in evidence anything and everything touching the validity of the patent, nor could the plaintiff ascertain on what points the defendant intended to rely. The position of the defendant too was not much better, for the practice was simply to declare that he had infringed, leaving him to discover in what particulars he had done so, and it was quite possible that he might go into Court in entire ignorance of

what was the infringement complained of. All this has now been changed, and a plaintiff must, by the recent Patent Law Amendment Act, in commencing an action for infringement, give to the defendant particulars of the infringement complained of, and the defendant, in pleading to the action, if he intend to impeach the validity of the patent, must deliver to the plaintiff particulars of the objections to its validity on which he intends to rely; and if it forms one of his objections that the patent is not new, he must point out the place where, and the manner in which the invention was used or published prior to the date of the letters patent. A defendant therefore now knows at once what is the infringement of which he is charged, and the plaintiff is warned, before he has gone to any considerable expense, of any objection which may exist to the validity of his patent, and both of them therefore know on what points to be prepared at the trial; whereas, under the previous practice, both plaintiff and defendant went into Court in ignorance of the course the other intended to pursue, and each was obliged to be prepared with evidence and argument on every conceivable point.

In order to support an action at law, a patentee will generally have to be prepared with proof of the grant of the letters patent, for which purpose the producing the patent itself, or a certified copy

sealed with the seal of the Commissioners of Patents, is sufficient; next there must be proof of the due filing of the specification, which is usually done by producing a printed certified copy, and then it must be shown that the invention is new and useful, and that the specification contains a sufficient description of the invention to enable a competent workman or person to understand what is claimed; and, lastly, that an infringement has been committed by the defendant.

Mr. Justice Buller, in an action tried before him, stated—"Wherever the patentee brings an action on his patent, if the novelty or effect of the invention be disputed, he must show in what his invention consists, and that he produced the effect proposed by the patent, in the manner specified. Slight evidence of this on his part is sufficient, and it is then incumbent on the defendant to falsify the specification." * The plaintiff having proved his case, the defendant may call evidence to show that he has not infringed the patent, or supposing him to have delivered such notice of his objections as already mentioned, he may give evidence to prove that the invention is not new, or that the patentee was not the first inventor, or the first introducer of

* *Turner* v. *Winter*, 1 T. R. 602; Dav. P. C. 145; Webs. R. 77; Carp. R. vol. 1, 105.

the invention into this kingdom, or that the specification does not sufficiently describe the invention, or that the invention claimed does not agree with the title in the patent or with the provisional specification. If the defendant succeed in establishing either of these points, the plaintiff will not be able to support his action: on the other hand, should the defendant fail, then such damages may be awarded by the jury as they think just*, and if the defendant continues to infringe, an injunction to restrain him from so doing will be granted on application.

There is frequently very great difficulty in procuring actual legal proof of an infringement of a patent, and cases have been known where patentees have been even many years in procuring legal evidence, such as would justify them in hazarding a trial at law to stop infringements, which all the time they knew perfectly well were being committed: but now, on a *primâ facie* case being made out, the Courts will order an inspection of the supposed infringement by competent persons, and even by the plaintiff himself, and will, if satis-

* It is not usual to ask more than nominal damages in a Court of Law, because the Court of Chancery, and perhaps now also the Courts of Law, will require the defendant to render an account of the quantity of infringement, and order any profits which the defendant may have made to be paid to the plaintiff.

fied that the application is made in the *bonâ fide* belief that an infringement has been committed and is not what may be termed a fishing application to discover the secrets of the defendant's trade, require the defendant to state on oath what it is that he is actually doing.

In order, as much as possible, to prevent the vexatious infringements of patents which have so commonly attended valuable discoveries, and to save the inventor from the ruinous expense of having to defend his patent from the repeated attacks of perhaps a whole trade, it has been provided by the Patent Law Amendment Act that where the validity of a patent has once been tried, and the judge who tried the cause has certified the fact upon the record, the plaintiff in any future proceedings for infringement of his patent shall be allowed his full costs, charges, and expenses taxed as between attorney and client.

So much for the proceedings in the Courts of Law; but in many instances, and particularly when the object is rather to put a stop to infringements than to seek for damages, it will be desirable, in place of bringing an action at law, to take proceedings in the Court of Chancery to obtain an injunction, as by this means more speedy relief will often be obtained. It will therefore be desirable to explain, in the words of *Lord Eldon*, the prin-

ciple on which the Court of Chancery proceeds in case of an application of this kind. 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 shown 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, before it will 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 grant of the patent and the filing of the specification are set forth, the infringement by the defendant is alleged, and such relief is prayed as the circumstances of the case may require.

* *Hill* v. *Thompson and Forman*, Carp. R. vol. 1, 374.

As soon as the bill is filed, an injunction may be at once applied for; the application is usually supported and opposed by affidavits. The plaintiff should verify the statements in the bill, and may bring forward such corroborative evidence as it may be in his power to produce. The defendant may by his affidavits raise any defence he pleases; and, as a general rule, anything which would have been a good defence to an action at law will be equally good in a suit in equity.

On the hearing of the application for an injunction, if the Judge is satisfied with the case made out by the plaintiff, an interim injunction until the hearing of the cause will be granted; if he is not satisfied, he will sometimes direct an issue to be tried at law, to determine whether the patent is valid: or sometimes, and this is now the more usual course, he will order the motion to stand over, giving liberty to the plaintiff to bring an action at law for the infringement, if he wishes to do so. If the plaintiff should afterwards bring an action and recover a verdict, he may again apply to the Court of Chancery, and an injunction will be granted almost as a matter of course. But whether the injunction is granted when first applied for, or not till after an action has been tried, it is only an interim one granted till the hearing of the cause, which must be proceeded with like any other suit in the Court of Chancery.

At the hearing such final order will be made as may be just; and if an injunction has been granted, it will then be either made perpetual or discharged.

The Court of Chancery is unwilling to exercise its powers in favour of a patentee, until assured of the validity of the patent; but if the patentee has already proved the validity of his patent in a Court of Law, or if it is of many years' standing, the relief granted by this Court is very prompt and complete. Inspection will be granted of premises where infringements are suspected to be carried on, with far greater rapidity than at law, and if an infringement is discovered an injunction will be immediately granted; and although the defendants will be allowed to have another action tried if they deny the validity of the patent, or that they have infringed, they will be restrained by the injunction from working in the mean time. And this is of great advantage to the patentee, for it has frequently happened, where the invention has been an important one, and the profits made by it large, that infringers have been willing to run the risk of an action, hoping that if they can only work for a few months, the profits made by the infringement will more than compensate them for the loss they will sustain by having to pay the costs of an action; and in such cases, were it not for the intervention of the Court of Chancery, the

patentee might be perpetually harassed by being compelled constantly to bring fresh actions.

It is not unfrequently considered that when a patentee has failed in obtaining a verdict in an action for the infringement of a patent, that the patent is void, yet such is not the case, as the want of success is frequently occasioned by the plaintiff failing to produce some material evidence, in which case, as a patent is not void until it is legally declared so in the manner to be mentioned presently, the plaintiff may proceed to bring other actions, and his former want of success will not injure any new cause of action. It may happen, too, that a part of the invention claimed in the specification may turn out to be old, in which case the patentee may, as previously stated, disclaim such portion of the invention, and then take proceedings against infringers of the remaining portion; but in such case he will not, as before stated, be allowed, generally speaking, to bring actions for infringements committed prior to the filing of the disclaimer.

It has just been stated that a patent was not void until it had been so declared in a suit at law expressly to try the validity of the grant; and the description or process of law employed for this purpose is termed a writ of *scire facias*; it is prosecuted in the name of the Queen, partly because if the patent is void, the Queen, as grantor,

has been either deceived by the statements made by the patentee when he applied for the patent, or else he has not complied with the provisos contained in the patent, and partly because it is considered that all the Queen's subjects are injured by an illegal grant of letters patent.

Any person may petition Her Majesty to direct a writ of *scire facias* to try the validity of a patent; and although the name of the Queen is used in the proceedings, the party petitioning pays the costs of the action, that is, so much of them as falls to the share of the plaintiff in the cause; and he must also give a bond to secure the patentee's costs in the event of the writ failing.

In a trial of this description, similar evidence in support of the novelty and utility of the invention, and of the sufficiency of the specification, will be required 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 valid. It may be desirable here to add, that the Judges in all the Courts of Law and Equity will not permit frivolous objections to be taken to the validity of a patent; but, on the contrary, they will, as indeed they are required by the terms of the patent, put the most favourable construction both on the grant and the specification; and even in the event of a verdict

passing for the Crown, and consequently against the validity of the patent, the Court will probably, on a reasonably strong case being made, as before stated, suspend its judgment, and allow the patentee to amend his specification by disclaimer or memorandum of alteration, and thus save any valuable matter of invention which may still be found in the patent.*

Before concluding this subject, it may be well to state that a patentee, before taking any proceedings upon his patent either at Law or in Equity, should carefully consult his legal advisers, and also scientific men, to ascertain whether the specification may not require to be amended by disclaimer or memorandum of alteration; for should the specification contain a claim of more than was new at the date of the patent, or be otherwise defective, and there be no disclaimer or memorandum of alteration filed before the commencement of legal proceedings, the patentee will perhaps be nonsuited, or more probably a verdict will be found against him, and in either case he will have to pay the costs of the action; for no disclaimer or memorandum of alteration can be made pending an action for infringement, as the Statute (5 & 6 W. IV. c. 83), enacts, "that no such disclaimer or altera-

* *The Queen* v. *Bynner*, 9 Q. B. Rep. 529; Law Times, vol. 7, 408.

tion 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."

APPENDIX.

STATUTES.

21 Jac. I. c. 3.

An Act concerning Monopolies and Dispensations with Penal Laws, and the Forfeitures thereof.

All monopolies, &c., shall be void.

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

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

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

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

All persons disabled to use monopolies, &c.

III. And be it further enacted, by the authority aforesaid, That all person and persons, bodies politic and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and uncapable to have, use, exercise, or put in ure any monopoly, or any such commission, grant, licence, charter, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, or any liberty, power, or faculty, grounded or pretended to be grounded upon them, or any of them.

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

IV. And be it further enacted by the authority aforesaid, That if any person or persons at any time after the end of forty days next after the end of this present session of Parliament, shall be hindered, grieved, disturbed, or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken, carried away or detained, by occasion or pretext of any monopoly, or of any such commission, grant, licence, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises; That then and in every such case, the same person and persons shall and may have his and their remedy for the same at the common law, by any action or actions to be grounded upon the Statute; the same action and actions to be heard and determined in the Courts of King's Bench, Common Pleas, and Exchequer, or in any of them, against him or them by whom he or they shall be so hindered, grieved, disturbed, or disquieted, or against him or them by whom his or their goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained; wherein all and every such person and persons which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained, shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed,

or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away, or detained, and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid, prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than one imparlance: And if any person or persons shall, after notice given that the action depending is grounded upon this Statute, cause or procure any action at the common law, grounded upon this Statute, to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the Court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of or upon any such judgment to be stayed or delayed by colour or means of any order, warrant, power, or authority, save only by writ of error or attaint; That then the said person and persons so offending shall incur and sustain the pains, penalties, and forfeitures ordained and provided by the Statute of Provision and *Præmunire* made in the sixteenth year of the reign of King Richard the Second.

He that delayeth an action grounded upon this Statute incurs a Præmunire.

16 Rich. II. c. 5.

Letters patent to use new manufactures, saved.

V. Provided nevertheless, and be it declared and enacted, That any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of one and twenty years or under, heretofore made, of the sole working or making of any manner of new manufacture within this realm, to the first and true inventor or inventors of such manufactures, which others at the time of the making of such letters patents and grants did not use, so they be not contrary to the law, nor mischievous to the State, by raising of the prices of commodities at home, or hurt of trade, or generally inconvenient, but that the same shall be of such force as they were or should be, if this Act had not been made, and of none other; and if the same were made for

more than one and twenty years, that then the same for the term of one and twenty years only, to be accounted from the date of the first letters patents and grants thereof made, shall be of such force as they were or should have been, if the same had been made but for the term of one and twenty years only, and as if this Act had never been had or made, and of none other.

Exception of future letters patent.

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

VII. [Not to extend to any Grants made by Parliament.]

VIII. [Nor to Warrants granted to Justices.]

IX. [Nor to Charters granted to Corporations.]

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

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

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

This Act shall not extend to commissions for allum mines.

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

XII. [Not to extend to the liberties of Newcastle-upon-Tyne, nor to licences of keeping taverns.]

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

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

5 & 6 WILL. IV. c. 62.

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-judicial Oaths and Affidavits;" and to make other Provisions for the Abolition of unnecessary Oaths.

WHEREAS an Act was passed in 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-judicial oaths and affidavits;*" and it was thereby enacted that the said Act should commence and take effect from and after the first day of *June* in this present year, the year of our Lord one thousand eight hundred and thirty-five, it not being intended that the said recited Act should take effect before the same received the Royal Assent: And whereas the same recited Act did not receive the Royal Assent till after the said first day of *June*, one thousand eight hundred and thirty-five: And whereas it was enacted by the said recited Act, that from and after the first day of *June* next ensuing, it should not be lawful for any Justice of the Peace to administer or receive such voluntary oaths as are therein mentioned, it being intended that the said prohibition should take effect from the time of the commencement of the said recited Act: And whereas it is expedient to amend the said Act, and to make some further provisions for the better effecting the object thereof, and to consolidate all the provisions relating thereto into one Act: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

5 W. IV. c. 8.

Recited Act repealed.

and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act the said recited Act shall be, and the same is hereby repealed.

Declaration substituted for oaths and affidavits heretofore required on taking out a Patent.

XI. And be it enacted, That whenever any person or persons shall seek to obtain any patent under the great seal, for any discovery or invention, such person or persons shall, in lieu of any oath, affirmation, or affidavit which heretofore has or might be required to be taken or made upon or before obtaining any such patent, make and subscribe, in the presence of the person before whom he might, but for the passing of this Act, be required to take or make such oath, affirmation, or affidavit, a declaration, to the same effect as such oath, affirmation, or affidavit, and such declaration, when duly made and subscribed, shall be to all intents and purposes as valid and effectual as the oath, affirmation, or affidavit in lieu whereof it shall have been so made and subscribed.

Fees on oaths payable on declarations substituted in lieu thereof.

XIX. And be it enacted, That whenever any declaration shall be made and subscribed by any person or persons under or in pursuance of the provisions of this Act, or any of them, all and every such fees or fee as would have been due and payable on the taking or making any legal oath, solemn affirmation, or affidavit, shall be in like manner due and payable upon making and subscribing such declaration.

Declarations to be in the form prescribed by Schedule.

XX. And be it further enacted, That in all cases where a declaration in lieu of an oath shall have been substituted by this Act, or by virtue of any power or authority hereby given, or where a declaration is directed or authorised to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the schedule hereunto annexed.

