

THE
LAW AND PRACTICE
OF
LETTERS PATENT FOR INVENTIONS

WITH THE
PATENTS ACTS AND RULES ANNOTATED,

AND THE
INTERNATIONAL CONVENTION, A FULL COLLECTION OF
STATUTES, FORMS AND PRECEDENTS, AND
AN OUTLINE OF FOREIGN AND COLONIAL
PATENT LAWS, &c.

BY
Humphrey
LEWIS EDMUNDS, D.Sc. (LOND.), F.C.S.; F.G.S.
OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW;

ASSISTED BY
A. WOOD RENTON, M.A.; LL.B.
OF GRAY'S INN, ESQ., BARRISTER-AT-LAW.

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PREFACE.

SINCE the publication in 1846 of the well-known work of Hindmarch on the Law of Patents, no comprehensive treatise upon the law and practice of Patents for Inventions has appeared, although there have been numerous books dealing with the subject in a more limited manner.

Hindmarch's work was written before the Patent Law Amendment Act of 1852, which made many important changes in the law. This Act has since given way to the Patents Act, 1883, and the practice as regards applications for and grants of patents is now, in almost every respect, different from the practice at the time when Hindmarch wrote.

The simplification of the procedure and the great reduction in the Government fees, have caused an enormous increase in the number of patents annually obtained. The annual number of grants is now about 10,000, whereas before 1852 it was about 450. This great increase has correspondingly added to the importance and volume of patent law.

A large Government office, the Patent Office, is now devoted exclusively to the official business connected with patents, and a body of professional patent agents may be said to have come into existence, as the separate practice of this profession was before 1852 confined to a very few persons.

It seems, therefore, that a comprehensive treatise is

called for, and it is in the hope of supplying this deficiency that I have prepared the present work.

It is divided into three parts.

PART I. treats generally of Patent Law and Practice. It commences with an account of the old common law prerogative of the Crown, and after considering the effect of the Statute of Monopolies, passed in the reign of James I., goes on to treat of the subject-matter of patentable inventions.

The growth and functions of the existing Patent Office are then described at length; and an outline of the procedure necessary to obtain a patent is given for the convenience of those who have no previous acquaintance with this branch of the law, and as a key to subsequent chapters. The application, the specification, the amendment thereof, and oppositions to the grant, are next discussed in detail; after which assignments and licences and the Register of Patents are dealt with.

The Infringement of patents and the Action of Infringement are then treated at considerable length, and every effort has been made to present these subjects in a practical, convenient, and, as far as possible, exhaustive form. The Action to Restrain Threats of Legal Proceedings, the Revocation, the Extension, and the Confirmation of patent grants, with chapters on the International and Colonial Arrangements, and on the General Features of Foreign and Colonial Patents, complete this part of the work.

In PART II. the Patents, Designs, and Trade Marks Acts, 1883—1888, are given, so far as they relate to patents, with full notes and cross references to other parts of the work. The principal Act of 1883, and the amending Acts of 1885, 1886, and 1888, have been consolidated into one text. The type is so arranged that the repealed portions of the Act of 1883, and the additions or alterations effected

by the amending Acts, can be seen at a glance, and in every case the amending Act and section are quoted in the margin. The complete text of the consolidated Acts, unencumbered by notes, is given in the Appendix, and the amending Acts also are there printed separately.

The form of patent grant in the Schedule to the Act of 1883 has been fully annotated, and I hope that the notes will be found of considerable practical importance as well as of intrinsic interest.

In connection with the Schedule of Fees an account is given of the payments for patents before 1852, showing the complexity of the law at that time, by which three separate patents were required for England, Scotland, and Ireland, and the excessive expenses thrown upon patentees. Under the Patent Law Amendment Act the cost of obtaining a patent was greatly lessened, and there was a further reduction in 1883. Patentees still, however, suffer an anomalous and heavy taxation in the form of renewal fees, which begin to be payable before the end of the fourth year.

The Patents Rules, 1890, with notes and cross references, where necessary, follow; then the Law Officers' Rules, the Privy Council Rules relating to Extensions and Confirmations, and the International Convention, with the Declaration of the Accession of Great Britain, the Acceptance of the Accession, and the Order in Council applying the provisions of the Patents Acts which relate to International and Colonial Arrangements made by the Sovereign.

PART III. contains an Appendix of Statutes, Forms, Foreign and Colonial Patent Laws, &c.

In the Appendix of Statutes all the Acts relating to Patents will be found, the repealed statutes being in small type. Any work on patent law, as a whole, without the text of the repealed Acts of 1835 and 1852 would be

incomplete, as these statutes must be constantly referred to, and the present effect of many cases decided under them can only be understood by a reference to the text. The remaining repealed statutes, occupying a few pages only, are sometimes of considerable interest in themselves, and are occasionally referred to in the body of the work.

The Appendix of Forms has been made as complete as possible. It contains the forms under the Patents Rules, 1890, and a large number of precedents in litigation and other matters connected with patents. Many of these have been selected from forms actually used in important cases in recent years.

The Appendix of Foreign and Colonial Patent Laws does not pretend to be more than an abstract of the principal provisions of those States where patent privileges may be obtained. The great increase in the number of applications by British inventors for patents in foreign countries renders some account of subject-matter, duration, payment of fees, &c., in connection with foreign grants, a matter of interest.

The text contains all the patent cases which are now of any importance. The dates of cases are given in the references on each page and in the Table of Cases, where the principal contemporary references are also cited.

Much care has been bestowed on the Index, and every effort has been made to render it an efficient and convenient guide to the contents of the volume.

Although great attention has been paid to all the minute details of patent practice, which, I believe, are more completely treated here than in any other work, it has been my constant aim to present something more than a mere compilation, and to deal at convenient points with the history of this peculiarly interesting branch of the law, and to describe the difficulties which had to be surmounted, and the object of many of the statutory provisions. The

work is so arranged that confusion can nowhere arise as to what is obsolete and what existing law. I hope that the contents of this volume will thereby be rendered of more interest to the very large number of persons whose professional or official life is largely devoted to the consideration of patents for inventions.

Throughout the whole progress of this work I have been indebted to my friend, Mr. A. Wood Renton, Barrister-at-Law, for most able, constant, and untiring assistance; and I wish to express here my great obligations to him.

By the courtesy of the Comptroller-General of Patents, Mr. H. Reader Lack, many opportunities have been afforded me of completing the information on the details of the practice in the Patent Office. In so doing, I have met with every assistance from the officials connected with that department of the Board of Trade.

Mr. G. P. Wheeler, Barrister-at-Law, of the Judicial Department of the Privy Council, has revised the proofs of the chapters on Extension and Confirmation, and I have also to thank him for several forms which appear in the Appendix.

Mr. John Imray, M.A., and Mr. Oliver Imray, have read the whole of the proofs, and I am obliged to them for many practical observations and useful suggestions.

Mr. E. W. Hulme, of the Patent Office Library, has provided numerous references and footnotes.

L. E.

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Wyeth <i>v.</i> Stone, 1 Story, 273 - - - -	130

Y.

Yates, <i>Re</i> [1869] L. R. 5 Ch. 1 - - - -	651
Yates and Kellett's Patent [1887] L. R. 12 App. Cas. 147; 4 P. O. R. 150 - - - -	382, 396, 470, 598*
York <i>v.</i> Stowers [1883] W. N. (1883) 174 - - -	323* 486*
Young's Patent, Lawson, 105 - - - -	363
Young <i>v.</i> Fernie [1863—1866] 33 L. J. Ch. 192; 10 L. T. N. S. 861; L. R. 1 H. L. 63; 35 L. J. Ch. 523; Pemberton, 236 - - 22* 316, 328	
Young <i>v.</i> Rosenthal [1884] 1 P. O. R. 34 - 45, 133, 220, 291, 340*	

Z.

Zouch and More's (Lord) Case, Godbolt, 416 - - - -	548
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Part I.

PATENT LAW AND PRACTICE.



CHAPTER I.

INTRODUCTION.

THE Sovereign, as the fountain of honour, office, and privilege, Royal grants.
the arbiter of trade, and the chief guardian of the common weal,
has from time immemorial exercised this prerogative of the
Crown in making grants to subjects. Such grants are in general
made by *letters patent* (*litteræ patentēs*), that is, according to
Blackstone, "open letters; so called because they are not sealed
up, but exposed to open view with the Great Seal pendent (*a*) at
the bottom; and are usually addressed by the Sovereign to all
the subjects of the realm." Letters patent commence with the
formula, "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," and then, after
such recitals as may be necessary, proceed to grant the privilege
which is conferred, "of Our *especial grace*, certain knowledge, and
mere motion."

Among grants which are made by letters patent, we may cite as Examples
of royal
grants by
letters patent.
examples of titles of honour, peerages and baronetcies; of ap-
pointments to offices, those of many of the ministers of the Crown
and of the judges of the Superior Courts; of special privileges,
charters of incorporation to bodies of persons (*b*); and, vastly
more numerous for many years past than all other grants by
letters patent taken together, letters patent for the monopoly of
"making, using, exercising, and vending" (*c*) new inventions, to
the true and first inventors thereof (*d*). It is this last form of
royal grant which it is the object of this work to discuss.

(*a*) Patents for inventions are now sealed with the seal of the Patent Office, which is to have the same effect as if the Great Seal of the United Kingdom were appended: Act 1883, sect. 12. Many letters patent for other grants are now sealed with the Wafer Great Seal. See Crown Office Act, 1877, sect. 5, and the orders made pursuant thereto, London

Gazettes of March 5th, and August 13th, 1878.

(*b*) Charters of incorporation are less freely granted than formerly, because of the Companies Acts and other statutes, which provide other means for obtaining incorporation.

(*c*) See the words of the patent, p. 531.

(*d*) The following is a list of some of

Procedure to obtain patents for inventions has diverged.

In consequence of the very numerous grants of patents for inventions, the word "patent" has, in common parlance, come to suggest a patent for an invention only, and it is in this sense that we shall generally use it hereafter (*e*). Patents for inventions have been dealt with by numerous statutes, and the procedure to obtain them has diverged into a channel of its own. With the exception of patents for inventions, the royal grants still made by letters patent pass through a series of formal stages before they receive the Great Seal (*f*). These stages are of very great antiquity, and, though considerably simplified in recent years, are still numerous and technical. The procedure is a simplified form of that for patents of invention before 1852 (*g*).

Constituents of existing law of patents.