XXI. And be it further enacted, That in any case where a declaration is substituted for an oath under the authority of this Act, or by virtue of any power or authority hereby given, or is directed and authorised to be made and subscribed under the authority of this Act, or by virtue of any power hereby given, any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

Persons making a false declaration deemed guilty of a misdemeanor.

XXII. And be it enacted, That this Act shall commence and take effect from and after the first day of *October*, in this present year, the year of our Lord one thousand eight hundred and thirty-five.

Act to take effect after 1st October, 1835.

SCHEDULE REFERRED TO BY THE FOREGOING ACT.

" I, A. B. do solemnly and sincerely declare, that

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the year of the reign of his present Majesty, intituled, " An Act" [*here insert the title of this Act*].

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5 & 6 WILL. IV. c. 83.

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

WHEREAS it is expedient to make certain additions to, and alterations in the present law touching letters patent for inventions, as well for the better protecting of patentees in the rights intended to be secured by such letters patent, as for the more ample benefit of the public from the same: Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Tem-

poral, 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 the specification, stating the reason for such disclaimer; or may, with such leave as aforesaid, enter a memorandum of any alteration in the said title or specification, not being such disclaimer or such alteration as shall extend the exclusive right granted by the said letters patent; and such disclaimer or memorandum of alteration, being filed by the said Clerk of the Patents, and enrolled with the specification, shall be deemed and taken to be part of such letters patent or such specification in all Courts whatever: Provided always, that any person may enter a Caveat, in like manner as Caveats are now used to be entered, against such disclaimer or alteration; which Caveat being so entered shall give the party entering the same a right to have notice of the application being heard by the Attorney-general or Solicitor-general, or Lord Advocate respectively: Provided also, that no such disclaimer or alteration shall be receivable in evidence in any action or suit (save and except in any proceeding by Scire facias) pending at the time when such disclaimer or alteration was enrolled, but in every such action or suit the original title and specification alone shall be given in evidence, and deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: Provided also, that it shall be lawful for the

Any person having obtained Letters Patent for any invention may enter a disclaimer of any part of his specification, or a memorandum of any alteration therein, which, when filed, to be deemed part of such specification.

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.

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 patentee is proved not to be the real inventor, though he believed himself to be so.

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

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.

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

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

IV. And be it further enacted, That if any person who now hath or shall hereafter obtain any letters patent as aforesaid shall advertise in the "London Gazette," three times, and in three London papers, and three times in some Country paper published in the town where or near to which he carried on any manufacture of anything made according to his specification, or near to or in which he resides in case he carried on no such manufacture, or published in the county where he carries on such manufacture, or where he lives in case there shall not be any paper published in such town, that he intends to apply to his Majesty in Council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in Council to that effect, it shall be lawful for any person to enter a Caveat at the Council office;

and if his Majesty shall refer the consideration of such petition to the Judicial Committee of the Privy Council, and notice shall first be by him given to any person or persons who shall have entered such Caveats, the petitioner shall be heard by his Counsel and witnesses to prove his case, and the persons entering Caveats shall likewise be heard by their Counsel and witnesses; whereupon, and upon hearing and inquiring of the whole matter, the Judicial Committee may report to his Majesty that a further extension of the term in the said letters patent should be granted, not exceeding seven years; and his Majesty is hereby 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.

V. And be it enacted, That in any action brought against any person for infringing any letters patent the defendant on pleading thereto shall give to the plaintiff, and in any Scire facias to repeal such letters patent the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action, and no objection shall be allowed to be made in behalf of such defendant or plaintiff respectively at such trial unless he prove the objections stated in such notice: Provided always, that it shall and may be lawful for any judge at chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant respectively to show cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections, on such terms as to such judge shall seem fit.

As to costs in Actions for in-

VI. And be it enacted, That in any action brought for infringing the right granted by any letters patent, in taxing

fringing letters patent.

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, unauthorised, the name of a patentee, &c.

VII. And be it enacted, That if any person shall write, paint, or print, or mould, cast, or carve, or engrave or stamp, upon anything 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 anything made, for the sole making or vending of which a patent before obtained shall have expired.

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2 & 3 Victoria, c. 67.

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

Whereas by an Act passed in the fifth and sixth years of the reign of his 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 enquiry 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 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

5 & 6 W. 4. c. 83.

expiration of the first term, any law, custom, or usage to the contrary notwithstanding; provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent: And whereas it has happened since the passing of the said Act, and may again happen, that parties desirous of obtaining an extension of the term granted in letters patent of which they are possessed, and who may have presented a petition for such purposes in manner by the said recited Act directed, before the expiration of the said term, may nevertheless be prevented by causes over which they have no control from prosecuting with effect their application before the Judicial Committee of the Privy Council; and it is expedient therefore that the said Judicial Committee should have power, when under the circumstances of the case they shall see fit, to entertain such application, and to report thereon, according to the provisions of the said recited Act, notwithstanding that before the hearing of the case before them the terms of the letters patent sought to be renewed or extended may have expired: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of the said recited Act as provides that no extension of the term of letters patent shall be granted as therein mentioned if the application by petition for such extension be not prosecuted with effect before the expiration of the term originally granted in such letters patent, shall be and the same is hereby repealed.

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

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

Term of patent right may be extended in certain cases though the application for such extension

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

be not prosecuted with effect before the expiration thereof.

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3 & 4 Victoria, c. 24.

An Act to repeal part of an Act of the Forty-third Year of the Reign of Queen Elizabeth, intituled "An Act to avoid trifling and frivolous Suits in Law in Her Majesty's Courts in Westminster," and of an Act of the Twenty-second and Twenty-third Year of the Reign of King Charles the

Second, intituled "An Act for laying Impositions on Proceedings at Law;" and to make further Provisions in lieu thereof.

WHEREAS an Act passed in the forty-third year of the reign of Queen *Elizabeth*, intituled "*An Act to avoid trifling and frivolous suits in Law in Her Majesty's Courts in Westminster*," and another Act in the Twenty-second and Twenty-third Years of the Reign of King *Charles* the Second, intituled "*An Act for laying Impositions on Proceedings at Law*," which recites that many good subjects of this realm have been and daily are undone by such suits, contrary to the intention of the said Statute of Queen *Elizabeth*; but the same evil, notwithstanding, doth still prevail and increase, and it is expedient to make further provisions for the prevention thereof: Now be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said recited Act of the Forty-third of *Elizabeth*, so far as it relates to costs in actions of trespass, or trespass on the case, and so much of the Twenty-second and Twenty-third of *Charles* the Second as relates to costs in personal actions, be and they are hereby repealed.

43 Eliz. c. 6.

22 & 23 Car. 2. c. 9.

Recited Acts in part repealed.

II. And be it enacted, That if the plaintiff in any action of trespass, or of trespass on the case, brought or to be brought in any of Her Majesty's Courts at *Westminster*, or in the Court of Common Pleas at *Lancaster*, or in the Court of Common Pleas at *Durham*, shall recover by the verdict of a Jury less damages than forty shillings, such plaintiff shall not be entitled to recover or obtain from the defendant, in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the judge or presiding officer before whom such verdict shall be obtained, shall immedi-

Costs not to be recovered in action of trespass, or of trespass on the case, where damages recovered are less than 40*s*., unless upon Judge's certificate, &c.

ately afterwards certify on the back of the record, or on the writ of trial or writ of inquiry, that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in respect of which the action was brought was wilful and malicious.

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5 & 6 Victoria, c. 97.

An Act to amend the Law relating to Double Costs, Notices of Action, Limitations of Actions, and Pleas of the General Issue, under certain Acts of Parliament.

Whereas divers Acts of Parliament, public, local, and personal, contain enactments or provisions relating to the recovery of double, treble, or other costs in certain cases, and to the pleading of the general issue and the giving any special matter in evidence at any trial to be had for any matter done in pursuance of or under the authority of the said Acts, and to the giving of notice of action before any action shall be commenced: And whereas it is expedient that the law should be altered in such respects: 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 any clause, enactment, or provision in any Act or Acts commonly called public local and personal, or local and personal, or in any Act or Acts of a local or personal nature, whereby it is enacted or provided that either double or treble costs, or any other than the usual costs between party and party, shall or may be recovered, shall be, and the same are hereby

Repeal of provision in local and personal Acts giving double and treble costs.

repealed: Provided always, that in lieu thereof the usual costs between party and party shall and may be recovered, and no more.

Repealing provision in public Acts giving double and treble costs.

II. And be it enacted, That so much of any clause, enactment, or provision in any public Act or Acts, not local or personal, whereby it is enacted or provided that either double or treble costs, or any other than the usual costs between party and party, shall or may be recovered, shall be, and the same are hereby repealed: Provided always, that instead of such costs, the party or parties heretofore entitled under such last-mentioned Acts to such double, treble, or other costs, shall receive such *full* and reasonable indemnity as to all costs, charges, and expenses incurred in and about any action, suit, or other legal proceeding, as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

Act not to extend to actions, &c. brought before passing of this Act.

VI. Provided always, and be it enacted, That nothing herein contained shall extend or be construed to extend to any action, bill, plaint, or information, or any legal proceeding of any kind whatsoever, commenced before the passing of this Act, but such proceedings may be thereupon had and taken in all respects as if this Act had not passed.

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7 & 8 Victoria, c. 69.

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

3 & 4 W. IV. c. 41.

Whereas the Act passed in the fourth year of the reign of His late Majesty, intituled "*An Act for the better Administration of Justice in His Majesty's Privy Council,*" hath been

found beneficial to the due administration of justice: and whereas another Act, passed in the sixth year of the said reign, intituled "*An Act to amend the Law touching Letters Patent for Inventions*," hath been also found advantageous to inventors and to the public: and whereas the Judicial Committee, acting under the authority of the said Acts, hath been found to answer well the purposes for which it was so established by Parliament, but it is found necessary to improve its proceedings in some respects, for the better despatch of business, and expedient also to extend its jurisdiction and powers: And whereas by the laws now in force in certain of Her Majesty's Colonies and Possessions abroad, no appeals can be brought to Her Majesty in Council for the reversal of the judgments, sentences, decrees, and orders of any Courts of Justice within such Colonies, save only of the Courts of Error or Courts of Appeal within the same, and it is expedient that Her Majesty in Council should be authorised to provide for the admission of appeals from other Courts of Justice within such Colonies or Possessions: Be it therefore enacted, &c. &c.

5 & 6 W. IV. c. 83.

II. And whereas it is expedient, for the further encouragement of inventions in the useful arts, to enable the time of monopoly in patents to be extended in cases in which it can be satisfactorily shown that the expense of the invention hath been greater than the time now limited by law will suffice to reimburse: Be it enacted, That if any person, having obtained a patent for any invention, shall, before the expiration thereof, present a petition to Her Majesty in Council, setting forth that he has been unable to obtain a due remuneration for his expense and labour in perfecting such invention, and that an exclusive right of using and vending the same for the further period of seven years, in addition to the term in such patent mentioned, will not suffice for his reimbursement and remuneration, then, if the matter of such petition shall be by Her Majesty referred to the Judicial Committee of the Privy

On Petition Her Majesty may grant an extension of patent term in certain cases.

Council, the said Committee shall proceed to consider the same after the manner and in the usual course of its proceedings touching patents, and if the said Committee shall be of opinion, and shall so report to Her Majesty, that a further period, greater than seven years' extension of the said patent term, ought to be granted to the petitioner, it shall be lawful for Her Majesty, if she shall so think fit, to grant an extension thereof for any time not exceeding fourteen years, in like manner, and subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said Act of the sixth year of the reign of His late Majesty.

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

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

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

IV. And whereas doubts have arisen touching the power given by the said recited Act of the sixth year of the reign of His late Majesty in cases where the patentees have wholly or in part assigned their right: Be it enacted, That it shall be lawful for Her Majesty, on the Report of the Judicial Committee, to grant such extension as is authorised by the said Act and by this Act, either to an assignee or assignees, or to the original patentee or patentees, or to an assignee or assignees and original patentee or patentees conjointly.

Disclaimer and memorandum of alteration under 5 & 6 W. IV. c. 83 may be made notwithstanding original patentee may have assigned

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

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

his patent right.

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

Disclaimers and memoranda of alterations already made to be deemed valid.

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

New letters patent granted under 5 & 6 W. IV. to assignees before passing of this Act declared valid.

Proviso.

14 & 15 Victoria, c. 82.

An Act to simplify the Forms of Appointments to certain Offices, and the Manner of passing Grants under the Great Seal.

27 H. 8. c. 11. Whereas by an Act of the twenty-seventh year of King *Henry* the Eighth, chapter eleven, provision is made that all writings to be passed under the Great Seals therein mentioned should be passed through the offices of the Signet and Privy Seal respectively, by such warrants as therein described: And whereas it is expedient to simplify the manner of appointment to offices held at the pleasure of the Crown, and the mode of granting such charters and letters patent, as hereinafter mentioned: Be it enacted, therefore, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

So much of 27 H. 8. c. 11. as relates to warrants for passing grants, &c. under the Great Seal repealed.

I. So much of the said Act of the twenty-seventh year of King *Henry* the Eighth as relates to the warrants and other writings for or preparatory to the passing of any gift, grant, or other writing under the Great Seal of *England* therein mentioned, shall, after the commencement of this Act, be repealed.

Authority for passing grants under the Great Seal.

II. In every case where, under the said Act of the twenty-seventh year of King *Henry* the Eighth, or according to the law or usage subsisting before the passing of this Act, any gift, grant, or writing whatsoever to be passed under the Great Seal of the United Kingdom would have required a Queen's Bill, or Bills from the offices of the Signet and the Privy Seal respectively, it shall be lawful for Her Majesty after the commencement of this Act by warrant under Her Royal Sign Manual, addressed to the

Lord High Chancellor, or Lord Keeper, or Lord Commissioners of the Great Seal of the United Kingdom, to command such Lord Chancellor, Lord Keeper, or Lords Commissioners, (as the case may be,) to cause letters patent to be passed under the Great Seal of the United Kingdom, according to such warrant; and every such warrant shall be prepared by Her Majesty's Attorney and Solicitor General for the time being, or one of them, and shall set forth the tenor and effect of the letters patent thereby authorised to be granted, and shall be countersigned by one of Her Majesty's principal Secretaries of State, and shall be sealed with the Privy Seal, for which sealing such Royal Sign Manual, so countersigned as aforesaid, shall be sufficient warrant to the Lord Keeper of the Privy Seal; and such warrant under the Royal Sign Manual, so countersigned and sealed as aforesaid, shall be a sufficient authority to the said Lord High Chancellor, or Lord Keeper, or Lords Commissioners of the Great Seal, for passing letters patent under such Great Seal, according to the tenor of the same warrant, any law or usage to the contrary in anywise notwithstanding; and no Queen's Bill, Signet Bill, Privy Seal Bill, or other warrant or authority whatsoever, save as herein provided, shall be necessary for or preparatory to the passing of such letters patent.

Signet and Privy Seal bills, &c. dispensed with.

III. From and after the commencement of this Act the several offices of clerks of the Signet and clerks of the Privy Seal shall be abolished.

Offices of clerks of Signet and Privy Seal abolished.

IV. It shall be lawful for the Commissioners of Her Majesty's Treasury to grant to the persons holding offices hereby abolished, and to all persons who may sustain any loss of fees or emolument by reason of the passing of this Act, such compensation as, having regard to the tenure and nature of their respective offices, such Commissioners deem just and proper to be awarded.

Compensation to persons holding abolished offices, or sustaining loss of emolument.

V. All powers and duties whatever now exercised or

Duties of Sig-

net Office (not superseded by this Act) to be performed in office of Secretary of State.

performed by the clerks of Her Majesty's Signet or otherwise in the office of Her Majesty's Signet, not superseded or otherwise provided for by this Act, shall after the commencement of this Act be exercised and performed, in the office and under the direction of Her Majesty's Principal Secretary of State for the Home Department, by such persons as such Secretary of State shall from time to time appoint.

Power to Treasury to regulate the Privy Seal office, and fix salaries.

VI. It shall be lawful for the Commissioners of Her Majesty's Treasury, from time to time after the passing of this Act, to determine and regulate the establishment to be maintained after the commencement of this Act for executing the duties of the Privy Seal office, and to fix the salaries to be paid to the several officers of such establishment.

Lord Chancellor and Secretary of State may make rules concerning the passing of letters patent.

VII. It shall be lawful for the Lord High Chancellor, or Lord Keeper, or Lords Commissioners of the Great Seal of the United Kingdom, from time to time after the passing of this Act, to frame and establish such further rules and regulations to be observed in the passing of letters patent under the Great Seal of the United Kingdom as shall seem to them expedient.

Act not to affect letters patent, &c. not passed through Signet and Privy Seal offices;

VIII. Provided also, That nothing in this Act contained shall extend to or affect any letters patent, writ, commission, or other writing which may now be passed under the Great Seal by the fiat or under the authority or directions of the Lord High Chancellor, or Lord Keeper, or Lords Commissioners of the Great Seal of the United Kingdom, or otherwise, without passing through the offices of the Signet and the Privy Seal.

nor rights, &c. of Lord Chancellor.

IX. Nor shall the duties, rights, patronage, privileges of nomination, or other privileges belonging to or exercised by the Lord Chancellor, Lord Keeper, and Lords Commissioners of the Great Seal, in the name or on the behalf of Her Majesty or otherwise, be by this Act in any way or respect prejudiced, affected or varied, except so far as is herein specifically enacted.

X. This Act shall, save where herein otherwise provided, commence from and after the Thirty-first day of *December*, One thousand eight hundred and fifty-one. Commencement of Act.

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15 & 16 Victoria, c. 83.

An Act for amending the Law for granting Patents for Inventions.

Whereas it is expedient to amend the law concerning letters patent for inventions: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. The Lord Chancellor, the Master of the Rolls, Her Majesty's Attorney-General for *England*, Her Majesty's Solicitor-General for *England*, the Lord Advocate, Her Majesty's Solicitor-General for *Scotland*, Her Majesty's Attorney-General for *Ireland*, and Her Majesty's Solicitor-General for *Ireland*, for the time being respectively, together with such other person or persons as may be from time to time appointed by Her Majesty, as hereinafter mentioned, shall be Commissioners of patents for inventions; and it shall be lawful for Her Majesty from time to time, by warrant under Her Royal Sign Manual, to appoint such other person or persons as she may think fit to be a Commissioner or Commissioners as aforesaid; and every person so appointed shall continue such Commissioner during Her Majesty's pleasure; and all the powers hereby vested in the Commissioners may be exercised by any three or more of them, the Lord Chancellor or Master of the Rolls being one. Certain persons constituted Commissioners of patents for inventions, three of whom may act, the Chancellor or Master of the Rolls being one.

II. It shall be lawful for the Commissioners to cause a seal to be made for the purposes of this Act, and from time to time to vary such seal, and to cause to be sealed therewith all Seal of the Commissioners.

the warrants for letters patent under this Act, and all instruments and copies proceeding from the office of the Commissioners, and all courts, judges, and other persons whomsoever shall take notice of such seal, and receive impressions thereof in evidence, in like manner as impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further proof or production of the originals, all copies or extracts, certified under the seal of the said office, of or from documents deposited in such office.

Power to Commissioners to make rules and regulations, which shall be laid before Parliament.

III. It shall be lawful for the Commissioners from time to time to make such rules and regulations (not inconsistent with the provisions of this Act) respecting the business of their office, and all matters and things which under the provisions herein contained are to be under their control and direction, as may appear to them necessary and expedient for the purposes of this Act; and all such rules shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the next meeting of Parliament; and the Commissioners shall cause a report to be laid annually before Parliament of all the proceedings under and in pursuance of this Act.

Commissioners to report annually to Parliament.

Treasury to provide offices.

IV. It shall be lawful for the Commissioners of Her Majesty's Treasury to provide and appoint from time to time proper places or buildings for an office or offices for the purposes of this Act.

Commissioners, with consent of the Treasury, to appoint clerks, &c.

V. It shall be lawful for the Commissioners, with the consent of the Commissioners of the Treasury, from time to time to appoint for the purposes of this Act such clerks and officers as the Commissioners may think proper; and it shall be lawful for the Commissioners from time to time to remove any of the clerks and officers so appointed.

Petition and declaration to

VI. Every petition for the grant of letters patent for an invention, and the declaration required to accompany such

petition, shall be left at the office of the Commissioners, and there shall be left therewith a statement in writing hereinafter called the provisional specification, signed by or on behalf of the applicant for letters patent, describing the nature of the said invention; and the day of the delivery of every such petition, declaration, and provisional specification shall be recorded at the said office, and endorsed on such petition, declaration, and provisional specification, and a certificate thereof given to such applicant or his agent; and all such petitions, declarations, and provisional specifications shall be preserved in such manner as the Commissioners may direct, and a registry thereof and of all proceedings thereon kept at the office of the Commissioners.

be accompanied with a provisional specification.

VII. Every application for letters patent made under this Act shall be referred by the Commissioners, according to such regulations as they may think fit to make, to one of the law officers.

Every application to be referred to one of the law officers.

VIII. The provisional specification shall be referred to the law officer, who shall be at liberty to call to his aid such scientific or other person as he may think fit, and to cause to be paid to such person by the applicant such remuneration as the law officer shall appoint; and if such law officer be satisfied that the provisional specification describes the nature of the invention, he shall allow the same, and give a certificate of his allowance, and such certificate shall be filed in the office of the Commissioners, and thereupon the invention therein referred to may, during the term of six months from the date of the application for letters patent for the said invention, be used and published without prejudice to any letters patent to be granted for the same, and such protection from the consequences of use and publication is hereinafter referred to as provisional protection: Provided always, that in case the title of the invention or the provisional specification be too large or insufficient, it shall be lawful for the law officer to whom the same is referred to allow or require the same to be amended.

The provisional specification to be referred to the law officer, who, if satisfied, may give a certificate of his allowance, which shall be filed.

Inventor may deposit, in lieu of a provisional specification, a complete specification, such deposit to confer for a limited time the like rights as letters patent.

IX. The applicant for letters patent for an invention, instead of leaving with the petition and declaration a provisional specification as aforesaid, may, if he think fit, file with the said petition and declaration an instrument in writing under his hand and seal (hereinafter called a complete specification), particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed, which complete specification shall be mentioned in such declaration, and the day of the delivery of every such petition, declaration, and complete specification shall be recorded at the office of the Commissioners, and endorsed on such petition, declaration, and specification, and a certificate thereof given to such applicant or his agent, and thereupon, subject and without prejudice to the provisions hereinafter contained, the invention shall be protected under this Act for the term of six months from the date of the application, and the applicant shall have during such term of six months the like powers, rights, and privileges as might have been conferred upon him by letters patent for such invention, issued under this Act, and duly sealed as of the day of the date of such application; and during the continuance of such powers, rights, and privileges under this provision, such invention may be used and published without prejudice to any letters patent to be granted for the same; and where letters patent are granted in respect of such invention, then in lieu of a condition for making void such letters patent in case such invention be not described and ascertained by a subsequent specification, such letters patent shall be conditioned to become void if such complete specification, filed as aforesaid, does not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed; and a copy of every such complete specification shall be open to the inspection of the public, as hereinafter provided, from the time of depositing the same, subject to such regulation as the Commissioners may make.

X. In case of any application for letters patent for any invention, and the obtaining upon such application of provisional protection for such invention, or of protection for the same, by reason of the deposit of a complete specification as aforesaid in fraud of the true and first inventor, any letters patent granted to the true and first inventor of such invention shall not be invalidated by reason of such application, or of such provisional or other protection as aforesaid, or of any use or publication of the invention subsequent to such application, and before the expiration of the term of such provisional or other protection.

Letters patent granted to the first inventor not to be invalidated by protection obtained in fraud of the first inventor.

XI. Where any invention is provisionally protected under this Act, or protected by reason of the deposit of such complete specification as aforesaid, the Commissioners shall cause such provisional protection or such other protection as aforesaid to be advertised in such manner as they may see fit.

Commissioners to cause protections to be advertised.

XII. The applicant for letters patent, so soon as he may think fit after the invention shall have been provisionally protected under this Act, or where a complete specification has been deposited with his petition and declaration, then so soon as he may think fit after such deposit, may give notice at the office of the Commissioners of his intention of proceeding with his application for letters patent for the said invention, and thereupon the said Commissioners shall cause his said application to be advertised in such manner as they may see fit; and any persons having an interest in opposing the grant of letters patent for the said invention shall be at liberty to leave particulars in writing of their objections to the said application at such place and within such time and subject to such regulations as the Commissioners may direct.

Application for letters patent to be advertised, and also oppositions to the same.

XIII. So soon as the time for the delivery of such objections shall have expired, the provisional specification or complete specification (as the case may be) and particulars

Specification and objections to be referred to law officer.

of objection (if any) shall be referred to the law officer to whom the application has been referred.

Power to law officer to order by or to whom costs shall be paid.

XIV. It shall be lawful for the law officer to whom any application for such letters patent is referred, if he see fit, by certificate under his hand, to order by or to whom the costs of any hearing or inquiry upon any objection, or otherwise in relation to the grant of such letters patent, or in relation to the provisional (or other) protection acquired by the applicant under this Act, shall be paid, and in what manner and by whom such costs are to be ascertained; and if any costs so ordered to be paid be not paid within four days after the amount thereof shall be so ascertained, it shall be lawful for such law officer to make an order for the payment of the same, and every such order may be made a rule of one Her Majesty's Superior Courts at *Westminster* or *Dublin*, and may be recorded in the books of Council and Session in *Scotland*, to the effect that execution may pass thereupon in common form.

Power to law officer to cause a warrant to be made for sealing of letters patent.

XV. It shall be lawful for such law officer, after such hearing, if any, as he may think fit, to cause a warrant to be made for the sealing of letters patent for the said invention, and such warrant shall be sealed with the seal of the Commissioners, and shall set forth the tenor and effect of the letters patent thereby authorised to be granted, and such law officer shall direct the insertion in such letters patent of all such restrictions, conditions, and provisoes as he may deem usual and expedient in such grants, or necessary in pursuance of the provisions of this Act; and the said warrant shall be the warrant for the making and sealing of letters patent under this Act according to the tenor of the said warrant: Provided always, that the Lord Chancellor shall and may have and exercise such powers, authority and discretion in respect to the said warrant, and the letters patent therein directed to be made under this Act, as he now has and might now exercise with respect to the

Chancellor to have same powers in respect to warrant, &c. as he now has.

warrant for the issue under the Great Seal of letters patent for any invention, and with respect to the making and issuing of such letters patent; and the writ of *Scire facias* shall lie for the repeal of any letters patent issued under this Act, in the like cases as the same would lie for the repeal of letters patent which may now be issued under the Great Seal.

Writ of *Scire facias*.

XVI. Provided also, that nothing herein contained shall extend to abridge or affect the prerogative of the Crown in relation to the granting or withholding the grant of any letters patent; and it shall be lawful for Her Majesty, by warrant under her Royal Sign Manual, to direct such law officer to withhold such warrant as aforesaid, or that any letters patent for the issuing whereof he may have issued a warrant as aforesaid shall not issue, or to direct the insertion in any letters patent to be issued in manner herein provided of any restrictions, conditions, or provisoes which Her Majesty may think fit in addition to or in substitution for any restrictions, conditions, or provisoes which would otherwise be inserted therein under this Act; and it shall also be lawful for Her Majesty, by like warrant, to direct any complete specification which may have been filed under the provision hereinbefore contained, and in respect of the invention described in which no letters patent may have been granted, to be cancelled, and thereupon the protection obtained by the filing of such complete specification shall cease.

Nothing to affect the prerogative of Crown in granting or withholding grant of letters patent.

XVII. All letters patent for inventions granted under the provisions hereinbefore contained shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine at the expiration of three years and seven years respectively from the date thereof, unless there be paid, before the expiration of the said three and seven years respectively, the sum or sums of money and stamp duties in the schedule to this Act

Letters patent to be made subject to avoidance on nonfulfilment of certain conditions.

annexed; and the payment of the said sums of money and stamp duties respectively shall be endorsed on the warrant for the said letters patent; and such officer of the Commissioners as may be appointed for this purpose shall issue under the Seal of the Commissioners a certificate of such payment, and shall endorse a receipt for the same on any letters patent issued under the authority of the said warrant; and such certificate, duly stamped, shall be evidence of the payment of the several sums respectively.

Letters patent issued under the Great Seal to be valid for the whole of the United Kingdom, the Channel Islands, and the Isle of Man.