In order to understand completely the present position of patent privileges for inventions, it is necessary to consider the limits of the ancient common law prerogative of the crown with regard to monopolies, under which all patents for inventions are still granted, and then to trace the effect of subsequent statutory enactments. This ancient common law prerogative, as effected in 1624 by the Statute of Monopolies, and more recently by the Patents Act of 1883, and the amending Acts of 1885, 1886 and 1888, together with the rules of practice made thereunder, and the very numerous decisions of Courts of Law upon the construction of these statutes, especially of the Statute of Monopolies, make up the present body of patent law and practice. We propose, in the next chapter, to give an account of patents for monopolies before the Statute of Monopolies, and in the succeeding chapter to deal with the statute itself. After this we shall be in a position to consider the subject-matter of valid letters patent for inventions.

Plan of next three chapters.

the principal grants by letters patent at the present time. Many of them are under the Wafer Great Seal, as provided by the Orders in Council under the Crown Office Act, 1877, see note (*a*), *sup*. Offices in the Herald's College, knights bachelor, the Lord Lieutenant and the Custos Rotulorum of counties, justices of the High Court, the Queen's counsel, the Crown livings, the Attorney and Solicitor-Generals, annuities to judges of the High Court, Constable of the Tower, Chancellor of the Exchequer, Treasury Commission, Admiralty Commission, charters of incorporation to universities

or other learned bodies, and to trading companies, peerages, baronetcies, grants of separate Courts of Quarter Sessions, Commander-in-chief, Queen's printer, Master of the Horse, Keeper of Privy Seal, Postmaster-General, royal pardons. All these patents are enrolled on the Patent Rolls, which date back for a very long period. They may be seen at the Record Office, or in the case of very recent patents, at the Chancery Enrolment Office.

(*e*) See also Patents Act, 1883, s. 46.

(*f*) Or the Wafer Great Seal.

(*g*) For which see pp. 49—51.

CHAPTER II.

MONOPOLIES AT COMMON LAW.

SECT. 1. EARLY GRANTS.

SECT. 2. LIMITATIONS TO THE PREROGATIVE AT COMMON LAW.

SECT. 3. ATTEMPTS TO EXTEND PREROGATIVE.

SECT. 4. PROTESTS AGAINST MONOPOLIES.

SECT. 1.—EARLY GRANTS.

It is difficult or impossible to determine with certainty when monopolies were first granted to inventors, although the exercise of the prerogative in this way is undoubtedly very ancient. Ancient grants.

Thus, in a case decided in the reign of Edward III. (*a*), it is said that arts and sciences which are for the public good are greatly favoured in law, and the King, as chief guardian of the common weal, has power and authority by his prerogative to grant many privileges for the sake of the public good, although *prima facie* they appear to be clearly against common right.

It is also stated that King Edward III., on the representation of some alchemists, granted a commission to two friars and two aldermen to inquire whether a philosopher's stone might be made, and on their reporting that the project was feasible, granted to the two aldermen a patent of privilege, that they and their assignees should have the sole making of the philosopher's stone (*b*).

The earliest form of these grants of privileges seems to have been that of exclusively conducting new trades or dealing in objects of commerce hitherto unknown, and the prerogative was apparently used in some cases as a means of raising money (*c*).

(*a*) Year Book, Part iv., 40 Edw. III. fol. 17, 18; Hindmarch, p. 4.

(*b*) Moor, p. 675; *Darcy v. Allin*.

(*c*) Professor S. R. Gardiner (*History of England, from 1603—1642, vol. iv., pp. 1 et seq.*), holds that many of the monopolies and grants which were com-

plained of, under James I., were quite defensible in principle, and that the chief public grievances arose from the abuse of their privileges by the patentees, and the difficulty or impossibility of obtaining redress.

SECT. 2.—LIMITATIONS TO THE PREROGATIVE AT COMMON LAW.

To this royal prerogative there came to be, however, certain well-defined limits—

Limits to prerogative.

- (1) The Sovereign could not grant the sole right to sell articles in common use. Thus, letters patent granting to one John Pechey the sole importation of sweet wines into London were, at a Parliament held 50 Edw. III., adjudged to be void (*d*).
- (2) Again, a grant of the sole right to exercise a known occupation was illegal. This was decided as to the manufacture and importation of playing cards in *Darcy v. Allin* (*e*).
- (3) Further, it was necessary that the grantee should be at least the *introducer* of the invention within the realm.
- (4) The term must be for some limited period, such as might be sufficient for the instruction of others.
- (5) The subject-matter must be such as, in the result, led to a new trade or manufacture.
- (6) The subject-matter must also possess the incidents of utility and novelty, and must not be prejudicial or inconvenient (*f*).

The conditions of the validity of a patent before the Statute of Monopolies cannot be better stated than in the words of the report of *Darcy v. Allin* (*g*): “Where any man, by his own charge and industry, or by his own wit or invention, doth bring any new trade into the realm, or any engine tending to the furtherance of a trade that never was used before, and that for the good of the realm, in such cases the King may grant to him a monopoly patent, for some reasonable time, until the subjects may learn the same, in consideration of the good that he doth bring by his invention to the commonwealth, otherwise not.”

Darcy v. Allin.

Cloth-workers of Ipswich Case.

In *The Cloth-workers of Ipswich Case* (*h*), it was said:—“If a man hath brought in a new *invention* and a new *trade* within the kingdom in peril of his life, and consumption of his estate or stock, or if a man hath made a new discovery of anything, in such cases *the king, of his grace and favour*, in recompense of his costs and travail, *may grant by charter*

(*d*) 3 Inst., 181; Noy, 173; 11 Co. 84; H. of Com. Jour. 1614, i. 470; 1 Web. P. C. 4.

(*e*) An. 44 Eliz. 11; 11 Co. R. 84; Noy, 178.

(*f*) 1 Web. P. C. 7, n.

(*g*) A.D. 1602, Noy, R. 182; 1 Web. P. C. 6.

(*h*) A.D. 1615, Godbolt's R. 252.

unto him that he only shall use such a trade or traffic *for a certain time*, because at first the people of the kingdom are ignorant, and have not the knowledge or skill to use it, but when the patent is expired, the King cannot make a new grant thereof; for when the trade is become common, and others have been bound apprentices in the same trade, there is no reason that such should be forbidden to use it."

SECT. 3.—ATTEMPTS TO EXTEND PREROGATIVE.

The royal prerogative, which was afterwards defined in *Darcy v. Allin*, was, however, frequently extended beyond the limits therein laid down, and, under the pretence of providing for the better government of trade, the Crown sanctioned the most oppressive monopolies, with a view to reward favourites, or to raise money. The position of matters in the reign of Elizabeth is thus described by Hume (*h*):

"It is astonishing to consider the number and importance of those commodities which were thus assigned over to patentees. Currants, salt, iron, powder, cards, calf-skin, pouldavies, ox shin bones, train oil, lists of cloth, potashes, aniseeds, vinegar, sea coals, steel, aqua vitæ, brushes, pots, bottles, saltpetre, lead, accidents, oil, calamme stone, oil of blubber, glasses, paper, starch, tin, sulphur, new drapery, dried pilchards, transportation of iron ordnance, of beer, of horn, of leather; importation of Spanish wool, of Irish yarn. These are but a part of the commodities which had been appropriated to monopolists. When this list was read in the House, a member cried, 'Is not bread in the number?' 'Bread,' said every one with astonishment. 'Yes; I assure you,' replied he, 'if affairs go on at this rate, we shall have bread reduced to a monopoly before next Parliament.' These monopolists were so exorbitant in their demands that in some places they raised the price of salt from sixteen pence a bushel to fourteen or fifteen shillings. Such high profits naturally begat intruders upon their commerce, and in order to secure themselves against encroachments, the patentees were armed with high and arbitrary powers by the Council, by which they were enabled to oppress the people at pleasure, and to exact money from such as they thought proper to accuse of interfering with their patent. The patentees of salt-petre, having the power of entering every house and of committing what havoc they pleased in stables, cellars, or wheresoever they

Hume on monopolies under Elizabeth.

Salt monopolies.

Powers of patentees.

(*h*) 5 Hume, 386; cf. also 4 Parl. Hist. 452.

suspected saltpetre might be gathered, commonly extorted money from those who desired to free themselves from this damage or trouble, and while all domestic intercourse was thus restrained, lest any scope should remain for industry, almost every species of foreign commerce was confined to exclusive companies, who bought and sold at any price they themselves thought proper to offer or exact."

SECT. 4.—PROTESTS AGAINST MONOPOLIES.

These grievances aroused the attention of the House of Commons, and a petition was presented to the Queen complaining of the patents, but she still persisted in defending the monopolists. Accordingly, a Bill was introduced into the Lower House, abolishing all the obnoxious grants, and "as the former application had been unsuccessful, a law was insisted on as the only certain expedient for correcting these abuses. The courtiers, on the other hand, maintained that this matter regarded the prerogative, and that the Commons could never hope for success if they did not make application in the most humble and respectful manner to the Queen's goodness and beneficence. . . . It was asserted that the Queen inherited both an enlarging and a restraining power: by her prerogative she might restrain what was otherwise at liberty: that the royal prerogative was not to be canvassed, nor disputed, nor examined, and did not even admit of any limitation: that absolute princes, such as the Sovereigns of England, were a species of Divinity: that it was in vain to attempt tying the Queen's hands by laws or statutes, since by means of her dispensing power she could loosen herself at pleasure; and that even if a clause should be annexed to a statute excluding her dispensing power she could first dispense with that clause; and then with the statute. After all this discourse, more worthy of a Turkish divan than of an English House of Commons . . . the Queen, who perceived how odious monopolies had become, sent for the Speaker, and advised him to acquaint the House that she would immediately cancel the most grievous of these patents" (i). An address of thanks was at once voted, and was delivered to her Majesty by the Speaker, attended by about 180 members, on November 30th, 1601. The following extract from the Queen's answer shows how clearly she understood the limits to her prerogative: "I never put

Bill for
abolition of
monopolies.

Patents
cancelled.

(i) Hume, *ubi supra*. See Cecil's Lord John Russell's Hist. Eng. Govt.,
speech, Parl. Hist. 1601, i. 934, and p. 477.

my pen to any grant, but upon pretence and semblance made unto me, that it was both good and beneficial to the subjects in general, though a private profit to some of my ancient servants who had deserved well: but the contrary being found by experience, I am exceedingly beholden to such subjects as would move the same at first. . . . That the grants should be grievous to the people, and oppressions, &c., be privileged under colour of our patents, our kingly dignity shall not suffer it: and when I heard of it I could give no rest to the thoughts till I had reformed it" (*k*).