XVIII. The Commissioners, so soon after the sealing of the said warrant as required by the applicant for the letters patent, shall cause to be prepared letters patent for the invention, according to the tenor of the said warrant, and it shall be lawful for the Lord Chancellor to cause such letters patent to be sealed with the Great Seal of the United Kingdom, and such letters patent so sealed shall extend to the whole of the United Kingdom of *Great Britain* and *Ireland*, the Channel Islands, and the *Isle of Man;* and in case such warrant so direct, such letters patent shall be made applicable to Her Majesty's colonies and plantations abroad, or such of them as may be mentioned in such warrant; and such letters patent shall be valid and effectual as to the whole of such United Kingdom, and the said islands and isle, and the said colonies or plantations, or such of them as aforesaid, and shall confer the like powers, rights, and privileges as might, in case this Act had not been passed, have been conferred by several letters patent of the like purport and effect passed under the Great Seal of the United Kingdom, under the Seal appointed to be used instead of the Great Seal of *Scotland*, and under the Great Seal of *Ireland* respectively, and made applicable to *England*, the dominion of *Wales*, the town of *Berwick-upon-Tweed*, the Channel Islands, and *Isle of Man*, and the said colonies and plantations, or such of them as aforesaid, to *Scotland*, and to *Ireland*, respectively, save as herein

otherwise provided: Provided always, that nothing in this Act contained shall be deemed or taken to give any effect or operation to any letters patent to be granted under the authority of this Act in any colony in which such or the like letters patent would be invalid by the law in force in the same colony for the time being: Provided always, that a transcript of such letters shall, so soon after the sealing of the same and in such manner as the Commissioners shall direct, be transmitted to the Director of Chancery in *Scotland*, and be recorded in the Records of Chancery in *Scotland*, upon payment of such fees as the Commissioners shall appoint, in the same manner and to the same effect in all respects as letters patent passing under the Seal appointed by the treaty of union to be used in place of the Great Seal of *Scotland* have heretofore been recorded, and extracts from the said records shall be furnished to all parties requiring the same, on payment of such fees as the Commissioners shall direct, and shall be received in evidence in all Courts in *Scotland* to the like effect as the letters patent themselves.

Nothing to give effect to any letters patent granted in any colony.

XIX. Provided always, That no letters patent, save as hereinafter mentioned in the case of letters patent destroyed or lost, shall issue on any warrant granted as aforesaid, unless application be made to seal such letters patent within three months after the date of the said warrant.

No letters patent to be issued after three months from date of warrant.

XX. Provided also, That no letters patent (save letters patent issued in lieu of others destroyed or lost) shall be issued or be of any force or effect unless the same be granted during the continuance of the provisional protection under this Act, or, where a complete specification has been deposited under this Act, then unless such letters patent be granted during the continuance of the protection conferred under this Act by reason of such deposit, save that where the application to seal such letters patent has been made during the continuance of such provisional or other protection as

No letters patent (except in lieu of those lost, &c.) to be issued after expiration of protection given by this Act.

aforesaid, and the sealing of such letters patent has been delayed by reason of a caveat or an application to the Lord Chancellor against or in relation to the sealing of such letters patent, then such letters patent may be sealed at such time as the Lord Chancellor shall direct.

Letters patent may be granted to personal representatives of the applicant during the term of protection or within three months after applicant's decease.

XXI. Provided also, That where the applicant for such letters patent dies during the continuance of the provisional protection, or the protection by reason of the deposit of a complete specification, (as the case may be,) such letters patent may be granted to the executors or administrators of such applicant during the continuance of such provisional or other protection, or at any time within three months after the death of such applicant, notwithstanding the expiration of the term of such provisional or other protection, and the letters patent so granted shall be of the like force and effect as if they had been granted to such applicant during the continuance of such provisional or other protection.

If letters patent be destroyed or lost, other letters patent may be issued.

XXII. Provided also, That in case any such letters patent shall be destroyed or lost, other letters patent of the like tenor and effect, and sealed and dated as of the same day may, subject to such regulations as the Commissioners may direct, be issued under the authority of the warrant in pursuance of which the original letters patent were issued.

Letters patent may be dated as of the day of the application.

XXIII. It shall be lawful (the Act of the eighteenth year of King *Henry* the Sixth, chapter one, or any other Act, to the contrary notwithstanding,) to cause any letters patent to be issued in pursuance of this Act to be sealed and bear date as of the day of the application for the same, and in case of such letters patent for any invention provisionally registered under the "Protection of Inventions Act, 1851," as of the day of such provisional registration, or where the law officer to whom the application was referred, or the Lord Chancellor, thinks fit and directs, any such letters patent as aforesaid may be sealed and bear date as of the day of the sealing of such letters patent, or of any other day between the day of such

application or provisional registration and the day of such sealing.

Letters patent where antedated to be of the same validity as if sealed on the day of the date.

XXIV. Any letters patent issued under this Act sealed and bearing date as of any day prior to the day of the actual sealing thereof shall be of the same force and validity as if they had been sealed on the day as of which the same are expressed to be sealed and bear date: Provided always, that save where such letters patent are granted for any invention, in respect whereof a complete specification has been deposited upon the application for the same under this Act, no proceeding at law or in equity shall be had upon such letters patent in respect of any infringement committed before the same were actually granted.

Letters patent obtained in United Kingdom for patented foreign inventions not to continue in force after the expiration of the foreign patent.

XXV. Where, upon any application made after the passing of this Act, letters patent are granted in the United Kingdom for or in respect of any invention first invented in any foreign country or by the subject of any foreign Power or State, and a patent or like privilege for the monopoly or exclusive use or exercise of such invention in any foreign country is there obtained before the grant of such letters patent in the United Kingdom, all rights and privileges under such letters patent shall (notwithstanding any term in such letters patent limited) cease and be void immediately upon the expiration or other determination of the term during which the patent or like privilege obtained in such foreign country shall continue in force, or where more than one such patent or like privilege is obtained abroad, immediately upon the expiration or determination of the term which shall first expire or be determined of such several patents or like privileges: Provided always, that no letters patent for or in respect of any invention for which any such patent or like privilege as aforesaid shall have been obtained in any foreign country, and which shall be granted in the said United Kingdom after the expiration of the term for which such patent or privilege was granted or was in force, shall be of any validity.

Letters patent not to prevent the use of inventions in foreign ships resorting to British ports;

XXVI. No letters patent for any invention (granted after the passing of this Act) shall extend to prevent the use of such invention in any foreign ship or vessel, or for the navigation of any foreign ship or vessel, which may be in any port of Her Majesty's dominions, or in any of the waters within the jurisdiction of any of Her Majesty's Courts, where such invention is not so used for the manufacture of any goods or commodities to be vended within or exported from Her Majesty's dominions: Provided always, that this enactment shall not extend to the ships or vessels of any foreign State of which the laws authorise subjects of such foreign State, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in *British* ships or vessels, or in or about the navigation of *British* ships or vessels, while in the ports of such foreign State, or in the waters within the jurisdiction of its Courts, where such inventions are not so used for the manufacture of goods or commodities to be vended within or exported from the territories of such foreign State.

except ships of foreign States in whose ports British ships are prevented from using foreign inventions.

Specifications to be filed instead of being enrolled.

XXVII. All letters patent to be granted under this Act (save only letters patent granted after the filing of a complete specification) shall require the specification thereunder to be filed in the High Court of Chancery, instead of requiring the same to be enrolled, and no enrolment shall be requisite.

Specifications, &c. to be filed in such office as Lord Chancellor shall direct.

XXVIII. Every specification to be filed in pursuance of the condition of any letters patent shall be filed in such office of the Court of Chancery as the Lord Chancellor shall from time to time appoint, and every provisional specification and complete specification left or filed at the office of the Commissioners on the application for any letters patent, shall forthwith after the grant of the letters patent, or if no letters patent be granted then immediately on the expiration of six months from the time of such application, be transferred to and kept in the said office appointed for filing specifications

in Chancery; and in case reference is made to drawings in any specification deposited or filed under this Act, an extra copy of such drawings shall be left with such specification.

As to filing extra copies of drawings.

XXIX. The Commissioners shall cause true copies of all specifications (other than provisional specifications), disclaimers, and memoranda of alterations filed under or in pursuance of this Act, and of all provisional specifications after the term of the provisional protection of the invention has expired, to be open to the inspection of the public at the office of the Commissioners, and at an office in *Edinburgh* and *Dublin* respectively, at all reasonable times, subject to such regulations as the Commissioners may direct; and the Commissioners shall cause a transcript of the said letters patent to be transmitted for enrolment in the Court of Chancery *Dublin*, and shall cause the same to be enrolled therein, and the transcript or exemplification thenceforward shall have the like effect to all intents and purposes as if the original letters patent had been enrolled in the Court of Chancery in *Dublin*, and all parties shall have all their remedies by *Scire facias* or otherwise, as if the letters patent had been granted to extend to *Ireland* only.

Copies of specifications to be open to inspection at office of Commissioners, and at Edinburgh and Dublin.

XXX. The Commissioners shall cause to be printed, published, and sold, at such prices and in such manner as they may think fit, all specifications, disclaimers, and memoranda of alterations deposited or filed under this Act, and such specifications (not being provisional specifications), disclaimers, and memoranda respectively shall be so printed and published as soon as conveniently may be after the filing thereof respectively, and all such provisional specifications shall be so printed and published as soon as conveniently may be after the expiration of the provisional protection obtained in respect thereof; and it shall be lawful for the Commissioners to present copies of all such publications to such public libraries and museums as they may think fit, and to allow the

Specifications and other documents to be printed and published.

As to presenting copies of publications to public libraries, &c.

person depositing or filing any such specification, disclaimer, or memorandum of alteration to have such number, not exceeding twenty-five, of the copies thereof so printed and published, without any payment for the same, as they may think fit.

Enrolments, &c., may be removed to the office for specifications.

XXXI. It shall be lawful for the Lord Chancellor and the Master of the Rolls to direct the enrolment of specifications, disclaimers, and memoranda of alterations heretofore or hereafter enrolled or deposited at the Rolls Chapel Office, or at the Petty Bag Office, or at the Enrolment Office of the Court of Chancery, or in the custody of the Master of the Rolls as Keeper of the Public Records, to be transferred to and kept in the office appointed for filing specifications in Chancery under this Act.

Commissioners to cause indexes to be made to old specifications, &c.; such specifications, &c. may be printed and published.

XXXII. The Commissioners shall cause indexes to all specifications, disclaimers, and memoranda of alterations heretofore or to be hereafter enrolled or deposited as last aforesaid to be prepared in such form as they may think fit, and such indexes shall be open to the inspection of the public at such place or places as the Commissioners shall appoint, and subject to the regulations to be made by the Commissioners, and the Commissioners may cause all or any of such indexes, specifications, disclaimers, and memoranda of alterations to be printed, published, and sold in such manner and at such prices as the Commissioners may think fit.

Copies of specifications, &c. as printed by Queen's Printers to be evidence.

XXXIII. Copies, printed by the printers to the Queen's Majesty, of specifications, disclaimers, and memoranda of alterations shall be admissible in evidence, and deemed and taken to be *primâ facie* evidence of the existence and contents of the documents to which they purport to relate in all Courts and in all proceedings relating to letters patent.

Register of Patents to be kept.

XXXIV. There shall be kept at the office appointed for filing specifications in Chancery under this Act a book or books, to be called "The Register of Patents," wherein shall be entered and recorded in chronological order all letters

patent granted under this Act, the deposit or filing of specifications, disclaimers, and memoranda of alterations filed in respect of such letters patent, all amendments in such letters patent and specifications, all confirmations and extensions of such letters patent, the expiry, vacating, or cancelling such letters patent, with the dates thereof respectively, and all other matters and things affecting the validity of such letters patent, as the Commissioners may direct, and such register, or a copy thereof, shall be open at all convenient times to the inspection of the public, subject to such regulations as the Commissioners may make.

A Register of Proprietors to be kept at the office for filing specifications.

XXXV. There shall be kept at the office appointed for filing specifications in Chancery under this Act a book or books entitled "The Register of Proprietors," wherein shall be entered, in such manner as the Commissioners shall direct, the assignment of any letters patent, or of any share or interest therein, any licence under letters patent, and the district to which such licence relates, with the name or names of any person having any share or interest in such letters patent or licence, the date of his or their acquiring such letters patent, share, and interest, and any other matter or thing relating to or affecting the proprietorship in such letters patent or licence; and a copy of any entry in such book, certified under such seal as may have been appointed or as may be directed by the Lord Chancellor to be used in the said office, shall be given to any person requiring the same, on payment of the fees hereinafter provided; and such copies so certified shall be received in evidence in all Courts and in all proceedings, and shall be *primâ facie* proof of the assignment of such letters patent, or share or interest therein, or of the licence or proprietorship, as therein expressed: Provided always, that until such entry shall have been made the grantee or grantees of the letters patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such letters patent, and of all the licences and privileges

thereby given and granted; that certified duplicates of all entries made in the said Register of Proprietors shall forthwith be transmitted to the office of the Commissioners in *Edinburgh* and *Dublin*, where the same shall also be open to the inspection of the public; and any writ of *Scire facias* to repeal such letters patent may be issued to the Sheriff of the county or counties in which the grantee or grantees resided at the time when the said letters patent were granted; and in case such grantee or grantees do not reside in the United Kingdom it shall be sufficient to file such writ in the Petty Bag Office, and serve notice thereof in writing at the last known residence or place of business of such grantee or grantees; and such register or a copy shall be open to the inspection of the public at the office of the Commissioners subject to such regulations as the Commissioners may make: Provided always, that in any proceeding in *Scotland* to repeal any letters patent service of all writs and summonses shall be made according to the existing forms and practice; provided also, that the grantee or grantees of letters patent to be hereafter granted may assign the letters patent for *England*, *Scotland*, or *Ireland* respectively, as effectually as if the letters patent had been originally granted to extend to *England* or *Scotland* or *Ireland* only, and the assignee or assignees shall have the same rights of action and remedies, and shall be subject to the like actions and suits as he or they should and would have had and been subject to upon the assignment of letters patent granted to *England*, *Ireland*, or *Scotland* before the passing of this Act.

Power for more than twelve persons to have a legal interest in letters patent.

XXXVI. Notwithstanding any proviso that may exist in former letters patent, it shall be lawful for a larger number than twelve persons hereafter to have a legal and beneficial interest in such letters patent.

Falsification or forgery of entries a misdemeanor.

XXXVII. If any person shall wilfully make or cause to be made any false entry in the said Register of Proprietors, or shall wilfully make or forge, or cause to be made or forged,

any writing falsely purporting to be a copy of any entry in the said book, or shall produce or tender, or cause to be produced or tendered, in evidence any such writing, knowing the same to be false or forged, he shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment accordingly.

Entries may be expunged.

XXXVIII. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said Register of Proprietors, it shall be lawful for such person to apply, by motion, to the Master of the Rolls, or to any of the Courts of Common Law at *Westminster* in term time, or by summons to a Judge of any of the said Courts in vacation, for an order that such entry may be expunged, vacated, or varied; and upon any such application the Master of the Rolls, or such Court or Judge respectively, may make such order for expunging, vacating, or varying such entry, and as to the costs of such application, as to the said Master of the Rolls or to such Court or Judge may seem fit; and the officer having the care and custody of such register, on the production to him of any such order for expunging, vacating, or varying any such entry, shall expunge, vacate, or vary the same, according to the requisitions of such order.

Provisions of 5 & 6 W. 4. c. 83. and of 7 & 8 Vict. c. 69. as to disclaimers and memoranda of alterations to apply to patents under this Act.