Queen Elizabeth's answer.

It would appear, however (*l*), that the Queen did not revoke all of the monopolies complained against, and a list of them, dated May, 1603, seems to imply there were still some in existence (*m*).

Matters did not improve on the accession of James I. The manufacture of alum had been introduced into England from abroad, and exercised without much success till about 1600, when Sir Thomas Chaloner discovered a mine in Yorkshire, and the art was brought to perfection by Sir John Bouchier. The importation of alum was prohibited by proclamation; the King took the whole trade into his own hands, and made it the subject of letters patent (1608) (*n*).

Accession of James I.

Alum patents.

Other monopolies were granted, and Parliament again protested against the abuse of the royal prerogative. In 1610, the King published a book (*o*), in which he declared that monopolies were things against the laws of the realm, and (as if to fortify himself against cupidity) expressly commanded that no suitor should presume to move him to any grant thereof.

Book published by James I.

The grants, however, continued. The case of Mompesson and Mitchell is the most flagrant instance. According to Rapin, a patent was granted to Sir Giles Mompesson and Sir Francis Mitchell for the sole making and selling of gold and silver lace. The patentees grossly abused their privilege, "making sophisticated lace of copper and base materials, and procuring others (who made good lace) to be fined and imprisoned for infringing their patent. Great complaints were made to Parliament; and in consequence Mitchell was imprisoned, but Mompesson escaped, and a proclamation was issued, offering a reward for his apprehension. The

Gold and silver lace patents.

(*k*) Cobbet's Parl. Hist. of Eng., i. 923.

(*l*) Rymer, xvi. 540; Carte, iii. 702.

(*m*) Lodge, iii. 159; Hallam, Const. Hist., i. 357, n.

(*n*) Parl. Report, &c. 1829, Appen-

dix, 167. See Statute of Monopolies, sect. 11, *infra*, p. 634.

(*o*) 11 Co. Rep. 88 C. Coke says, that the judgment given in *Darcy v. Allin* was the principal motive of the publishing of the King's book.

King informed the Parliament that he was ignorant of the abuse of his patent and would revoke it. The Lords confiscated the estate of Mompesson, who had escaped, and degraded him of his knighthood. Mitchell was also degraded, fined 1,000*l.*, carried through the streets of London on a horse, with his face to the tail, and imprisoned for life. The patent for gold and silver lace and some others were revoked by royal proclamation" (*p*).

(*p*) Parliamentary Report, 1829, p. 167.

CHAPTER III.

THE STATUTE OF MONOPOLIES.

IN 1624 (*a*) advantage was taken of the good feeling then existing between James and his Parliament (*b*), and of the declaration to which he had committed himself in 1610 (*c*), to secure the enactment of the Statute of Monopolies (21 Jac. I. c. 3) (*d*).

This famous statute deserves somewhat minute consideration. After reciting the King's gracious declaration against grants of monopolies in 1610, and that "yet, nevertheless, upon misinformations and untrue pretences of public good, many such grants have been unduly obtained and unlawfully put in execution," the Act declares and enacts, that "all monopolies and all commissions, grants, licences, charters, and letters patent heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of anything within this realm or the dominion of Wales, or of any other monopolies, or of power, liberty, or faculty to dispense with any others, or to give 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 forfeiture 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, further-

Statute of
Monopolies,
sect. 1.

Declaration
against
monopolies
of every
description.

(*a*) Previous to 33 Geo. III. c. 13, every Act was considered as passed upon and relates back to the first day of the Session, unless otherwise provided for by the Act. Hence the Statute of Monopolies is said to have passed in 1623, although really passed in 1624.

(*b*) Web. Lett. Pat., p. 7.

(*c*) Coke, 3 Inst. 182.

(*d*) See Appendix, pp. 628—635, where the whole statute is given. The repealed sections are printed in smaller type.

ing, 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 nowise to be put in use or execution."

Coke's
definition of
monopoly.

The monopolies against which this Act was directed are those defined by Lord Coke as being against the common law and the commonwealth, *i. e.*, unlawful monopolies. The following is Coke's definition (*e*): "A monopoly is an institution or allowance by the king, by his grant, commission, or otherwise, to any person or persons, bodies politic or corporate, of or for the sole buying, selling, making, working, or using of anything whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade."

Darcy v.
Allin.

To this may be added an extract from the judgment of the Court in *Darcy v. Allin* (*f*): "There are three inseparable incidents to every monopoly against the commonwealth; that the price of the same commodity will be raised, for he who has the sole selling of any commodity may and will make the price as he pleases; that after the monopoly granted the commodity is not so good and merchantable as it was before, for, the patentee having the sole trade, regards only his private benefit and not the commonwealth; that it tends to the impoverishment of divers artificers and others, who, before, by the labour of their hands in their art or trade, had maintained themselves and their families, who now will of necessity be restrained to live in idleness and beggary."

Sect. 3.

In prohibiting all such grants of monopolies, the statute was merely declaratory of the common law, already clearly established by the decisions in *Pechey's case* (*g*), in *Bircot's case* (*h*), and in *Darcy v. Allin* (*i*). Sect. 3 enacted that "all persons, bodies politic and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and incapable to have (*i. e.*, to take) (*k*), exercise, or put in use any monopoly, or any such commission, grant, licence, charter, letters patent, 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."

(*e*) 3 Inst. 181, c. 85.

(*f*) 11 Co. R. 84; Web. P. C. at p. 3.

(*g*) 50 Edw. III.; 3 Inst. 181.

(*h*) 15 Eliz.; 3 Inst. 184.

(*i*) Co. R. 84.

(*k*) Coke, 3 Inst. 183.

The Statute of Monopolies further provided that the force and validity of disputed grants should be examined and determined according to the common law, in the Courts of common law, and not at the Council Table, Star Chamber, Chancery, Exchequer Chamber, or any other Court of like nature. The necessity for this provision is well explained by Lord Coke: "Such boldness," he observes, "the monopolists took, that often at the Council Table, Star Chamber, Chancery, and Exchequer Chamber, petitions, informations, and bills were preferred, pretending a contempt for not obeying the commandments and clauses of the said grant of monopolies, and of the proclamation concerning the same" (*l*). The Court of Star Chamber also had considered all infringements of patents and grants of the Crown as contempt of royal authority, and on that principle had supported any patent the Crown thought fit to grant (*m*).

Sect. 2.
Validity of grants to be tried at common law.

Having laid down a general prohibition of monopolies, the statute proceeds (sects. 5—14) to except certain grants from its operation. As Lord Coke has pointed out (*n*), the word "sole" is applied in sect. 1 to five separate things, "whereof four are special, and the fifth, 'sole using,' is so general that no monopoly can be raised which will be beyond the reach of the statute," and yet for more caution the words "or of any other monopolies" are added. The words also "of anything" in the same section are of so large an extent as to necessitate the provisos contained in the subsequent sections.

Letters patent for inventions depend upon the provisions of sect. 6 (*o*), which expressly enacts that no declaration contained in the statute shall extend "to any letters patent and grants of privilege, for the term of fourteen years or under, thereafter to be made, of the sole working or making of any manner of new manufactures within the realm, to the true and first inventor or inventors, which others at the time of making such letters patent 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 to the hurt of trade, or generally inconvenient; the said fourteen years to be accounted from the date of the first letters patent or grants of such privileges thereafter to be made, but that the same shall be of

Sect. 6.
Proviso in favour of inventors.

(*l*) 3 Inst. 182, 183.

(*m*) Web. Letters Patent, p. 42, n. (*y*).

(*n*) 3 Inst. 187.

(*o*) Sect. 5 relates to patents granted

for periods not exceeding twenty-one years, and in force at the time of the statutes being passed. With these exceptions, the words of sects. 5 and 6 are the same. See Coke, 3 Inst. 181.

such force as they should be if that Act had never been made, and no other.”

The basis of patent right.

It is upon the wording of this proviso and the great number of decisions upon its meaning, that patent right in inventions now mainly rests. We shall deal more fully with the interpretation of this proviso in the next chapter. For the present, we may observe that it appears from the language of this section that a valid grant of letters patent must possess seven properties (*o*):—

- (1) It must be for a term of fourteen years or under;
- (2) It must be granted to the true and first inventor;
- (3) It must be of such manufactures “which any other, at the time of making such letters patent, did not use; for, albeit, it were newly invented, yet if any other did use it before the making of the letters patent, or grant of the privilege, it is declared and enacted to be void by this Act” (*p*), *i.e.*, there must be novelty;
- (4) The privilege must not be contrary to law;
- (5) It must not be mischievous to the State, by raising the prices of commodities at home. “In every such new manufacture that deserves a privilege, there must be *urgens necessitas et evidens utilitas*” (*q*);
- (6) The privilege must not be to the hurt of trade;
- (7) It must not be generally inconvenient.

“If any of these seven qualities fail, the privilege is declared and enacted to be void by this Act: and yet this Act, if they have all these properties, set them in no better case than they were before.”

Lord Coke on policy of patent privileges.

“The cause,” Lord Coke continues (*r*), “wherefore the privileges of new manufactures, either before this Act granted, or which after this Act should be granted, having these seven properties, were declared to be good, was, for that the reason wherefore such a privilege is good in law is, because the inventor bringeth to and for the commonwealth a new manufacture, by his invention, costs, and charges, and therefore it is reasonable that he should have a privilege for his reward (and the encouragement of others in the like) for a convenient time: but it was thought that the times limited by this Act were too long for the private, before the commonwealth should be partaker thereof, and such as served such privileged

(*o*) The interpretation given to these conditions by subsequent decisions will be considered more fully under the next chapter.

(*p*) Coke, *ubi supra*.

(*q*) *Ibid.*

(*r*) *Ibid.* 184.

persons by the space of seven years, in making or working of the new manufacture (which is the time limited by law of apprenticeship), must be apprentices or servants still, during the residue of the privilege, by means whereof such numbers of men would not apply themselves thereunto as should be requisite for the commonwealth after the privilege ended. And this was the true cause whereof both for the time passed and the time to come, they were left of such force as they were before the making of this Act."

Lord Coke's objection to the term of fourteen years as too long rests substantially on the grounds that those who have been apprenticed to learn the trade must continue apprenticed till the end of the term, and that consequently a sufficient number of persons would not devote themselves to the manufacture to supply the wants of the public at the end of the term.