XXXIX. All the provisions of the Acts of the Session holden in the fifth and sixth years of King William the Fourth, chapter eighty-three, and of the Session holden in the seventh and eighth years of Her Majesty, chapter sixty-nine, respectively, relating to disclaimers and memoranda of alterations in letters patent and specifications, except as hereinafter provided, shall be applicable and apply to any letters patent granted, and to any specification filed under the provisions of this Act: Provided always, that all applications for leave to enter a disclaimer or memorandum of alteration shall be made, and all caveats relating thereto shall be lodged at the office of the Commissioners, and shall

Applications for disclaimers and caveats to be at office of Commissioners.

be referred to the respective law officers in the said first-recited Act mentioned: Provided also, that every such disclaimer or memorandum of alteration shall be filed in the office appointed for filing specifications in Chancery under this Act, with the specification to which the same relates, in lieu of being entered or filed and enrolled as required by the said first-recited Act, or by the Act of the Session holden in the twelfth and thirteenth years of Her Majesty, chapter one hundred and nine, and the said Acts shall be construed accordingly: Provided also, that such filing of any disclaimer or memorandum of alteration, in pursuance of the leave of the law officer in the first-recited Act mentioned, certified as therein mentioned, shall, except in cases of fraud, be conclusive as to the right of the party to enter such disclaimer or memorandum of alteration under the said Acts and this Act; and no objection shall be allowed to be made in any proceedings upon or touching such letters patent, specification, disclaimer, or memorandum of alteration, on the ground that the party entering such disclaimer or memorandum of alteration had not sufficient authority in that behalf: Provided also, that no action shall be brought upon any letters patent in which or on the specification of which any disclaimer or memorandum of alteration shall have been filed in respect of any infringement committed prior to the filing of such disclaimer or memorandum of alteration, unless the law officer shall certify in his fiat that any such action may be brought, notwithstanding the entry of filing of such disclaimer or memorandum of alteration.

Provisions of 5 & 6 W. 4. c. 83.; 2 & 3 Vict. c. 67.; and 7 & 8 Vict. c. 69. as to confirmation *and prolongation* to apply to patents *under this Act.*

XL. All the provisions of the said Act of the fifth and sixth years of King *William* the Fourth, for the confirmation of any letters patent, and the grant of new letters patent, and all the provisions of the said Act, and of the Acts of the Session holden in the second and third years of Her Majesty, chapter sixty-seven, and of the Session holden in the seventh and eighth years of Her Majesty, chapter sixty-nine, respect-

ively, relating to the prolongation of the term of letters patent, and to the grant of new letters patent for a further term, shall extend and apply to any letters patent granted under the provisions of this Act, and it shall be lawful for Her Majesty to grant any new letters patent, as in the said Acts mentioned; and in the granting of any such new letters patent Her Majesty's Order in Council shall be a sufficient warrant and authority for the sealing of any new letters patent, and for the insertion in such new letters patent of any restrictions, conditions, and provisions in the said order mentioned: and the Lord Chancellor, on the receipt of the said Order in Council, shall cause letters patent, according to the tenor and effect of such Order, to be made and sealed in the manner herein directed for letters patent issued under the warrant of the law officer: Provided always, that such new letters patent shall extend to and be available in and for such places as the original letters patent extended to and were available in: Provided also, that such new letters patent shall be sealed and bear date as of the day after the expiration of the term of the original letters patent which may first expire.

In actions for infringement of letters patent, particulars to be delivered, and no evidence allowed not mentioned therein.

XLI. In any action in any of Her Majesty's Superior Courts of Record at *Westminster* or in *Dublin* for the infringement of letters patent, the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant, on pleading thereto, shall deliver with his pleas, and the prosecutor in any proceedings by *Scire facias* to repeal letters patent shall deliver with his declaration particulars of any objections on which he means to rely at the trial in support of the pleas in the said action, or of the suggestion of the said declaration in the proceedings by *Scire facias* respectively; and at the trial of such action or proceeding by *Scire facias* no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of

such letters patent which shall not be contained in the particulars delivered as aforesaid: Provided always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent shall be stated in such particulars: Provided also, that it shall and may be lawful for any Judge at chambers to allow such plaintiff or defendant or prosecutor respectively to amend the particulars delivered as aforesaid, upon such terms as to such Judge shall seem fit: Provided also, that at the trial of any proceeding by *Scire facias* to repeal letters patent the defendant shall be entitled to begin and to give evidence in support of such letters patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such letters patent, the defendant shall be entitled to the reply.

Courts of Common Law may grant injunction in case of infringement.

XLII. In any action in any of Her Majesty's Superior Courts of Record at *Westminster* and in *Dublin* for the infringement of letters patent, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting then for a Judge of such Court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such Court or Judge may seem fit.

Particulars to be regarded in taxation of costs.

XLIII. In taxing the costs in any action in any of Her Majesty's Superior Courts at *Westminster* or in *Dublin*, commenced after the passing of this Act for infringing letters patent, regard shall be had to the particulars delivered in such action, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular unless certified by the Judge before whom the trial was had to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause; and it shall

be lawful for the Judge before whom any such action shall be tried to certify on the record that the validity of the letters patent in the declaration mentioned came in question; and the record, with such certificate, being given in evidence in any suit or action for infringing the said letters patent, or in any proceeding by *Scire facias* to repeal the letters patent, shall entitle the plaintiff in any such suit or action, or the defendant in such proceeding by *Scire facias* on obtaining a decree, decretal order, or final judgment, to his full costs, charges, and expenses, taxed as between attorney and client, unless the Judge making such decree or order, or the Judge trying such action or proceeding, shall certify that the plaintiff or defendant respectively ought not to have such full costs: Provided always, that nothing herein contained shall affect the jurisdiction and forms of process of the Courts in *Scotland* in any action for the infringement of letters patent, or in any action or proceeding respecting letters patent hitherto competent to the said Courts: Provided also, that when any proceedings shall require to be taken in *Scotland* to repeal any letters patent, such proceedings shall be taken in the form of an action of reduction at the instance of Her Majesty's Advocate, or at the instance of any other party having interest, with concurrence of Her Majesty's Advocate, which concurrence Her Majesty's Advocate is authorised and empowered to give upon just cause shown only.

Payments and stamp duties on letters patent to be as in schedule.

XLIV. There shall be paid in respect of letters patent applied for or issued as herein mentioned, the filing of specifications and disclaimers, certificates, entries, and searches, and other matters and things mentioned in the schedule to this Act, such fees as are mentioned in the said schedule; and there shall be paid unto and for the use of Her Majesty, her heirs and successors, for or in respect of the warrants and certificates mentioned in the said schedule, or the vellum, parchment, or paper on which the same respectively are written, the stamp duties mentioned in the said schedule;

and no other stamp duties shall be levied, or fees, except as hereinafter mentioned, taken in respect to such letters patent and specifications, and the matters and things in such schedule mentioned.

Duties to be under management of Commissioners of Inland Revenue.

XLV. The stamp duties hereby granted shall be under the care and management of the Commissioners of Inland Revenue; and the several rules, regulations, provisions, penalties, clauses, and matters contained in any Act now or hereafter to be in force with reference to stamp duties shall be applicable thereto.

All moneys received to be paid to the Consolidated Fund.

XLVI. The fees to be paid as aforesaid shall from time to time be paid into the receipt of the Exchequer, and be carried to and made part of the Consolidated Fund of the United Kingdom.

Not to prevent payment of fees to law officers in cases of opposition, &c.

XLVII. Provided always, That nothing herein contained shall prevent the payment as heretofore to the law officers in cases of opposition to the granting of letters patent, and in cases of disclaimers and memoranda of alterations, of such fees as may be appointed by the Lord Chancellor and Master of the Rolls as the fee to be paid on the hearing of such oppositions, and in the case of disclaimers and memoranda of alterations respectively, or of such reasonable sums for office copies of documents in the office of the Commissioners, as the Commissioners may from time to time appoint to be paid for such copies, and the Lord Chancellor and Master of the Rolls, and the Commissioners, are hereby respectively authorised and empowered to appoint the fees to be so paid in respect of such oppositions, disclaimers, and memoranda of alterations respectively, and for such office or other copies.

Fees and salaries of officers.

XLVIII. It shall be lawful for the Commissioners of Her Majesty's Treasury from time to time to allow such fees to the law officers and their clerks (for duties under this Act in respect of which fees may not be payable to them under the provisions lastly hereinbefore contained) as the Lord Chan-

cellor and Master of the Rolls may from time to time appoint, and to allow such salaries and payments to any clerks and officers to be appointed under this Act, and such additional salaries and payments to any other clerks and officers in respect of any additional duties imposed on them by this Act, as the said Commissioners of the Treasury may think fit.

Sums for defraying salaries and expenses under this Act to be paid out of moneys to be provided by Parliament.

XLIX. It shall be lawful for the Commissioners of Her Majesty's Treasury to allow from time to time the necessary sums for providing offices under this Act, and for the fees, salaries, and payments allowed by them as aforesaid, and for defraying the current and incidental expenses of such office or offices; and the sums to be so allowed shall be paid out of such moneys as may be provided by Parliament for that purpose.

Power to Treasury to grant compensation to persons affected by this Act.

L. And whereas divers persons by virtue of their offices or appointments are entitled to fees or charges payable in respect of letters patent as heretofore granted within the United Kingdom of *Great Britain* and *Ireland*, or have and derive in respect of such letters patent, or the procedure for the granting thereof, fees or other emoluments or advantages.

It shall be lawful for the said Commissioners of the Treasury to grant to any such persons who may sustain any loss of fees, emoluments, or advantages by reason of the passing of this Act, such compensation as, having regard to the tenure and nature of their respective offices and appointments, such Commissioners deem just and proper to be awarded; and all such compensations shall be paid out of such moneys as may be provided by Parliament for that purpose: Provided always, that in case any person to whom any yearly sum by way of compensation shall be awarded and paid shall, after the passing of this Act, be appointed to any office or place of emolument under the provisions of this Act, or in the public service, then and in every such case

the amount of such yearly sum shall in every year be diminished by so much as the emoluments of such person for such year from such office or place shall amount to, and provision in that behalf shall be made in the award to him of such yearly sum.

Account of salaries, fees, and compensation allowances to be laid before Parliament.

LI. An account of all salaries, fees, allowances, sums, and compensations to be appointed, allowed, or granted under this Act shall, within fourteen days next after the same shall be so appointed, allowed, or granted respectively, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, then within fourteen days after the next meeting of Parliament.

Not to extend to patents applied for before commencement of Act.

LII. Letters patent may be granted in respect of applications made before the commencement of this Act, in like manner and subject to the same provisions as if this Act had not been passed.

As to letters patent granted before commencement of this Act for England, Scotland, or Ireland.

LIII. Where letters patent for *England* or *Scotland* or *Ireland* have been granted before the commencement of this Act, or are in respect of any application made before the commencement of this Act hereafter granted for any invention, letters patent for *England* or *Scotland* or *Ireland* may be granted for such invention in like manner as if this Act had not been passed: Provided always, that in lieu of all the fees or payments and stamp duties now payable in respect of such letters patent, or in or about obtaining a grant thereof, there shall be paid in respect of such letters patent for *England* or *Scotland* or *Ireland* on the sealing of such respective letters patent a sum equal to one-third part of the fees and stamp duties which would be payable according to the schedule to this Act in respect of letters patent issued for the United Kingdom under this Act, on or previously to the sealing of such letters patent; and at or before the expiration of the third year and the seventh year respectively of the term granted by such letters patent for *England* or *Scotland* or *Ireland*, sums equal to one-third part of the fees and stamp duties payable at the

expiration of the third year and the seventh year respectively of the term granted by letters patent issued for the United Kingdom under this Act; and the condition of such letters patent for *England* or *Scotland* or *Ireland* shall be varied accordingly; and such fees shall be paid to such persons as the Commissioners of Her Majesty's Treasury shall appoint, and shall be carried to and form part of the said Consolidated Fund.

Forms in schedule may be used.

LIV. The several forms in the schedule to this Act may be used for and in respect of the several matters therein mentioned, and the Commissioners may, where they think fit, vary such forms as occasion may require, and cause to be printed and circulated such other forms as they may think fit to be used for the purposes of this Act.

Interpretation of terms.

LV. In the construction of this Act the following expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,)

The expression "Lord Chancellor" shall mean the Lord Chancellor, or Lord Keeper of the Great Seal, or Lords Commissioners of the Great Seal:

The expression "The Commissioners" shall mean the Commissioners for the time being acting in execution of this Act:

The expression "Law Officer" shall mean Her Majesty's Attorney-General or Solicitor-General for the time being for *England*, or the Lord Advocate, or Her Majesty's Solicitor-General for the time being for *Scotland*, or Her Majesty's Attorney-General or Solicitor-General for the time being for *Ireland*:

The expression "invention" shall mean any manner of new manufacture the subject of letters patent and grant of privilege within the meaning of the Act of the twenty-first year of the reign of King *James* the First, chapter three.

The expressions "Petition," "Declaration," "Provisional Specification," "Warrant," and "Letters Patent" respectively, shall mean instruments in the form and to the effect in the schedule hereto annexed, subject to such alterations as may from time to time be made therein under the powers and provisions of this Act.

Short title.

LVI. In citing this Act in other Acts of Parliament, instruments, and proceedings, it shall be sufficient to use the expression "The Patent Law Amendment Act, 1852."

Commencement of Act.

LVII. This Act shall commence and take effect from the first day of October One thousand eight hundred and fifty-two.

Oct 1852.

THE SCHEDULE TO WHICH THIS ACT REFERS.

Fees to be Paid.

	£	s.	d.
On leaving Petition for Grant of Letters Patent .	5	0	0
On Notice of Intention to proceed with the Application	5	0	0
On sealing of Letters Patent	5	0	0
On filing Specification	5	0	0
At or before the Expiration of the Third year .	40	0	0
At or before the Expiration of the Seventh year .	80	0	0
On leaving Notice of Objections	2	0	0
Every Search and Inspection	0	1	0
Entry of Assignment or Licence	0	5	0
Certificate of Assignment or Licence . . .	0	5	0
Filing Application for Disclaimer . . .	5	0	0
Caveat against Disclaimer	2	0	0

Stamp Duties to be Paid.	£	s.	d.
On Warrant of Law Officer for Letters Patent. .	5	0	0
On Certificate of Payment of the Fee payable at or before the Expiration of the Third Year .	10	0	0
On Certificate of Payment of the Fee payable at or before the Expiration of the Seventh Year .	20	0	0

FORMS.

Petition.

No.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

The humble Petition of [*here insert Name and Address of Petitioner*] for, &c.

Sheweth,

That your Petitioner is in possession of an invention for

[*the Title of the Invention,*]

which invention he believes will be of great public utility; that he is the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief.

Your Petitioner therefore humbly prays that your Majesty will be pleased to grant unto him, his executors, administrators, and assigns, your Royal letters patent for the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*Colonies to be mentioned, if any*], for the term of fourteen years, pursuant to the Statutes in that case made and provided.

And your Petitioner will ever pray, &c.

Declaration.