Lord Coke's objection to term of fourteen years.

The terms of the prohibition in the declaratory part of the Statute of Monopolies were so wide that it was deemed necessary to except from their scope various grants and privileges which were not intended to be annulled. This was done by sections 7—14 (s).

Statute of Monopolies, sects. 7—14.

Section 7 related to all grants, privileges, or authority made or confirmed by Acts of Parliament, so long as such Acts should continue in force.

Section 8 excepted all warrants under Privy Seal made by his Majesty or his successors to the justices of the Courts of law, or justices of the peace, &c., giving power to hear and determine offences against any penal statute.

Judges.

Section 9 saved the charters of the City of London, and other boroughs and corporate towns, and of corporations of any art, trade or mystery, and of any company of merchants erected for the maintenance of any trade.

Corporate privileges.

Section 10 saved letters patent concerning printing, digging for and making saltpetre or gunpowder; and casting or making of ordnance, or shot for ordnance; and also letters patent for offices.

Saltpetre, &c.

Section 11 saved letters patent for digging and making alum, and for alum mines.

Alum.

Section 12 saved all privileges heretofore enjoyed by the hoastmen of the town of Newcastle-upon-Tyne for selling, carrying,

Newcastle-on-Tyne, &c.

(s) See *infra*, pp. 633—635.

and shipping any pit coals out of the river Tyne. It also saved commissions for the licensing of taverns.

Mansell's
glass patent.

Section 13 excepted letters patent for making of glass, granted to Admiral Sir Robert Mansell, dated 22nd May, in the 21 Jas. I. (*u*); and other letters patent granted to Jas. Maxwell, Esq., concerning the transportation of calve skins, dated 12th June, in the 13th Jas. I.

Baker's
smalt patent.

Section 14 saved letters patent, granted to Abraham Baker, concerning the making of smalt, dated 16th Feb., 16 Jas. I. (*x*);

Lord Dudley's
patent.

also letters patent granted to Edward Lord Dudley, concerning the smelting of iron ore, and making the same into cast works or bars, with sea coals, or pit coals, dated 22nd Feb., 19 Jas. I. (*y*).

(*u*) Mansell's patent is printed in full in 1 Web. P. C. at p. 17. See observations upon, and proceeding in connection with, this patent in 1 Web. P. C. 27 n. and 32 n. (*q*).

(*x*) See this patent printed in full, and observations thereon, in 1 Web. P. C., p. 12, and p. 32 n. (*r*).

(*y*) 1 Web. P. C. 14, and p. 33 n. (*r*).

CHAPTER IV.

THE SUBJECT-MATTER OF LETTERS PATENT.

SECT. 1. GENERAL.

SECT. 2. INTERPRETATION OF "ANY MANNER OF MANUFACTURE."

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SECT. 1.—GENERAL.

As we have explained in the last two chapters the sources of this branch of patent law are the prerogative, enjoyed and exercised by the Crown at least since the reign of Edward III. (a) —of rewarding and encouraging inventors by the grant of limited monopolies in their inventions, and the Statute of Monopolies (21 Jac. I. c. 3, s. 6 (b)), by which that prerogative was defined and restricted, but not created (c), and the numerous judicial decisions upon the construction of that statute.

Sources of
this branch of
the law.

(a) Cp. Year Book, Part IV.; 40 Edw. 3, fols. 17, 18; Moore, p. 675.

(b) Cp. the statute itself in the Appendix and Chapter III.

(c) The Patents Act, 1883, does not extend the subject-matter of letters patent: cp. sect. 46.

Proviso of
sect. 6 of
Statute of
Monopolies.

Sect. 6 of the Statute of Monopolies preserves and defines the royal prerogative to grant letters patent for inventions in these terms:—

“ Provided also, and be it declared and enacted, that any declaration before mentioned shall not extend to any letters patent 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 patent 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 patent or grants of such privilege hereafter to be made, but that *the same shall be of such force as they would be if this Act had never been made and of none other*” (d).

General effect
of the proviso
on the com-
mon law.

The effect of this section of the Act is in substance that such letters patent and grants of privilege as it describes are not, on the one hand, to be taken to be within the meaning of the preceding sections, which, in very general terms, declare the illegality of all monopolies whatsoever; nor are they, on the other hand, to be rendered valid by virtue of the Act, but they are to be of precisely the same force as if the Act had not been passed, and no more. An invention which may legally be made the subject of a patent privilege must, therefore, not only be of such a nature as to come within the meaning of the exception contained in the statute, but it must also be such an invention as at common law the Crown possesses the prerogative of granting the sole use of (e).

Definition of
subject-matter
of letters
patent.

It will be observed, that what the Statute of Monopolies does is to except from the operation of the prior invalidating clauses grants of privilege relating to “ *the sole working or making of any manner of new manufactures*” within the realm. This is the most succinct and yet at the same time the most comprehensive definition that can be given of the subject-matter of letters patent. We shall, therefore, consider in the first place the meaning and extent of the words *any manner of manufacture*, and then proceed to discuss novelty, utility, and the other incidents of patentable inventions.

Novelty,
utility.

(d) Upon the construction of this statute, see Coke, 3 Inst. 181; 11 Co. R. 88 b; *Mitchell v. Reynolds*, 1713, 19

Mod. R. 130.

(e) Hindmarch, p. 79.

SECT. 2.—INTERPRETATION OF “ANY MANNER OF MANUFACTURE.”

(1) *Process or Product.*

Having regard to the common law,—at which any new art of producing an article of trade or commerce might be made the subject of a patent privilege,—and to the construction warranted by the express language and by the context of the Statute of Monopolies, one would have expected a wide and generous interpretation of the word “manufacture” by the Courts of law. The earliest reported decisions, the *dicta* of the best institutional writers, the obvious intent of the common law, and the emphasis placed by the Statute of Monopolies upon “the working” as well as upon “the making” of any manner of new manufacture, clearly indicate that the term was meant to be taken in its ordinary double signification of an art, or anything made by art (*f*), *i.e.*, a process as well as a product. It may be interesting and instructive to trace shortly, and in chronological order, the cases bearing upon this point.

Interpreta-
tion of
“manu-
facture.”

Includes
anything
made by art.
Process—
Product.

(2) *Processes.*

In *Boulton v. Bull* (*g*), Mr Justice Heath, speaking of the word “manufacture” in 21 Jac. I. c. 3, s. 6, said: “What, then, falls within the scope of the proviso? Such manufactures as are reducible to two classes; the first class includes machinery, the second substances (such as medicines) formed by chemical and other processes, where the vendible substance is the thing produced, and that which operates preserves no permanent form. . . . 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.”

“Manufac-
ture” includes
process as
well as pro-
duct.
A.D. 1795.

In the same case, Chief Justice Eyre observed: “It was admitted in the argument at the bar that the word ‘manufacture’ in the statute was of extensive signification; that it applied not only to things made, but to the practice of making; to principles carried into practice in a new manner; to new results of principles carried into practice.”

“Things
made,” and
“practice of
making.”

In *Rex v. Wheeler* (*h*), Chief Justice Abbott said: “The word ‘manufacture’ has been generally understood to denote either a *thing made*, which is useful for its own sake, and vendible as such—

(*f*) This natural interpretation was not, however, at first clearly recognized or admitted.

(*g*) 1795, 2 H. Bl. 482, 493; *cp. Hornblower v. Boulton*, 1799, 8 T. R. 99.

(*h*) 1819, 2 B. & Ald. 349.

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 in some other useful purpose, as a stocking-frame, or a steam engine for raising water from mines.”

A.D. 1837.

The language of Baron Parke in *Morgan v. Seaward* (i) is equally emphatic—“The word ‘manufacture’ in the statute—21 Jac. I. c. 3, s. 6—must be construed in one of two ways; it may mean the machine when completed, or the mode of constructing the machine.”

A.D. 1842.

In a few cases (k), some degree of hesitation was evinced by the judges in accepting that interpretation which extended the language of the statute to processes, but the difficulty was finally settled by the Court of Common Pleas in *Crane v. Price* (l). Here the invention, in respect of which a patent was claimed, consisted in the application of anthracite or stone coal, combined with a hot air-blast in the smelting or manufacture of iron from ironstone, mine, or ore. In delivering the judgment of the Court, Chief Justice Tindal said: “The question is whether, admitting the use 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—was not known before in the manufacture of iron,—such a combination can be the subject of a patent.

Crane v. Price.

“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” (m).

(i) 1837, 2 M. & W. 558.

(k) *Hill v. Thompson*, 1817, 3 Mer. 626; *Gibson v. Brand*, 1841, 4 M. & G. 179; cp. Godson, *Patents and Copy-rights*, p. 82.

(l) 1842, 4 M. & G. 580. The particular decision in *Crane v. Price* was questioned in *Horton v. Mabon*, 1862, 12 C. B. N. S. 448, and in *Murray v. Clayton*, 1872, L. R. 7 Ch. 584; but the principle on which that case was decided has never been impeached.

(m) Cp. also *Stead v. Williams*, 1843, 2 Web. P. C. 134; *Heath v. Unwin*, 1844, 25 L. J. C. P. 20; *Crossley v. Potter*, 1853, Macr. P. C. 240, where the

connection between this part of the subject, and the questions of “novelty” and “utility,” is clearly indicated by Pollock, C. B. “It is very true that patents are continually taken out for what are called *methods* or *processes*, but the real object of the patent . . . is a new manufacture. Everybody who takes out a patent under the name of a process really takes it out for that which is the result of the process for the thing that is manufactured, or the process by which it is produced.” *Bush v. Fox*, 1834, Macr. P. C. 160; *Harwood v. G. N. Rail. Co.*, 1860, 29 L. J. Q. B. 202; *Ralston v. Smith*, 1865, 11 H. L. 223.

While it hardly seems necessary to labour a point which has been so emphatically decided, the following authorities and illustrations may be given:—

Application was made for a patent for an improvement in the manufacture of gas, viz., making gas *direct* from seeds, leaves, nuts, fruits, and other substances containing oil or oily matter, instead of from oils, resins, and gums previously extracted from such substances. The Court held that, assuming the invention to be new, it was a good subject-matter for a patent (*n*). Other cases.

“A discovery that the mixture of two or more simple substances in certain definite proportions will form a compound substance valuable for medical or other qualities, would afford a good ground for a patent. A discovery of some machinery, whereby such a mixture may be more quickly or more effectually accomplished might be the foundation of another patent” (*o*).