No.

I of in the county of

do solemnly and sincerely declare, That I am in possession of an invention for, &c.

[*the Title as in Petition.*]

which invention I believe will be of great public utility; that I am the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of my knowledge and belief [*where a Complete Specification is to be filed with the Petition and Declaration, insert these words:*—"and that the instrument in writing under my hand and seal, hereunto annexed, particularly describes and ascertains the nature of the said invention and the manner in which the same is to be performed"]; 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 session of Parliament held in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act "to repeal an Act of the present session of Parliament, inti- "tuled, '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-judicial oaths and affidavits,' and to make other pro- "visions for the abolition of unnecessary oaths."

A. B.

Declared at this day of

A.D. before me,

A Master in Chancery,

or

Justice of the Peace.

Provisional Specification.

No.
I do hereby declare the nature of the said
invention for
[*insert Title as in Petition.*]
to be as follows:
[*here insert Description.*]
Dated this day of A.D.
(*To be signed by Applicant or his Agent.*)

Reference.

(*To be endorsed on the Petition.*)

Her Majesty is pleased to refer this Petition to to consider what may be properly done therein.

Clerk of the Commissioners.

Warrant.

In humble obedience to Her Majesty's command referring to me the Petition of of , to consider what may be properly done therein, I do hereby certify as follows; That the said Petition sets forth that the Petitioner
[*Allegations of the Petition.*]
And the Petitioner most humbly prays,
[*Prayer of the Petition.*]
That in support of the allegations contained in the said

Petition the Declaration of the Petitioner has been laid before me, whereby he solemnly declares, that

[*Allegations of the Declaration.*]

That there has also been laid before me [a Provisional Specification signed , and also a certificate], *or* [a Complete Specification, and a certificate of the filing thereof], whereby it appears that the said invention was provisionally protected [*or* protected] from the day of A.D.

in pursuance of the Statute:

That it appears that the said application was duly advertised:

Upon consideration of all the matters aforesaid, and as it is entirely at the hazard of the said Petitioner whether the said invention is new or will have the desired success, and as it may be reasonable for Her Majesty to encourage all arts and inventions which may be for the public good, I am of opinion, that Her Majesty may grant Her Royal letters patent unto the Petitioner, his executors, administrators, and assigns, for his said invention within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*Colonies to be mentioned, if any*], for the term of fourteen years, according to the Statute in that case made and provided, if Her Majesty shall be graciously pleased so to do, to the tenor and effect following:

[*See next Form.*]

Given under my hand this day of A.D.

Seal of the Commissioners.

*Letters Patent.**

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 hath by his petition humbly represented unto us that he is in possession of an invention for which the petitioner believes will be of great public utility; that he is the first and true inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and 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 for the sole use, benefit, and advantage of his said invention within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, 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: 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 , his executors, administrators, and assigns, our especial licence, full power, sole privilege, and authority, that he the said , his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy or deputies, servants or agents, or such others as he the said , his executors, administrators, or assigns, shall

* This being the form of letters patent in actual use, it has been substituted for the form given in the Schedule to the Act.

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 our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, in such manner as to him the said , his executors, administrators, and assigns, or any of them, shall in his or their discretion seem meet; and that he the said , 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 licences, powers, privileges, and advantages hereinbefore granted or mentioned to be granted unto the said , his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years from the day of the date of these presents next and immediately ensuing, according to the Statute in such case made and provided; and to the end that he the said , 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 our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, that neither they nor any of them, at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly do make, use, or put in practice the said invention or any part of the same, so attained unto by the said as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor shall make

or cause to be made any addition thereunto or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the consent, licence, or agreement of the said , 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 , his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned: And moreover we do by these presents, for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers whatsoever of us, our heirs and successors, for the time being, that they or any of them do not nor shall at any time during the said term hereby granted, in anywise molest, trouble, or hinder the said , his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or anything relating thereto: 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 within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, or that the said is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding:

Provided also, that these our letters patent, or anything herein contained, shall not extent or be construed to extend to give privilege unto the said , 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 within our United Kingdom of Great Britain and Ireland, the Channel Islands, or Isle of Man, unto whom our like letters patent or privileges have been already granted for the sole use, exercise, and benefit thereof: It being our will and pleasure that the said , 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 practice 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: Provided likewise nevertheless, and these our letters patent are upon this express condition, that if the said , his executors or administrators, shall not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed, by an instrument in writing under his or their or one of their hands and seals, and cause the same to be filed in the Great Seal Patent Office within six calendar months next and immediately after the date of these our letters patent; and also if the said , his executors, administrators, or assigns, shall not pay the stamp duty of fifty pounds, and produce these our letters patent stamped with a proper stamp to that amount at the office of our commissioners of patents for inventions before the expiration of three years from the date of these our letters patent, pursuant to the provisions of the Act of the sixteenth year of our reign, chapter five; and also if the said , his executors, administrators, or assigns, shall not pay the stamp duty of one hundred pounds.

and produce these our letters patent stamped with a proper stamp to that amount at the said office of our said commissioners before the expiration of seven years from the date of these our letters patent, pursuant also to the said Act; and also if the said , his executors, administrators, or assigns, shall not supply or cause to be supplied for our service all such articles of the said invention as he or they shall be required to supply by the officers or commissioners administering the department of our service for the use of which the same shall be required in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the said officers or commissioners requiring the same; that then and in any of the said cases these our letters patent, and all liberties and advantages whatsoever hereby granted shall utterly cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: 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: And lastly, we do by these presents, for us, our heirs and successors, grant unto the said , his executors, administrators, and assigns, that these our letters patent, on the filing 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 , his executors, administrators, and assigns, as well in all our Courts of Record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, 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 thereunto

conducing and belonging. In witness whereof we have caused these our letters to be made patent, this

One thousand eight hundred and fifty- in the year of our reign, and to be sealed as of the said One thousand eight hundred and fifty-

By Warrant. EDMUNDS.

Specification.

To all to whom these presents shall come;

I of send greeting:

Whereas Her Most Excellent Majesty Queen Victoria, by Her letters patent bearing date the day of A.D. , in the year of Her reign, did for herself, Her heirs and successors, give and grant unto me, the said , Her special licence that I, the said , my executors, administrators, and assigns, or such others as I, the said , my executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*Colonies to be mentioned, if any*], an invention for

[*insert Title as in Letters Patent.*]

upon the condition (amongst others) that I, the said by an instrument in writing under my hand and seal, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in within calendar months next, and immediately after

the date of the said letters patent: Now know ye, that I, the said , do hereby declare the nature of my said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement; (that is to say,)

[*Describe the Invention.*]

In witness whereof I, the said *A. B.*, have heretofore set my hand and seal, this day of A. D.

A. B.

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16 Victoria, c. 5.

An Act to substitute Stamp Duties for Fees on passing Letters Patent for Inventions, and to provide for the Purchase for the public Use of certain Indexes of Specifications.

WHEREAS it is expedient that the fees payable in respect of letters patent for inventions under the Patent Law Amendment Act, 1852, and mentioned in the schedule to such Act, be converted into stamp duties: Be it enacted, therefore, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: 15 & 16 Vict. c. 83.

I. Sections seventeen, forty-four, forty-five, forty-six, and fifty-three of the said Patent Law Amendment Act, 1852, and so much of the schedule to the said Act as relates to fees and stamp duties to be paid under the said Act, shall be repealed. Sects. 17, 44, 45, 46, and 53, and part of Schedule of recited Act repealed.

II. All letters patent for inventions to be granted under the provisions of the said Patent Law Amendment Act, 1852 Letters Patent to be made subject to

avoidance on non-payment of Stamp Duties expressed in Schedule to this Act annexed.

(except in the cases provided for in the fourth section of this Act), shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine, at the expiration of three years and seven years respectively from the date thereof, unless there be paid before the expiration of the said three years and seven years respectively the stamp duties in the schedule to this Act annexed expressed to be payable before the expiration of the third year and of the seventh year respectively, and such letters patent, or a duplicate thereof, shall be stamped with proper stamps showing the payment of such respective stamp duties, and shall, when stamped, be produced before the expiration of such three years and seven years respectively at the office of the Commissioners; and a certificate of the production of such letters patent or duplicate so stamped, specifying the date of such production, shall be endorsed by the Clerk of the Commissioners on the letters patent or duplicate, and a like certificate shall be endorsed upon the warrant for such letters patent filed in the said office.

Stamp Duties mentioned in the Schedule to this Act to be payable.

III. There shall be paid unto and for the use of Her Majesty, Her heirs and successor, for or in respect of letters patent applied for or issued under the provisions of the said Patent Law Amendment Act, 1852, warrants, specifications, disclaimers, certificates, and entries, and other matters and things mentioned in the schedule to this Act, or the vellum, parchment, or paper on which the same respectively are written, the stamp duties mentioned in the said schedule; and no other stamp duties shall be levied in respect of such letters patent, warrants, specifications, disclaimers, certificates, entries, matters, and things; and the stamp duty mentioned in the said schedule on office copies of documents shall be in lieu of such sums as by the said Patent Law Amendment Act, 1852, are authorised to be appointed to be paid for such office copies.

IV. Where letters patent for England or Scotland or Ireland have been granted before the commencement of the said Patent Law Amendment Act, 1852, or have been since the commencement of the said Act, or hereafter may be granted for any invention, in respect of any application made before the commencement of the said Act, letters patent for England or Scotland or Ireland may be granted for such invention in like manner as if the said Act had not been passed: provided always, that in lieu of all fees or payments and stamp duties which were at the time of the passing of the said Act payable in respect of such letters patent as last aforesaid, or in or about obtaining a grant thereof, and in lieu of all other stamp duties whatsoever, there shall be paid in respect of such letters patent as last aforesaid on the sealing thereof, stamp duties equal to one-third part of the stamp duties which would be payable under this Act in respect of letters patent issued for the United Kingdom under the said Patent Law Amendment Act, 1852, on or previously to the sealing of such letters patent as last aforesaid; and before the expiration of the third year and the seventh year respectively of the term granted by such letters patent for England, Scotland, or Ireland, stamp duties equal to one-third part of the stamp duties payable under this Act before the expiration of the third year and the seventh year respectively of the term granted by letters patent issued for the United Kingdom under the said Patent Law Amendment Act, 1852, and the condition of such letters patent for England or Scotland or Ireland shall be varied accordingly.

As to Payment of Stamp Duties on Letters Patent for England, Scotland, or Ireland respectively.

V. The stamp duties hereby granted shall be under the care and management of the Commissioners of Inland Revenue; and the several rules, regulations, provisions, penalties, clauses, and matters contained in any Act now or hereafter to be in force with reference to stamp duties shall be applicable thereto.

Duties to be under the Management of the Commissioners of Inland Revenue;

VI. The said Commissioners of Inland Revenue shall pre-

who are to provide the proper

Stamps for the purpose.

pare stamps impressed upon adhesive paper, of the amounts following, that is to say, twopence, fourpence, eightpence, and one shilling, to be used only in respect of the stamp duties on the office copies of documents and on the certificates of searches and inspections mentioned in the schedule to this Act; such adhesive stamps of proper amounts to be affixed by the Clerk of the Commissioners of patents for inventions to such office copies of documents and certificates of searches and inspections as aforesaid; and immediately after such affixing he shall obliterate or deface such stamps by impressing thereon a seal to be provided for that purpose, but so as not to prevent the amount of the stamp from being ascertained; and no such office copy or certificate shall be delivered out until the stamps thereon shall be obliterated or defaced as aforesaid.

Conditions of Letters Patent already granted under recited Act to be satisfied by payment of Stamp Duties, &c., under this Act.

VII. The condition contained in any letters patent granted under the said Patent Law Amendment Act, 1852, and before the passing of this Act for making such letters patent void at the expiration of three years and seven years respectively from the date thereof, unless there be paid, before the expiration of the said three years and seven years respectively, the sums of money and stamp duties by the said Patent Law Amendment Act, 1852, required in this behalf, shall be deemed to be satisfied and complied with by payment of the like stamp duties as would have been required if such letters patent had been granted after the passing of this Act, and had been made subject to the condition required by this Act in lieu of the said condition therein contained; and the provision herein-before contained concerning the endorsement on the letters patent or duplicate, and on the warrant for the same letters patent, of a certificate of the production of the letters patent or duplicate properly stamped, shall be applicable in the case of such letters patent granted before the passing of this Act.

Power to Commissioners to purchase the

VIII. And whereas by the said Patent Law Amendment Act, 1852, the Commissioners are directed to cause indexes

to all specifications heretofore or hereafter to be enrolled or deposited, to be prepared in such form as they may think fit, which indexes are to be open to the inspection of the public: And whereas the existing specifications so directed to be indexed as aforesaid are in number fifteen thousand and upwards, and it would require some years to make indexes thereof on a proper arrangement and classification: And whereas Mr. Bennett Woodcroft has already made complete indexes of such specifications, which the Commissioners have examined and approved of, and it is expedient that such indexes be purchased for the use of the public:

Indexes of Specifications prepared by Mr. Woodcroft.

It shall be lawful for the Commissioners, with the consent of the Commissioners of Her Majesty's Treasury, to purchase the said indexes of the said Bennett Woodcroft for a sum not exceeding one thousand pounds, and to pay the purchase money for the same out of the monies in their hands which have arisen from fees received in respect of letters patent under the said Patent Law Amendment Act, 1852, and directed by the said Act to be paid in to the Receipt of the Exchequer; and after the purchase of such indexes the provisions of the said Act shall be applicable thereto as if such indexes had been prepared under the said recited enactment.

IX. The word "duplicate" shall be construed to mean in this Act such letters patent as may be issued under the twenty-second section of the Patent Law Amendment Act, 1852, in case of any letters patent being destroyed or lost.

As to the word "Duplicate."

X. This Act and the Patent Law Amendment Act, 1852, shall be construed together as one Act.

This Act and 15 & 16 Vict. c. 83. to be construed together.

The Schedule of Stamp Duties to be paid to which this Act refers.

	£	s.	d.
On Petition for Grant of Letters Patent . .	5	0	0
On Certificate of Record of Notice to proceed .	5	0	0
On Warrant of Law Officer for Letters Patent .	5	0	0
On the Sealing of Letters Patent . . .	5	0	0
On Specification	5	0	0
On the Letters Patent, or a Duplicate thereof, before the Expiration of the Third Year . .	50	0	0
On the Letters Patent, or a Duplicate thereof, before the Expiration of the Seventh Year .	100	0	0
On Certificate of Record of Notice of Objections .	2	0	0
On Certificate of every Search and Inspection .	0	1	0
On Certificate of Entry of Assignment or Licence	0	5	0
On Certificate of Assignment or Licence . .	0	5	0
On Application for Disclaimer	5	0	0
On Caveat against Disclaimer	2	0	0
On Office Copies of Documents, for every Ninety Words	0	0	2

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16 & 17 Victoria, c. 115.

An Act to amend certain Provisions of the Patent Law Amendment Act, 1852, in respect of the Transmission of certified Copies of Letters Patent and Specifications to certain Offices in Edinburgh and Dublin, and otherwise to amend the said Act.

15 & 16 Vict. c. 83.

WHEREAS it is expedient to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the trans-

mission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 33. and Part of Sect. 28. of recited Act repealed.

I. Section thirty-three of the said Act, and such part of section twenty-eight of the said Act as directs that in case reference is made to drawings in any specification deposited or filed under the said Act an extra copy of such drawings should be left with such specification, shall be repealed.

Copies of Provisional Specifications to be open to inspection at the Commissioners' Office.

II. The Commissioners shall cause true copies of all provisional specifications left at the office of the Commissioners to be open to the inspection of the public, at such times, after the date of the record thereof respectively, as the Commissioners shall by their order from time to time direct.

A copy of every Specification, &c., under the hand of the Patentee or Applicant, to be left at Commissioners' Office.

III. A true copy, under the hand of the patentee or applicant, or agent of the patentee or applicant, of every specification and of every complete specification, with the drawings accompanying the same, if any, shall be left at the office of the Commissioners on filing such specification or complete specification.

Copies or extracts of Letters Patent, &c., certified and sealed, filed at Commissioners' Office, to be received in evidence.

IV. Printed or manuscript copies or extracts, certified and sealed with the seal of the Commissioners, of letters patent, specifications, disclaimers, memoranda of alterations, and all other documents recorded and filed in the Commissioners' office, or in the office of the Court of Chancery appointed for the filing of specifications, shall be received in evidence in all proceedings relating to letters patent for inventions, in all courts whatsoever within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, and Her Majesty's Colonies and Plantations abroad, without further proof or production of the originals.

Certified printed copies of

V. Certified printed copies, under the Seal of the Com-

Specifications, &c., under Seal of Commissioners, to be transmitted to the Director of Chancery in Scotland, and to the Court of Chancery in Ireland, which shall be evidence, without production of originals.

missioners, of all specifications and complete specifications, and fac-simile printed copies of the drawings accompanying the same, if any, disclaimers, and memoranda of alterations filed or hereafter to be filed under the said Patent Law Amendment Act, shall be transmitted to the office of the Director of Chancery in Scotland and to the Enrolment Office of the Court of Chancery in Ireland within twenty-one days after the filing thereof respectively, and the same shall be filed in the Office of Chancery in Scotland and Ireland respectively, and certified copies or extracts from such documents shall be furnished to all persons requiring the same, on payment of such fees as the Commissioners shall direct; and such copies or extracts shall be received in evidence in all Courts in Scotland and in Ireland respectively in all proceedings relating to letters patent for inventions, without further proof or production of the originals.

Lord Chancellor, in certain cases, may seal Letters Patent after the expiration of provisional protection.

VI. Where letters patent have not been sealed during the continuance of the provisional protection on which the same is granted, provided the delay in such sealing has arisen from accident, and not from the neglect or wilful default of the applicant, it shall be lawful for the Lord Chancellor, if he shall think fit, to seal such letters patent at any time after the expiration of such provisional protection, whether such expiration has happened before or shall happen after the passing of this Act, and to date the sealing thereof as of any day before the expiration of such provisional protection, and also to extend the time for the filing of the specification thereon; and where the specification, in pursuance of the condition of any letters patent, has not been filed within the time limited by such letters patent, provided the delay in such filing has arisen from accident, and not from the neglect or wilful default of the patentee, it shall be lawful for the Lord Chancellor, if he shall think fit, to extend the time for the filing of such specification, whether the default in such filing has happened before or shall happen after the passing

of this Act: Provided always, that, except in any case that may have arisen before the passing of this Act, it shall not be lawful for the Lord Chancellor to extend the time for the sealing of any letters patent, or for the filing of any specification, beyond the period of one month.

Removing doubts as to Provision of 15 & 16 Vict. c. 83. respecting the making and sealing of new Letters Patent for a further term.

VII. And whereas doubts have arisen whether the provision of the Patent Law Amendment Act, 1852, for the making and sealing new letters patent for a further term, in pursuance of Her Majesty's Order in Council, in the cases mentioned in section forty of the said Act, extends to the making and sealing of new letters patent in the manner by such Act directed where such new letters patent are granted by way of prolongation of the term of letters patent issued before the commencement of the said Act: And whereas it is expedient that such new letters patent granted by way of prolongation shall be granted according to the provisions of the said Patent Law Amendment Act: Be it declared and enacted, That where Her Majesty's Order of Council for the sealing of new letters patent shall have been made after the commencement of the said Act, the said provision of the said Act for making and sealing in manner aforesaid of new letters patent shall extend, and shall as from the commencement of the said Act be deemed to have extended, to the making and sealing in manner aforesaid of new letters patent for a further term, as well where the original letters patent were made before as where such original letters patent have been issued since the commencement of the said Act.

15 & 16 Vict. c. 83. and this Act to be construed as one Act.

VIII. This Act, and the Patent Law Amendment Act, 1852, shall be construed together as one Act.

22 Victoria, c. 13.

An Act to amend the Law concerning Patents for Inventions with respect to Inventions for Improvements in Instruments and Munitions of War.

Whereas in some cases of inventions for improvements in instruments or munitions of war it may be important to the public service that the nature of the invention should not be published, and it is therefore expedient to amend the law concerning letters patent for inventions: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Improvements in Instruments or Munitions of War may be assigned by Inventors to Secretary of State for War.

I. Any inventor of any improvement in instruments or munitions of war, or the executors, administrators, or assigns of such inventor, may, for valuable consideration or without, assign to Her Majesty's principal Secretary of State for the War Department, on behalf of Her Majesty, all the benefit of the invention, and of all letters patent obtained or to be obtained for the same, and such Secretary of State may be a party to the assignment, and such assignment shall be effectual to vest the benefit of such invention and of such letters patent in the said Secretary of State for the time being, on behalf of Her Majesty, at law and in equity; and the benefit of such invention and of such letters patent shall be deemed property acquired by the said Secretary of State on behalf of Her Majesty; and all covenants and agreements contained in such assignment for giving full effect thereto, and for keeping the invention secret, and otherwise in relation thereto, shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced and proceeded upon by the said Secretary of State for the time being accordingly, and all actions, suits, and proceedings in relation thereto may

be instituted and conducted by such Secretary of State for the time being, who shall have all such rights, privileges, and prerogatives in relation thereto as by law provided in the case of actions, suits, and proceedings concerning property under his care, control, and disposition.

Foregoing Enactment to extend to assignments already made.

II. The foregoing enactment shall extend to render valid and effectual, and be otherwise applicable to and in respect of any such assignment as aforesaid made before the passing of this Act, and the covenants and agreements contained in such assignment, as well as any such assignment to be made thereafter, and the covenants and agreements therein contained.

Secretary of State for War may certify to Commissioners of Patents that the Invention should be kept secret.

III. Where any such assignment as aforesaid has been made to the said Secretary of State he may, at any time before the filing of the petition for the grant of letters patent for the invention, or after the filing of such petition and before publication of the provisional specification (if any), if he think it for the benefit of the public service that the particulars of the invention, and of the manner in which the same is performed, should be kept secret, certify the fact of such assignment having been so made, and his opinion to the effect aforesaid, in writing under his hand to the Commissioners of patents for inventions.

Where the Secretary of State for War has so certified, petition for Letters Patent, &c. to be left with the Clerk of the Patents in a packet under Seal of Secretary of State.

IV. Where the said Secretary of State certifies as aforesaid, the petition for letters patent for the invention, the declaration accompanying such petition, and the provisional specification or complete specification (as the case may be) filed or left therewith, and any specification to be filed in pursuance of the condition of any letters patent for such invention, and all disclaimers and memoranda of alterations to be filed in relation to such letters patent, and any drawings accompanying any of the documents aforesaid, and any copies of any such documents or drawings, or, where the said Secretary of State so certifies after the said petition has been filed, such of the said documents and drawings as may be filed after his so certifying, and the copies thereof shall, in lieu of being filed

or left in the ordinary manner in the office of the Commissioners, or in the office appointed for that purpose under "The Patent Law Amendment Act, 1852," be delivered to the Clerk of the Patents in a packet sealed with the seal of the said Secretary of State.

Such packet to be kept so sealed, or under the Seal of the Commissioners.

V. Such packet shall at all times after the delivery thereof to the Clerk of the Patents, until the expiration of the term or any extended term for which letters patent for the invention may be granted, be kept by him sealed up as aforesaid, or under the seal of the Commissioners, save when it may be necessary to have access to the documents therein contained, or any of them, for the purpose of recording and endorsing the day of the filing thereof, or for the purpose of any reference to one of the law officers, either in relation to the same or any other invention; but in any such case as aforesaid the Clerk of the Patents shall not part with the care or custody of the said packet, or any of the said documents, save as may be required by one of the law officers for the purposes of any such reference, and shall use such precautions as may be necessary to prevent the contents or particulars of any such documents being improperly disclosed.

Such sealed packet to be delivered, on demand, to Secretary of State, or by Order of Lord Chancellor.

VI. Such sealed packet shall be delivered at any time during the continuance of any such letters patent to the said Secretary of State, or to any person having authority to receive the same on his behalf, on demand in writing under the hand of the said Secretary of State, or to such person as the Lord Chancellor may order, and shall, if and when the same is returned to the Commissioners, be again sealed up and kept under seal as aforesaid.

At the expiration of Letters Patent, sealed packet to be delivered to Secretary of State.

VII. Such sealed packet as aforesaid shall, at the end of the term or extended term for which any letters patent for the invention to which the documents in such packet relate, be delivered up to the said Secretary of State or to any person having authority to receive the same on his behalf.

Where Secretary of State

VIII. Where the said Secretary of State certifies as afore-

said after the filing of the petition, and before the publication of the provisional specification (if any), such petition, and the declaration accompanying such petition, and the provisional specification and drawings relating to the invention which may have been filed or left in any such office as aforesaid, and all copies thereof in any such office, shall be forthwith placed in a packet sealed with the seal of the Commissioners; and every such packet shall be subject to all the provisions of this Act concerning any sealed packet delivered to the Clerk of the Patents.

certifies after filing of petition, documents already filed to be put into a sealed packet.

IX. No copy of any specification, or other document or drawing by this Act required to be kept under seal, shall be transmitted to *Scotland* or *Ireland*, or be printed, published, or sold, or be open to the inspection of the public; but, save as in this Act otherwise directed the provisions of the Patent Law Amendment Act, 1852, and any Act amending the same, shall extend and be applicable to and in respect of every such specification and other document and drawing as aforesaid, and the letters patent and invention to which the same relates, and this Act and the Patent Law Amendment Act, 1852, shall be construed together as one Act.

Copy of Specification, &c. not to be sent to Scotland or Ireland, or published, but otherwise Provisions of Patent Acts to apply.

X. It shall not be lawful for any person to take proceedings by *Scire facias* or otherwise to repeal any letters patent for any invention in relation to which the said Secretary of State has certified as aforesaid.

No Scire facias to be brought.

XI. The Secretary of State may, at any time by writing under his hand, waive the benefit of this Act with respect to any particular invention, and the documents and matters relating thereto shall be thenceforth kept and dealt with in the ordinary way.

Secretary of State may waive the benefit of this Act as respects any Invention.

XII. The communication of any invention for any improvement in instruments or munitions of war to the said Secretary of State, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed

Communication of Invention to Secretary of State, &c. not to prejudice Letters Patent.

use or publication of such invention so as to prejudice the grant or validity of any letters patent for the same.

Construction of "Secretary of State."

XIII. In the construction of this Act "Her Majesty's Principal Secretary of State for the War Department" shall mean Her Majesty's principal Secretary of State for the time being to whom Her Majesty shall think fit to intrust the seals of the War Department.

Rules and Regulations made by the Commissioners of Patents for Inventions, and by the Lord Chancellor and the Master of the Rolls, under the Acts 15 & 16 Vict. cap. 83, and 16 & 17 Vict. cap. 115.

First Set of Rules and Regulations under the Act 15 *&* 16 *Vict. cap.* 83, *for the passing of Letters Patent for Inventions.*

By the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly, Master of the Rolls, Sir Frederick Thesiger, Her Majesty's Attorney-General, and Sir FitzRoy Kelly, Her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the said Act.

Whereas a commodious office is forthwith intended to be provided by the Crown as the Great Seal Patent Office; and the Commissioners of Her Majesty's Treasury have, under the powers of the said Act, appointed such office as the office also for the purposes of the said Act:

I. All petitions for the grant of letters patent, and all declarations and provisional specifications, shall be left at the said Commissioners' office, and shall be respectively written upon sheets of paper of twelve inches in length by eight inches and a half in breadth, leaving a margin of one inch and a half on

each side of each page, in order that they may be bound in the books to be kept in the said office.

II. The drawings accompanying provisional specifications shall be made upon a sheet or sheets of parchment, paper, or cloth, each of the size of twelve inches in length by eight inches and a half in breadth, or of the size of twelve inches in breadth by seventeen inches in length, leaving a margin of one inch on every side of each sheet.

III. Every provisional protection of an invention allowed by the law officer shall be forthwith advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner, the title of his invention, and the date of the application.

IV. Every invention protected by reason of the deposit of a complete specification shall be forthwith advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner, the title of the invention, the date of the application, and that a complete specification has been deposited.

V. Where a petitioner applying for letters patent after provisional protection, or after deposit of a complete specification, shall give notice in writing at the office of the Commissioners of his intention to proceed with his application for letters patent, the same shall forthwith be advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner and the title of his invention; and that any persons having an interest in opposing such application are to be at liberty to leave particulars in writing of their objections to the said application at the office of the Commissioners within twenty-one days after the date of the Gazette in which such notice is issued.

VI. The Lord Chancellor having appointed the Great Seal Patent Office to be the office of the Court of Chancery for the filing of specifications, the said Great Seal Patent Office and the office of the Commissioners shall be combined; and the

clerk of the patents for the time being shall be the clerk of the Commissioners for the purposes of the Act.

VII. The office shall be open to the public every day, Christmas Day and Good Friday excepted, from ten to four o'clock.

VIII. The charge for office or other copies of documents in the office of the Commissioners shall be at the rate of twopence for every ninety words.

(Signed) St. Leonards, C.
John Romilly, M.R.
Fred. Thesiger, A.G.
FitzRoy Kelly, S.G.

Dated the 1st Oct. 1852.

By the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, and the Right Honourable Sir John Romilly, Master of the Rolls.

Ordered, That there shall be paid to the Law Officers and to their clerks the following fees:—

By the Person opposing a Grant of Letters Patent.

	£	s.	d.
To the Law Officer	2	12	6
To his clerk	0	12	6
To his clerk for summons . . .	0	5	0

By the Petitioner on the Hearing of the Case of Opposition.