In a patent for “improvements in the preparation of red and purple dyes,” the specification thus declared the nature of the invention: “I mix aniline with dry arsenic acid and allow the mixture to stand for some time: or I accelerate the operation by heating it to, or nearly to, the boiling point, until it assumes a rich purple colour.” The patentee claimed the “manufacture or preparation of red and purple dyes by treating aniline dyes with arsenic acid as hereinbefore described.” Lord Chancellor Chelmsford said, “there is nothing upon the face of the specification to show that the invention described is not in every part of it the subject of a patent” (*p*).

In *Stevens v. Keating* (*q*), Pollock, C.B., said: “All patents must be for a manufacture. The real invention may be not so much for the thing when produced as for the mode in which it is produced; and its novelty may consist not so much in its existence as a new substance as in its being an old substance, but produced by a different process. In one sense, an old substance produced by a new process is a new manufacture, of that there cannot be a doubt; and therefore, although the language of the Act has been said to apply only to manufactures and not to processes, when you come

Thing produced, or mode in which produced.

(*n*) *Booth v. Kennard*, 1856, 1 H. & N. 527. The patent was afterwards set aside for want of novelty: 1857, 2 H. & N. 84.

(*o*) *Bewley v. Hancock*, 1856, 6 De G. M. & G. 402; cp. also *Bovill v. Pimm*, 1856, 11 Exch. 739. See *Wallington*

v. Dale, 1851-2, 7 Exch. R. 888; *Newall v. Elliott*, 1864, 13 W. R. 11.

(*p*) *Simpson v. Holliday*, 1866, L. R. 1 H. L. 315; and *Cunnington v. Nuttall*, 1871, L. R., 5 H. L. at p. 252.

(*q*) 1847, 2 Web. P. O. 182.

to examine it, either literally or even strictly, it appears to me the expression 'manufacture' is free from objection, because though an old thing, if made in a new way, the very making of it in a new way makes it a new manufacture."

There are cases, however, to which the explanation that a patent for a process is merely a patent for a new thing manufactured scarcely applies.

Thus, in *Forsyth v. Riviere* (*r*), the application of a known detonating powder to the discharge of known kinds of fire-arms, was held to be patentable. Again, the application of plates of metal and wire to the several parts of buildings and ships, so as to prevent the access of fire and the current of air, has been held good subject-matter (*s*).

In *The Electric Telegraph Co. v. Brett* (*t*), a method of giving duplicate signals at intermediate stations was declared to be patentable.

In none of these three cases was any new substance produced, the bare process being held good subject-matter for a patent.

Manufacture
includes
chemical
processes.

Since it was settled in *Crane v. Price* (*u*) that the word "manufactured" in the Statute of Monopolies (*r*) included "process," no doubt (*x*) has existed that a chemical invention is *ceteris paribus* patentable. In the case, however, of *Badische Anilin v. Levinstein* (*y*), a point was incidentally decided which appears to justify the treatment of *chemical* inventions separately from other processes, viz., that the prior user of an *analogous* invention will not go far towards destroying the novelty of a similar invention subsequently patented. In the case under consideration, the invention was for a series of red and brown colouring

(*r*) 1819, 1 Web. P. C. 97; 1 Carp. P. C. 401; Johns. Pat. Man. 15.

(*s*) *Hartley's Patent*, 1 Web. P. C. 54. The subject-matter of this patent was considered by Eyre, C. J., in his judgment in *Boulton and Watts v. Bull* (2 H. Bl. 493), and placed in the general class of patents for methods of operating and manufacturing, producing no new substances, and employing no new machinery. See, however, Webster's note on this case, *ubi supra*.

(*t*) 1851, 10 C. B. 838; 20 L. J. C. P. 123.

(*u*) 1842, 4 M. & G. 580; 5 Scott, N. R. 338; 12 L. J. C. P. 81; 1 Web. P. C. 393; 2 Carp. P. C. 669.

(*v*) 21 Jac. 1, c. 3, s. 6.

(*x*) See Godson's Patents for Inven-

tions, pp. 96—98; cp. also *Muntz v. Foster*, 1843, 2 Web. P. C. 93; *Steiner v. Heald*, 1851, 6 Exch. 607; 17 Jur. 875; 20 L. J. Ex. 410; *Bowley v. Hancock*, 1856, 6 De G. M. & G. 391; 2 Jur. N. S. 289; 4 W. R. 334; *Hills v. London Gas Light Co.*, 1857, 5 H. & N. 312; 27 L. J. Ex. 60; 29 L. J. Ex. 409; *Higgs v. Goodwin*, 1858, 27 L. J. Q. B. 421; 5 Jur. N. S. 97; E. B. & E. 529; *Young v. Fernie*, 1863, 1 De G. J. & S. 353; 9 L. T. N. S. 590; 12 W. R. 221; 10 Jur. N. S. 58; 33 L. J. Ch. 192; 3 N. R. 270; *Simpson v. Holliday*, 1864, 20 New. Lon. Jour. N. S. 105; *Bailey v. Robertson*, 1878, L. R. 3 A. C. 1055.

(*y*) 1887, 4 P. O. R. 449; 1889, 6 P. O. R. 387.

matters, which the patentee termed "sulpho-acids of oxy-azo-naphthaline," for the production of which he relied, *inter alia*, upon the following process:—Naphthalamine was diazosed, combined with naphthol, and the compound sulphonated. The defendants alleged, and it was admitted, that the same reaction had been obtained, but with phenol instead of naphthol. Dr. Griess deposed, "I distinctly state that by the combination of diazo benzol and phenol, dye was obtained, and, if I had been a little cleverer, *analogy* would have induced me to prepare the very dye which is now under consideration. But analogy did not lead me to do that. *Analogy does not go a long way in chemistry.*"

(3) Principles and Discoveries.

A mere principle, *i.e.*, an abstract law of nature, a fundamental law of mechanics, chemistry, or any other science, cannot be made the subject of a valid patent grant (1) because such principles are capable of an endless variety of uses and applications, and are the common property of all men; (2) because no primary law of science can, apart from the practical application of it, be capable of producing any vendible article or manufacture, "and, therefore, unless a person who discovers such a principle or law makes some practical use of it, so as to produce some article which the public requires and will purchase, he cannot give the public the consideration which the law requires to be given for the grant of a sole privilege. The object of the law was not to reward mere speculative discovery, but to encourage industry and procure for the public the benefit of new manufactures" (2).

Principles.

Why not subject-matter of valid patent.

A principle, however, so far embodied and connected with corporeal substances as to be in a condition to act, and to produce effects in any art, trade, mystery, or manual occupation is undoubtedly patentable (a). In the case of *Otto v. Linford* (b), the late Master of the Rolls, Sir George Jessel, put the distinction, which is here referred to, with his accustomed clearness: "If you have a new principle or a new idea

A principle applied can.

(2) Hindmarch, p. 90.

(a) *Boulton v. Bull*, 1795, 2 H. Bl. 496; *Hornblower v. Boulton*, 1799, 8 T. Rep. 101; *Jupe v. Pratt*, 1837, 1 Web. P. C. 146; *Neilson v. Harford*, 1841, per Alderson, B., 1 Web. P. C. 342; *The Houshill Co. v. Neilson*, 1843, 1 Web. P. C. 673; 9 C. & F. 788;

Electric Telegraph Co. v. Brett, 1851, 10 C. B. 838; *Crossley v. Potter*, 1853, Macrory, P. C. 240; *Dangerfield v. Jones*, 1865, per Wood, V.-C., 13 L. T. N. S. 142.

(b) 1881, 46 L. T. 39; cp. *Badische Anilin v. Levinstein*, 1885, 2 P. O. R. 91; 4 P. O. R. 449.

Principles in practice.

as regards any art or manufacture, and then show a mode of carrying that into practice, you may patent that, though you could not patent the idea alone, and very likely could not patent the machine alone, because the machine alone would not be new.

“One of the strongest illustrations that I know of is the patent for the hot blast in the iron manufacture (*c*), where there was nothing new at all except the idea that the application of hot air instead of cold air to the mixture of iron ore and fuel would produce most remarkable results in the shape of economy in the purchase of iron. The inventor or discoverer could not patent that, but what he did was this: he said, ‘I will patent that idea in combination with the mode of carrying it out; that is, I tell you you may heat your air in a closed vessel next your furnace, and then that will effect the object.’ It was held that that would do” (*d*).

Minter v. Wells (*e*) is a case in point. This was an action for the infringement of a patent for “an improvement in the construction of chairs.” The claim was for “the application of a self-adjusting leverage to the back and seat of a chair, whereby the weight on the seat acts as a counterbalance to the pressure against the back of such chair.”

A rule *nisi* to enter a non-suit on the ground that the patent was bad as claiming a principle in mechanics, was refused by the Court of Exchequer. “Every invention of this kind,” said Lord Lyndhurst, C. B., “must include the application of some principle; and here the application of the principle of the lever to the construction of a reclining chair constitutes the machine, the invention of which the plaintiff claims. He does not, as is asserted, claim the principle in the summing-up of his specification, but he claims the invention of applying that principle in a certain manner and by certain machinery.”

Discoveries.

It is sometimes said that a *discovery* cannot be the subject of letters patent. In this statement “discovery” is used synonymously with “principle.” For instance, the persons who “discovered” abstract phenomena of electricity, or magnetism; the expansive power of steam; the fact that in the expansion of a gas in the performance of work there is a fall of temperature; or the existence of a metal or a medicinal herb; could not patent these “dis-

(*c*) The case here referred to is *Neilson v. Harford*, 1841, *ubi supra*.

(*d*) 1881, 46 L. T. 39; *op. Badische*

Anilin v. Levinstein, 1885, 2 P. O. R. 91; 4 P. O. R. 449.

(*e*) 1834, 1 Web. P. C. 127.

coveries," though any mode of applying them would, *cæteris paribus*, be patentable (*f*).

(4) *Amount of Invention.*

The only subject now remaining for consideration in this general sketch of the judicial interpretation of the words *any manner of manufacture* is this: How far is the application of known materials or appliances to new uses, and to produce new results, patentable? "It is impracticable," said Mr. Justice Chitty, in *Lister v. Norton* (*g*), "to frame propositions of a scientific character on this point. Every case must be decided on its peculiar merits, and with reference to its own special circumstances. The authorities are necessarily decisions on particular cases, and are useful only as affording some guide to the decision of the case before the Court."