To the Law Officer	2	12	6
To his clerk	0	12	6
To his clerk for summons . . .	0	5	0

By the Petitioner for the Hearing, previous to the Fiat of the Law Officer allowing a Disclaimer or Memorandum of Alteration in Letters Patent and Specification.

To the Law Officer	2	12	6
To his clerk	0	12	6

By the Person opposing the Allowance of such Disclaimer or Memorandum of Alteration, on the Hearing of the Case of Opposition.

To the Law Officer	£2	12	6
To his clerk	0	12	6

By the Petitioner for the Fiat of the Law Officer allowing a Disclaimer or Memorandum of Alteration in Letters Patent and Specification.

To the Law Officer	3	3	0
To his clerk	0	12	6

(Signed) ST. LEONARDS, C.
JOHN ROMILLY, M.R.

Dated the 1st Oct. 1852.

ORDERED by the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain.

I. All specifications in pursuance of the conditions of letters patent, and all complete specifications accompanying petitions and declarations before grant of letters patent, shall be filed in the Great Seal Patent Office.

II. All specifications in pursuance of the conditions of letters patent, and all complete specifications accompanying petitions for the grant of letters patent, shall be respectively written bookwise upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three-fourths of an inch in breadth; the same may be written upon both sides of the sheet, but a margin must be left of one inch and a half on every side of each sheet.

III. The drawings accompanying such specifications shall be made upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three-fourths of an inch in breadth, or upon a sheet or sheets of parchment, each of the size of twenty-one inches and

a half in breadth by twenty-nine inches and a half in length, leaving a margin of one inch and a half on every side of each sheet.

IV. The charge for office or other copies of documents in the Great Seal Patent Office shall be at the rate of twopence for every ninety words.

Dated the 1st Oct. 1852. (Signed) St. Leonards, C.

Note. *It is recommended to Applicants and Patentees to make their elevation drawings according to the scale of one inch to a foot.*

Second Set of Rules and Regulations under the Act 15 & 16 *Vict. cap.* 83, *for the passing of Letters Patent for Inventions.*

By the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly, Master of the Rolls, Sir Frederick Thesiger, Her Majesty's Attorney-General, and Sir FitzRoy Kelly, Her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the said Act.

I. The office of the Directory of Chancery in Scotland, being the office appointed by the Act for the recording of transcripts of letters patent, shall be the office of the Commissioners in Edinburgh for the filing of copies of specifications, disclaimers, memoranda of alterations, provisional specifications, and certified duplicates of the register of proprietors.

II. All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed, and shall be open to the inspection of the public at the said office, every day from ten to three o'clock.

III. The charge for office copies of such transcripts, copies, and certified duplicates, recorded and filed in the said office, shall be at the rate of twopence for every ninety words.

IV. The Enrolment Office of the Court of Chancery in Dublin, being the office appointed by the act for the enrolment of transcripts of letters patent, shall be the office of the commissioners in Dublin for the filing of copies of specifications, disclaimers, memoranda of alterations, provisional specifications, and certified duplicates of the register of proprietors.

V. All such transcripts, copies, and certified duplicates shall be bound in books and properly indexed, and shall be open to the inspection of the public at the said Enrolment Office every day, Christmas Day and Good Friday excepted, from ten to three o'clock.

VI. The charge for office copies of such transcripts, copies, and certified duplicates, enrolled and filed as aforesaid, shall be at the rate of twopence for every ninety words.

VIII. A provision is to be inserted in all letters patent in respect whereof a provisional and not a complete specification shall be left on the application for the same, requiring the specification to be filed within six months from the date of the application.

IX. No amendment or alteration, at the instance of the applicant, will be allowed in a provisional specification after the same has been recorded, except for the correction of clerical errors or of omissions made *per incuriam*.

X. The provisional specification must state distinctly and intelligibly the whole nature of the invention, so that the Law officer may be apprised of the improvement, and of the means by which it is to be carried into effect.

(Signed) St. Leonards, C.
John Romilly, M.R.
Fred. Thesiger, A.G.
FitzRoy Kelly, S.G.

Dated the 15th Oct. 1852.

ORDERED by the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain.

Every application to the Lord Chancellor against or in relation to the sealing of letters patent shall be by notice, and such notice shall be left at the Commissioners' office, and shall contain particulars in writing of the objections to the sealing of such letters patent.

(Signed) ST. LEONARDS, C.

Dated the 15th Oct. 1852.

Third Set of Rules and Regulations under the Act 15 & 16 *Vict. cap.* 83, *for the passing of Letters Patent for Inventions, and under the Act of the* 16 & 17 *Vict. cap.* 115.

By the Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly, Master of the Rolls, Sir Alexander James Edmund Cockburn, Her Majesty's Attorney General, and Sir Richard Bethell, Her Majesty's Solicitor General, being four of the Commissioners of Patents for Inventions under the said Act of the 15 & 16 Vict. cap. 83.

It is Ordered as follows:

Rule VII. of the second set of Rules and Regulations of the Commissioners, dated the 15th October 1852, is hereby rescinded.

I. Every application for letters patent, and every title of invention and provisional specification, must be limited to one invention only, and no provisional protection will be allowed or warrant granted where the title or the provisional specification embraces more than one invention.

II. The title of the invention must point out distinctly and specifically the nature and object of the invention.

III. The copy of the specification, or complete specification, directed by the Act 16 & 17 Vict. cap. 115, sec. 3, to be left at the office of the Commissioners on filing the specification or complete specification shall be written upon sheets of brief or foolscap paper, briefwise, and upon one side only of each sheet. The extra copy of drawings, if any, left with the same, must be made as heretofore, and according to the directions contained in Rule III. of the Lord Chancellor, dated the 1st October 1852.

IV. The copy of the provisional specification to be left at the office of the Commissioners on depositing the same shall be written upon sheets of brief or foolscap briefwise, and upon one side only of each sheet. The extra copy of drawings if any, left with the same, must be made as heretofore, and according to the directions contained in Rule II. of the Commissioners, dated the 1st October 1852.

V. All specifications, copies of specifications, provisional specifications, petitions, notices, and other documents left at the office of the Commissioners, and the signatures of the petitioners or agents thereto, must be written in a large and legible hand.

VI. In the case of all petitions for letters patent left at the office of the Commissioners after the 31st day of December 1853, the notice of the applicant of his intention to proceed for letters patent for his invention shall be left at the office of the Commissioners eight weeks at the least before the expiration of the term of provisional protection thereon, and no notice to proceed shall be received unless the same shall have been left in the office eight weeks at the least before the expiration of such provisional protection; and the application for the warrant of the Law Officer and for the letters patent must be made at the office of the Commissioners twelve clear days at the least before the expiration of the term of provi-

sional protection, and no warrant or letters patent shall be prepared unless such application shall have been made twelve clear days at the least before the expiration of such provisional protection. Provided always, that the Lord Chancellor may in either of the above cases, upon special circumstances, allow a further extension of time, on being satisfied that the same has become necessary by accident and not from the neglect or wilful default of the applicant or his agent.

(Signed) CRANWORTH, C.
JOHN ROMILLY, M.R.
A. E. COCKBURN, A.G.
RICHARD BETHELL, S.G.

Dated the 12th Dec. 1853.

RULE IN RESPECT OF APPLICATION TO THE LORD CHANCELLOR TO EXTEND THE TIME FOR SEALING LETTERS PATENT.

By the Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain.

Whereas by the Act 16 & 17 Vict. cap. 115, the Lord Chancellor is empowered to extend the time for the sealing of letters patent for an invention, and for the filing of the specification thereon, limited to the period of one month after the expiration of the six months of provisional protection of such invention, provided the delay in sealing such letters patent and in filing such specification has arisen from accident, and not from the neglect or wilful default of the applicant.

It is Ordered as follows:

Every petition addressed to the Lord Chancellor, praying for the extension of time for the sealing of letters patent, and for the filing of the specification thereon, under the provisions of the Act of the 16 & 17 Vict. cap. 115, and the affidavit accompanying the same, shall be left at the Office of the Commissioners of Patents. And in every case where the delay in

sealing such letters patent and in filing such specification is alleged to have been caused by adjourned hearings of objections to the grant of such letters patent before the Law Officer to whom such objections may have been referred, the petitioner, before leaving his petition as aforesaid, shall obtain the certificate of such Law Officer, to the effect that the allegations in respect of such adjourned hearings and causes of delay are in the opinion of such Law Officer correct, and that the delay arising from such adjourned hearings has not been occasioned by the neglect or default of the petitioner. And such certificate shall be written at the foot of or shall be annexed to such petition.

(Signed) CRANWORTH, C.

Dated this 17th day of July, 1854.

RULES OF LAW OFFICERS AS TO FORMS OF DECLARATIONS FOR PATENTS OF COMMUNICATION.

I. In any application for a patent which is stated to be a Communication, the Declaration must state the name and address of the party from whom it has been received in the following manner:—

No. 1. When Declaration is made in the United Kingdom,

"That it has been communicated to me from abroad by (here insert name and address in full).

No. 2. In other cases,

"That it is a Communication from (A. B.) a person resident at (here insert address in full).

II. All provisional specifications must be written on one side only of each sheet.

FITZROY KELLY.
H. M. CAIRNS.

Dated 23rd February, 1859.

RULES TO BE OBSERVED IN PROCEEDINGS BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, UNDER THE ACT OF THE 5TH AND 6TH WM. IV. C. 83, INTITULED, "AN ACT TO AMEND THE LAW TOUCHING LETTERS PATENT FOR INVENTIONS."

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

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

* 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.

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 2nd of these 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 objections 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.

9. A party applying for an extension of a patent under section 4 of the said Act, must lodge at the Council-office four printed or written copies of his specification for the use of the Judicial Committee. If such specification shall have been printed in some publication, lodging four copies of the publication containing the same will be deemed sufficient.

In the event also of the applicant's specification not having been published as aforesaid, and if the expense of making four copies of any drawing therein contained or referred to would be considerable, the lodgment of one copy only of such drawing will be deemed sufficient.

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

The Judicial Committee will hear the Attorney-General or other Counsel on behalf of the Crown against granting any application made under either the second or fourth section of the said Act, in case it shall be thought fit to oppose the same on such behalf.

Council-office, Whitehall, Dec. 21, 1835.

RULES ISSUED BY THE SECRETARY OF STATE FOR THE WAR DEPARTMENT, AS TO PATENTS FOR IMPROVEMENTS IN INSTRUMENTS AND MUNITIONS OF WAR.

War Office, 13th October, 1859.

1. Misapprehension having frequently arisen as to the rules of the War Office, with respect to inventions which are brought under its consideration, it is deemed expedient to apprise inventors that the Ordnance Select Committee has been appointed by Her Majesty's Principal Secretary of State for the War Department to examine and report upon all inventions or improvements relating to the implements or munitions of war, which from time to time he may think proper to submit to the consideration of the Committee.

2. An investigation will be made by the Committee into the merits of any invention only upon the terms and conditions stated in this memorandum, which terms and conditions must be held to be binding upon every inventor whose invention is submitted by him to the Committee.

3. The inventor must leave with the Secretary of the Committee a written description, model, or specification of his invention, and should it be thought desirable to subject it to experimental trial, he must, when required by the Secretary, deliver at Shoeburyness, or other place named to him, a specimen corresponding with the description.

4. The inventor will be required to state—

I. The results intended to be attained by his invention.

II. The estimate cost of the invention or improvement in a state to be introduced into the Service.

III. The sum which he requires, either—

1st. For the assignment of the invention or patent to the Secretary of State for the time being;

2nd. For a license, if patented, and afterwards for the manufacture and supply of the invention as finally approved.

5. The inventor must attend at his own expense any meetings of the Committee to which he may be summoned, and give all information and answer all questions then and there put to him by the Committee, for the purpose of illustrating or explaining his invention.

6. The inventor will bear all damage or injury that may arise to any of his specimens delivered to the Committee.

7. The Committee do not undertake to order a trial of any invention, unless the experiments are likely, in their judgment, to lead to beneficial results; nor do they undertake to order experiments, in any case, at the public cost. Before, however, any experiments are undertaken by the Committee, they will apprise the inventor of the time and place of doing so. The inventor will be permitted to be present at all experiments made at his cost.

8. In the event of the adoption into the service of the invention, the descriptions, drawings, or models which have been furnished by the inventor, will be retained by the Ordnance Select Committee as the property of the department.

9. In the event of rejection, drawings or models will be considered as the property of the inventor, and will be returned to him, on his making application for the same within two months after the date of the notification of the rejection of his proposal. The Committee will, however, have the option of retaining copies of the same for purposes of record. The period within which application for the return must be made, will be extended in the case of foreign inventors, according to circumstances.

10. The Secretary of State does not undertake to purchase, at the price named, or at any other price, any invention offered to him under the terms of this memorandum.

B. Hawes.

Form of Assignment of Letters Patent.

This Indenture, made the day of , in the year of our Lord, 18 , 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 by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date the day of , A.D. , Her Most Gracious Majesty Queen Victoria did for herself, her heirs and successors, give and grant unto the said A. B., his executors, administrators and assigns, the sole privilege of making, using, exercising and vending within the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, a certain invention entitled , during the term of fourteen years from the day of the date of the said letters patent, *a specification of which said invention has been duly filed in the Great Seal Patent Office.**

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 sealing of these presents, the receipt whereof the said A. B. doth hereby acknowledge, 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 said letters patent, including the right of obtaining whatever prolongation or extension can or may be obtained of the same.

* The words in italics to be omitted if the specification has not been filed.

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 heirs, executors and administrators, covenant, agree and declare to and with the said C. D., his executors, administrators, and assigns, in manner following; (that is to say), that 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 preparing and filing the specification required by the said letters patent, through the advisers and at the risk of the said C. D., his executors,*

*administrators, or assigns**, and 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 witness, &c.

A. B. (*seal*).

At the back of the deed is written :—

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

Witness G. H.

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

E. F.

FORM OF LICENCE TO USE INVENTION.

THIS INDENTURE, made the day of , in the year of our Lord, 18 ; between A. B., of of the one part, and C. D., of of the other part.

WHEREAS by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date the day of , A.D. , Her Most Gracious Majesty Queen Victoria did for herself, her heirs and successors, give and grant unto the said A. B., his executors, administrators, and assigns, the sole privilege of making, using,

* The words in italics to be omitted if the specification has been filed.

† Under the Patent Law Amendment Act, 1852, sec. 35, assignments, licences, &c., are to be recorded

exercising, and vending, within the United Kingdom of Great Britain and Ireland the Channel Islands and Isle of Man, a certain invention entitled

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 given and granted, and by these presents doth give and grant to the said C. D., his executors and administrators, full and free licence, liberty, 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 hereinafter mentioned. And in 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 or 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

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

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.

In witness, &c.

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

At the back of the deed is written :—

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

Witness G. H.

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

E. F.

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