No general rule.

The question under discussion invariably resolves itself into this: Does the art or manufacture which it is sought to patent display such an amount of invention as, in the circumstances, to entitle the inventor to a patent grant? In the judicial application of this test, it has been held (*h*) that (a) the *application* of old materials

Amount of invention.

(*f*) Cp. Trans. Inst. P. A., vol. vi. p. 232, 1887-88, G. B. Ellis.

(*g*) 1886, 3 P. O. R. at p. 205.

(*h*) Authorities for (a): *Hartley's Case* (after 1773), 2 H. Bl. 493; *Macintosh v. Everington*, 6 Rep. Arts. N. S. 317, 365; *Brunton v. Hawkes*, 1821, 1 Carp. P. C. 405; *Hall v. Jarvis*, 1822 (1 Web. P. C. 100), 4 B. & Ald. 541; *Kay v. Marshall*, 1841, 2 Web. P. C. 82; *Walton v. Potter*, 1841, 4 Scott, N. C. 91; 3 M. & G. 411; 1 Web. P. C. 597; *Muntz v. Foster*, 1844, 2 Web. P. C. 103; *Pow v. Taunton*, 1845, 9 Jur. 1056; *Reg. v. Cutler*, 1847, Macr. P. C. 124; 3 C. & K. 215; 14 Q. B. 372, n.; *Steiner v. Heald*, 1851, 6 Exch. 607; 11 Jur. 875; 20 L. J. Exch. 410; *Bush v. Fox*, 1852-56, Macr. P. C. 164; 2 Jur. N. S. 1029; 23 L. J. Ex. 257; 5 H. L. C. 707; 25 L. J. Ex. 251; Macr. P. C. 178; *Mackelcan v. Rennie*, 1862, 13 C. B. N. S. 52; *Penn v. Bibby*, *Penn v. Jack*, 1866, L. R. 2 Ch. 127; 37 L. J. Ch. 455; 15 W. R. 208; 15 L. T. N. S. 399; *White v. Toms*, 1867, 36 L. J. Ch. 264; 17 L. T. N. S. 348; *Rushton v. Crawley*, 1870, L. R. 10 Eq. 522. *Note.*—There must be an amount of invention, deemed sufficient by the Court, to make a merely new application of old materials or machinery patentable. Cp. *Brook v. Aston*, 1857, 8 E. & B. 478; 27 L. J.

Q. B. 145; 28 L. J. Q. B. 175; *Harwood v. The G. N. Rail. Co.*, 1860, 2 B. & S. 194, 222; 11 H. L. C. 654; 29 L. J. Q. B. 193; 31 L. J. Q. B. 198; 35 L. J. Q. B. 27; *Saxby v. The Gloucester Waggon Co.*, 1881, L. R. 7 Q. B. D. 305; 50 L. J. Q. B. 577; *Penn v. Bibby*, *ubi supra*, per Lord Chelmsford, L. C., L. R. 2 Ch. at p. 136; *Bamlett v. Picksley*, 1875, Griffin, P. C. 40.

Authorities for (b): *Edison and Swan Co. v. Woodhouse and Rawson*, 1887, 4 P. O. R. 79.

Authority for (c): *Moss v. Malings*, 1886, 3 P. O. R. 373.

Authorities for (d): *Morris v. Branson*, 1776, Bull. N. P. 76; 1 Carp. P. C. 30; 1 Web. P. C. 51; *R. v. Arkwright*, 1785, 1 Web. P. C. 71; *Boulton v. Bull*, 1795, 2 H. Bl. 489; *Jessop's Case* (before 1795), cited 2 H. Bl. 489; *Hornblower v. Boulton*, 1799, 8 Term Rep. 104; Dav. P. C. 233; *Ex parte Fox*, 1812, 1 V. & B. 67; 1 Web. P. C. 431; *Bovill v. Moore*, 1815-16, 2 Coop. Ch. Ca. 56; Dav. P. C. 361; 2 Marsh. R. 211; *Lister v. Leather*, 1857, 8 E. & B. 1017; *Ralston v. Smith*, 1865, 11 H. L. C. 223; *Fox v. Dellestable*, 1866, 15 W. R. 195; cp. *Bircot's Case*, 3 Inst. 184.

Authorities for (e): *Boulton v. Bull*, 1795, 2 H. Bl. 487; *Huddart v. Grimshaw*, 1803, Dav. P. C. 267; *Hill v.*

What patent-
able.

or methods to the production of new and useful results; (b) the modification of one element in an old combination; (c) a slight alteration in the shape of an old instrument, being new and very useful; (d) a new addition to an existing machine; and (e) a combination of old materials, by which a new, or a better or a cheaper, article is given to the public—may be patented.

What not
patentable.

Upon the other hand (*i*), (a) a particular application of an old contrivance; (b) an application of a known article to a known or analogous purpose; (c) an old combination with immaterial variations—are not patentable, unless they clearly involve an exercise of the inventive faculty and are not merely obvious.

In the interpretation of the statute, the word “manufacture” is almost synonymous with “invention” (*j*).

Thompson, 1817, 1 Web. P. C. 237; *Brunton v. Hawkes*, 1821, 4 B. & A. 550; *Lewis v. Davis*, 1829, 3 C. & P. 502; 1 Web. P. C. 488; 1 Carp. P. C. 471; *Saunders v. Aston*, 1832, 1 Carp. P. C. 510; *Carpenter v. Smith*, 1841, 1 Web. P. C. 538; 11 L. J. Ex. 213; *Crane v. Price*, 1840-42, per Tindal, C. J., 1 Web. P. C. 408; *Allen v. Rawson*, 1845, 1 C. B. 551; *Bovill v. Keyworth*, 1857, 7 E. & B. 725; 29 L. T. 194; 3 Jur. N. S. 817; *Lister v. Leather*, *ubi supra*; *Spencer v. Jack*, 1862-64, 3 De G. J. & S. 346; 11 L. T. N. S. 242; *Watling v. Stevens*, 1886, 3 P. O. R. 37; *Moseley v. Victoria Rubber Co.*, 1887, 4 P. O. R. 251; *Morton v. Middleton*, 1863, 1 Ct. of S. 3rd Ser. 721; *Foxwell v. Bostock*, 1864, 12 W. R. 725; *Wright v. Hitchcock*, 1870, L. R. 5 Ex. 37; 39 L. J. Ex. 97; *Murray v. Clayton*, 1872, L. R. 7 Ch. 577.

(*i*) Authorities for (a): *Reg. v. Cutler*, 1847-49, 14 Q. B. 372, n.; *Macr. P. C.* at p. 133; *Sharp v. Brauer*, 1886, 3 P. O. R. at p. 196. Here Bacon, V.-C., said: “There is not a suggestion that this gentleman, who is the plaintiff in the patent action, has invented anything in the world. He has been examined very fully, and upon his own statement it is clear and evident to me that he did not invent anything; but a luminous idea occurred to him that this old-fashioned thing (a screen), that everybody might have made and used whenever he liked, and wherever he liked, would be very handy if it was applied to a window, and so it is applied to a window. It is equally applicable to a fireplace.” His lordship then held that there was no valid patent.

Authorities for (b): See cases cited

supra; and, besides, *Losh v. Hague*, 1838, 1 Web. P. C. 207; *Telley v. Easton*, 1857, 2 C. B. N. S. 706; 26 L. J. C. P. 269; *The Patent Bottle Envelope Co. v. Seymer*, 1858, 5 C. B. N. S. 164; 28 L. J. C. P. 22; 5 Jur. N. S. 174. “Analogous purpose”: *Kay v. Marshall*, 1839-48, 5 Bing. N. C. 492; 7 Scott, 548; 8 L. J. C. P. 261; 2 Web. P. C. 71; judgment affirmed in the House of Lords, 8 C. & F. 245; West. 682; 5 Jur. 1028; 2 Web. P. C. 79; *Horton v. Mabon*, 1862, 31 L. J. C. P. 255; 12 C. B. N. S. 437; 10 W. R. 582; 6 L. T. N. S. 289; affirmed on appeal, 16 C. B. N. S. 141; 12 W. R. 491; 9 L. T. N. S. 815; *Ormsom v. Clarke*, 1862, 32 L. J. C. P. 8; 13 C. B. N. S. 337; 9 Jur. N. S. 749; 11 W. R. 118; 7 L. T. N. S. 361; affirmed in the Exchequer Chamber, 32 L. J. C. P. 291; 14 C. B. N. S. 475; 10 Jur. N. S. 128; 11 W. R. 787; *Willis v. Davison*, 1863, 1 N. R. 234; *Harwood v. The G. N. Rail. Co.*, 1860-65, *ubi supra*; *Ralston v. Smith*, 1865, 11 H. L. C. 223; 20 C. B. N. S. 28; 13 L. T. N. S. 1; 35 L. J. C. P. 49; *Jordan v. Moore*, 1866, L. R. 1 C. P. 624; 13 Jur. N. S. 766; 35 L. J. C. P. 268; 14 W. R. 769; *Parkes v. Stevens*, 1869, L. R. 5 Ch. 36; 18 W. R. 233; 22 L. T. N. S. 635; *Cropper v. Smith*, 1884, 1 P. O. R. at p. 90.

Authority for (c): *Rowcliffe v. Longford Wire Co.*, 1887, 4 P. O. R. at p. 281.

(*j*) *Cornish v. Keene*, 1837, per Tindal, C. J., 1 Web. P. C. at p. 508; 6 L. J. C. P. 225; and *cp. Bush v. Fox*, 1854, per Coleridge, J., *Macr. P. C.* 176; and *Ralston v. Smith*, 1865, per Lord Westbury, 11 H. L. C. 223.

It may sometimes be a question whether an article is properly subject-matter for a patent, or should be registered as a design. A design may be registered although it be for something which might have been patented (*k*). This point was considered in *Walker v. The Falkirk Iron Co.* (*l*). In that case, the proprietor of a registered design for kitchen-range fire-doors, brought an action for infringement thereof in the Court of Session. The defender pleaded, *inter alia*, that what was registered might have been patented, and therefore could not be properly registered as a design. It was held by the judge of first instance, Lord Maclaren, that the design was novel, and not patentable, and was properly registered, and that the pursuer was entitled to succeed. On the defender appealing, it was held by the Inner House that the design was novel, and that the fact that the pursuer might have obtained a patent was immaterial.

Patent or design?

(5) *Combinations in general.*

It may be said generally that every invention is either a combination, or the result of a combination.

Classification of patentable inventions.

The term "combination" (*m*), therefore, requires definition and analysis before we proceed any further.

Definition of combination.

This word signifies by derivation the putting of two things together, so as to convert a double into a single. Its original meaning has, however, been extended, and it now, in common parlance, imports the putting together, not of two only, but of any number of things, so as to form a single group, and indeed the putting together of any number of groups.

The meaning of "combination" in the law of patents is somewhat narrower. It is not the mere putting things together in the sense of juxtaposition: it includes also connection of some kind, so that the group, in consequence of the connection of its members, has properties or effects different from those possessed by its members separately.

Combinations may be divided roughly into five classes:—(1) New compounds, resulting from the chemical combination of two or

Classes of combinations.

(*k*) Registration protects the form, shape, pattern, or configuration of an article.

(*l*) 1887, 4 P. O. R. 390.

(*m*) See paper on "Combinations as subjects of Patent Claims," J. Imray,

Trans. I. P. A. vol. i. 130, from which the definition and classification here given of combinations have been largely adapted. See also Chapter on Claims, at p. 97.

more known substances, *e. g.*, the aniline dyes produced by combining aniline and its analogues with metallic salts; (2) a new mixture without actual chemical combination, *e. g.*, an alloy of two or more metals producing a compound metal presenting particular qualities; (3) a mechanical union of two or more materials, *e. g.*, macintosh cloth, resulting from the combination of a fabric with a film of caoutchouc; (4) dynamical combinations, including "machines" properly so called; and (5) processes, that is to say, combinations of operations, pursued in regular sequence. A process may be mechanical, *e. g.*, printing, or chemical, *e. g.*, soap making, or mechanical and chemical, *e. g.*, paper making.

(6) *Applications and Combinations of Old Materials, &c.*

The following kinds of inventions have been held to be good subject-matter for letters patent.

Applications. The application of old materials or methods to the production of new and useful results (*n*).

The authorities for this statement are collected above, see p. 23, note (*h*) (*a*). A few illustrations, however, may with advantage be given here.

Cases.
Good subject-matter.

A method of disposing plates of iron, so as to produce a useful effect, viz., to secure buildings from fire, is patentable, although here the application alone is new (*o*). But it may be doubted how far this is now good law.

A claim for the application of india-rubber in a state of solution as a cement between two fabrics to make a waterproof covering, is good, notwithstanding the application of other substances, and of india-rubber in other states to the same purpose (*p*).

In *Muntz v. Foster* (*q*), an action for the infringement of a patent for "an improved manufacture of metal plates for sheathing the bottoms of ships," Tindal, C. J., directed the jury in the following terms: "The plaintiff has by an experiment ascertained that a certain mixture of the alloy of zinc with copper will have the effect of producing a better sheathing, by reason and by means of its oxydating just in sufficient quantity; that is, not too much, so as

(*n*) In *Luckie v. Robson* (2 Jur. 201), it was held that a new adaptation of old materials is sufficient to ground an injunction against the infringement of a patent. Cp. *Re Martin and Hyam*, 1845, 3 W. R. 433; *Reynolds v. Amos*, 1886,

3 P. O. R. 215.

(*o*) *Hartley's Patent* (after 1773), 2 H. Bl. 493; 1 Web. P. C. 54—56.

(*p*) *Macintosh v. Everington*, 6 Reports, Arts. N. S. 317, 365.

(*q*) 1844, 2 Web. P. C. 103.

to wear away and impair the sheathing and render the vessel unsafe, but enough, at the same time, to keep, by its wearing, the bottom of the vessel clean from those impurities which before attached to it. . . . I look upon it that there is as much merit in discovering the hidden and concealed virtue of a compound alloy of metal, as there would be in discovering an unknown quality which a natural earth or stone possessed. We know by the cases that have been determined that where such unknown qualities have from the result of experiments been applied to useful purposes of life, that such application has been considered as the ground, and a proper ground, of a patent; and therefore when I come to that part of the case in which they seek to show this is not so, because these metal plates have been invented before—that is, persons have used them before—in my judgment it will not go far enough, unless there has been some application of them before to this very useful purpose.”

On the other hand, the application of an old invention to a new purpose is not patentable, unless there is some novelty in the application (*r*), *i.e.*, unless the new application lies so much out of the track of the former use as not naturally to suggest itself to the mind of a person turning his thoughts to the subject (*s*). No subject-matter.

In *Thompson v. James*, a suit to restrain the infringement of a patent for crinolines, it appeared that the invention consisted merely in the substitution of steel springs for whalebone and other elastic materials; Romilly, M. R., held that there was no subject-matter (*t*). Cases.

So, where a patentee claimed the application of either iron or steel tubes—when coated with copper, brass, or other alloys of copper—in the construction of tubular flues for steam boilers, and admitted that the coated tubes mentioned in the specification were not new, nothing more than the mere application of the tubes being claimed; Denman, C. J., held that the patent was invalid (*u*).

Again, in *Bush v. Fox* (*x*), an action for the infringement of a

(*r*) *Brook v. Aston*, 1859, per Campbell, C. J., 8 E. & B. at p. 485.

(*s*) *Penn v. Bibby*, 1866, L. R. 2 Ch. 127, per Lord Chelmsford. Cp. *Harwood v. G. N. Ry. Co.*, 1860-65, per Cockburn, C. J., 2 B. & S. 208. Where there is merely an improvement in a mode of manufacture, and no invention, that is not a proper subject for a patent: *White v. Toms*, 1867, per Malins, V.-C., 37 L. J. Ch. 204.

(*t*) 1863, 32 Beav. 570; cp. *Parkes v. Stevens*, 1869, L. R. 8 Eq. 367; affirmed on appeal, L. R. 5 Ch. 36; *Rushton v. Crawley*, 1870, L. R. 10 Eq. 522.

(*u*) *Reg. v. Cutler*, 1847, Macr. P. C. 124; *Slazenger v. Feltham*, 1889, 6 P. O. R. 130; *Cole v. Saqui*, 1889, 6 P. O. R. 41; reversing decision of Kekewich, J., 1888, 5 P. O. R. 489.

(*x*) 1852-56, Macr. P. C. 164-166, 178.

patent for improvements in the means of, and in the apparatus for, building and working under water, where the invention consisted in the use of a caisson or hollow cylinder, so constructed that the workpeople might be supplied with compressed air; and it was proved that an apparatus described in the specification of a prior patent was the same in all material respects as the plaintiff's, and that they differed only in their application—the one being for building on land, the other for constructing foundations under water; Pollock, C. B., directed the jury that the alleged invention was not a new manufacture, and this ruling was affirmed in the Exchequer Chamber and in the House of Lords.

In *Harwood v. The Great Northern Rail. Co. (y)*, a patent for the application of “fishes,” in order to connect the rails of railways, was held to be bad, because a similar contrivance had previously been applied to the purpose of connecting and fastening timbers placed vertically upon one another, or placed horizontally side by side.

In *Ormson v. Clarke (z)*, a patent for an improvement in the manufacture of cast tubular boilers was held invalid, under the following circumstances: Tubular boilers, such as those in question, were perfectly well known, and had long been used for the heating of horticultural buildings. The only novelty was the casting in one piece that which used formerly to be cast in several pieces. There was no claim for novelty in the process of casting. In a later case (*a*), it was held that iron and wood having long been used for the construction of the frame and coating of vessels, the application of wooden planking to the iron frame of a vessel without any peculiarity in the nature of that planking could not be the subject of a patent. “It is not only,” said Byles, J., “the substitution of one well-known and analogous material for another, that is, wood for iron, to effect the same purpose on an iron vessel, but it is the application of the same old invention, viz., planking with timber, which was formerly done on a wooden frame, to

(y) 1860, 2 B & S. 194, 22; 11 H. L. C. 654. Cp. *Losh v. Hague*, 1838, 1 Web. P. C. 208; *Kay v. Marshall*, 1839-48, 2 Web. P. C. 71-79; *Horton v. Mabon*, 1862, 12 C. B. N. S. 437; 16 C. B. N. S. 141.

(z) 1862, 1863, 13 C. B. 339; 14 C. B. 490. Cp. *Williams v. Nye*, 1890, 7 P. O. R. 62.

(a) *Jordan v. Moore*, 1866, L. R. 1 C. P. 624. Cp. 1 *Hill v. Tombs*, Engineer,

April 15, 1881, p. 274, cited Johns. Pat. Man. 48; *Calvert v. Ashburn*, Pract. Mech. Jour. Vol. 7, 2nd ser. 971; *ib.* 49; *Hyde v. Trent*, Newt. Lond. Jour. Vol. 45, 135; Johns. Pat. Man. 45; *Oddy v. Smith*, 1888, 5 P. O. R. 503; *Longbottom v. Shaw*, 1888, *ib.* 497; L. R. 43 Ch. D. 46; *Tickelpenny v. Army and Navy Co-operative Society*, 1888, *ib.* 405.

an analogous purpose, or rather the same purpose on an iron frame.”

The doctrine that a patent cannot be claimed for applying an old machine to an analogous purpose is not applicable where there is a new machine, although that new machine may contain old and well-known mechanical appliances (*b*). In *Thomson v. Batty* (*c*), it was held that an invention to steady a compass by means of a bowl filled with a viscous fluid, which operated by the friction of the fluid against the sides of the bowl in which the fluid was itself contained, was not anticipated by an invention in which a compass bowl was steadied by being placed in another bowl filled with a viscous fluid, where the steadying effect was produced by the resistance of the fluid to the sides of the compass bowl.

A combination of old materials, by which a new, or a better, or a cheaper, article is given to the public, is good subject-matter (*d*). Combination
of old
materials.

Thus, in *Allen v. Rawson* (*e*), a patent for improvements in the treatment of felted fabrics, which consisted in the application of soap and water in combination with rollers in the process of fulling, was held valid, although the use of *acidulated* water was known, and the use of rollers was also known.

In *Wright v. Hitchcock* (*f*), an action for the infringement of a patent for improvements in the manufacture of frills or ruffles, and in the machinery or apparatus employed therein, it was proved that anterior to the date of the patent those articles were made by hand, the material being folded by a knife, and then sewn so as to keep it permanently folded. According to the plaintiff's invention the fabric was folded by a reciprocating knife, and the folds stitched by the sewing machine, so as to be kept permanently in their place. The invention was admitted to be novel, and to produce the result more cheaply and conveniently than the method previously known. It was held that there was good subject-matter for a patent.

The modification of one element in an old combination may be patentable. Material
variation of
element of
combination.

In *Edison and Swan Co. v. Woodhouse* (*g*), an action for the

(*b*) *Siddell v. Vickers*, 1888, 5 P. O. R. 430.

(*c*) 1889, 6 P. O. R. 84.

(*d*) See authorities collected *supra*, pp. 23, 24; *Crane v. Price*, 1842, 1 Web. P. C. 393. It seems that such a combination is patentable, although the constituent parts are already known in

combination: *Carpenter v. Smith*, 1841, per Lord Abinger, C. B., 1 Web. P. C. 538.

(*e*) 1845, 1 C. B. 551.

(*f*) 1870, L. R. 5 Ex. 37.

(*g*) 1887, 4 P. O. R. 79. Cp. *Moss v. Malings*, 1886, per North, J., 3 P. O. R. at pp. 378, 379.

infringement of patents for improvements in electric lamps and in the method of manufacturing the same, the plaintiffs' second claim was for "the combination of a carbon filament within a receiver made entirely of glass, through which the leading wires pass, and from which receiver the air is exhausted for the purposes set forth." In two prior instances of alleged anticipation, substantially the same instrument had been constructed, the use of a filament of carbon instead of a rod of carbon being the sole change introduced by Mr. Edison. It appeared, however, that this modification was no casual matter, but was intended to bring about, and did bring about, a result which a rod could never produce, viz. high resistance to the electric current with great durability. It was held by Fry and Bowen, L.JJ. (Cotton, L. J., dissenting), that the subject-matter of the plaintiffs' patent was good.

Immaterial variations of element of combination.

An old combination, however, with immaterial variations, is not patentable.

Thus, in *Rowcliffe v. Longford Wire Co. (h)*, the grantee of a patent for improvements in frames for woven or elastic wire-web mattresses brought an action for infringement. The defendants denied the alleged infringement, and alleged the patent to be invalid, *inter alia*, on the ground of want of subject-matter. The patent claimed a rectangular framework, which was substantially that of the old four-post bedstead, and differed from that only—in not having any legs or posts; in having the transverse sliding piece on the top of the sides instead of in grooves along the sides; and in having the feet and head raised above instead of being flush with the sides. It was held by Kay, J., that the alleged invention was not the subject-matter of a patent.

In *Herrburger v. Squire (i)*, it was held that the mere alteration of the position of the centre of a bent lever is not patentable.

The substitution of a pivot for a hinge in a machine for punching nails is not sufficient to support a patent (*k*).

(7) Additions.

A new addition to an existing machine is patentable. The history of the law upon this point is conveniently summarized in the judgment of Buller, J., in *Boulton v. Bull (l)*, "That a patent for

(h) 1887, 4 P. O. R. 281. (k) *United Horsenail Co. v. Swedish Horsenail Co.*, 1889, 6 P. O. R. 1.
 (i) 1889, per Fry, L. J., 6 P. O. R. at p. 194. (l) 1795, 2 H. Bl. 489.

an addition or improvement may be maintained is a point which has never been directly decided, and *Bircot's Case* (3 Inst. 184) is an express authority against it, which case was decided in the Exchequer Chamber. What were the particular facts of that case we are not informed^(m), and there seems to me to be more quaintness than solidity in the reason assigned, which is, that it was to put but a new button to an old coat, and it is much easier to add than to invent. If the button were new, I do not feel the weight of the objection that the coat on which the button was to be put was old. But, in truth, arts and sciences at that period were at so low an ebb, in comparison with that point to which they have been since advanced, and the effect and utility of improvement so little known, that I do not think that case ought to preclude the question. In later times, whenever the point has arisen, the inclination of the Court has been in favour of the patent for the improvement, and the parties have acquiesced where the objection might have been brought directly before the Court. In *Morris v. Branson*, which was tried at the sittings after Easter Term, 1776, the patent was for making eyelet holes of network in silk, thread, cotton, or worsted: and the defendant objected that it was not a new invention, it being only an addition to the old stocking frame. Lord Mansfield said: 'After one of the former trials on this patent, I received a very sensible letter from one of the gentlemen who was upon the jury, on the subject whether, on principles of public policy, there could be a patent for an addition only. I paid great attention to it, and mentioned it to all the judges. . . . That objection would go to repeal almost every patent that ever was granted.' There was a verdict for the plaintiff, with 500% damages, and no motion was made in arrest of judgment. Though his lordship did not mention what were the opinions of the judges, or give any direct opinion himself, yet we may safely collect that he thought, on great consideration, the patent was good; and the defendant's counsel, though they had made the objection at the trial, did not afterwards persist in it. Since that time it has been the generally received opinion in Westminster Hall that a patent for an addition is good. But then it must be for the addition only, and not for the old

Boulton v. Bull.

Morris v. Branson.

^(m) The patent in *Bircot's Case* related to the preparing and melting of lead ore: 3 Inst. 181; 1 Web. P. C. 31, n. (p).

machine too. In *Jessop's Case* . . . the patent was held to be void, because it extended to the whole watch, and the invention was of a particular movement only."

That a new addition to an existing invention is patentable no longer rests on judicial opinion, but has been affirmed in a series of cases, extending from *Ex parte Fox* (n), in 1812, to the present day.

The dictum of Malins, V.-C., in *Fox v. Dellestable* (o) must be borne in mind :

Position of
patentee of
improvement
on a patented
invention.

"No doubt a man may make an invention which is partly covered by an existing patent, but he cannot use it without the license of the patentee. He may wait for the expiration of the patent, and take out one himself if his invention be novel, and that patent will be valid."

SECT. 3.—NOVELTY.

(1) *General.*

Novelty of
subject-
matter.

"The only thing which a patentee gives to the public is a knowledge of his invention, and a patent is, in effect, a bargain between the patentee and the public, in which the public, in consideration of an inventor communicating to them a knowledge of his invention, so that they may afterwards be enabled to practise it, grant to him the sole use of his invention for a limited time. But if an invention is not new, the patentee does not communicate anything to the public which they did not know before, and therefore the patentee gives them nothing which can be considered as a consideration for the grant, and therefore the patent is wholly void" (p).

Consideration
for the grant.

Want of
novelty in
material part
of invention
avoids grant.

Want of novelty in any material part of an art or invention renders the patent grant void, even as to those parts of the invention which may be new, and otherwise proper subjects for a patent grant—because the consideration for a patent is *entire*, and also because in such a case there is a false suggestion or representation appearing on the face of the patent (q).

(n) 1 V. & B. 67; 1 Web. P. C. 431.
(o) 1866, 15 W. R. 195. Cp. *Ex parte Fox*, 1812, 1 V. & B. 67; *Lister v. Leather*, 1857, per Campbell, C. J., 8 E.

& B. 1017.

(p) Hindmarch, pp. 103, 104.

(q) Cp. Hindmarch, p. 115; also *Hill v. Thompson*, 1818, 2 B. Moo. 457; 8

Authority, as well as reason, is clear upon this point. That the grant of a privilege in a known art or trade is illegal, was decided in several cases before the Statute of Monopolies (*r*), is distinctly recognized by the language of that statute, and has uniformly been held by the Courts of Law ever since.

The law before Statute of Monopolies.

A more difficult question is raised, however, when we seek to define the necessary *degree* of novelty, and it is, of course, impossible to lay down rules which will absolutely and clearly govern every case that may arise.

Degree of novelty.

Still, it may be affirmed, with sufficient accuracy for general purposes, that an invention once brought to the knowledge of the public cannot be made the subject of a valid patent grant. "If the public," says Hindmarch (*s*), in language approved of and adopted by Lord Blackburn (*t*), "once become possessed of an invention by any means whatever, no subsequent patent can be granted for it, either to the true or first inventor himself, or to any other person; for the public cannot be deprived of the right to use the invention, and a patentee of the invention could not give any consideration to the public for the grant, the public already possessing everything that he could give."

General principle.

The public may obtain this knowledge by prior publication, or by prior user, either of the invention itself, or of another invention so closely analogous to it that nothing substantially new remains to be disclosed.

Prior publication and user.

(2) *Prior Publication.*

Publication of an invention in a book, pamphlet, newspaper, &c., or in a specification, will invalidate a patent granted on an application made after such publication.

Prior publication.

Taunt. 401; 1 Web. P. C. 249; *Brunton v. Hawker*, 1821, 4 B. & Ald. 541; 1 Carp. P. C. 405; *Lewis v. Marling*, 1829, 10 B. & C. 27; 5 M. & R. 70; 4 C. & P. 58; 1 Web. P. C. 497; *Kay v. Marshall*, 1839, 5 Bing. N. C. 501; 7 Scott, 561; *Gibson v. Brand*, 1842, 4 M. & G. 179; 4 Scott, N. R. 844; 1 Web. P. C. 631; *Muntz v. Foster*, 1844, 2 Web. P. C. 112; *Templeton v. Macfarlane*, 1848, 1 H. L. C. 595; *McCormick v. Gray*, 1861, 7 H. & N. 25; 31 L. J. Ex. 42; *United Horse Nail Co. v. Stewart*, 1885, 2 P. O. R. 132.

(*r*) *Hastings' Patent*, 1561, Noy, R. 182; 1 Web. P. C. 6; *Matthey's Patent*, Eliz., Noy, R. 178; 1 Web. P. C. 6; *Humphrey's Patent*, Noy, R. 183; 1 Web. P. C. 7; *Darcy v. Allin*, 1602, Noy, R. 182; 1 Web. P. C. 6; *Clothworkers of Ipswich Case*, 1615, Godb. 254; 1 Rol. R. 4.

(*s*) Page 33.

(*t*) *Patterson v. The G's Light and Coke Co.*, 1875, 3 App. Cas. at p. 244. See *infra*, p. 493, as to publication at international and industrial exhibitions; also as to applications under International Convention, see p. 408.

Cases on
prior publica-
tion in books,
&c.

Rex v. Arkwright (y). Here a part of the alleged invention had been described in *Emerson's* book on mechanics, published long before the date of the patent, and it was held, therefore, not patentable.

Hill v. Thompson (z). The Court of Common Pleas held that a book printed and published prior to the grant of the patent, which *in substance* informed the public of what the specification of the patent professed to inform them, completely negatived the novelty of the alleged invention (*a*).

It must, however, be noted that a mere barren general suggestion published in some book will not avoid, for want of novelty, a subsequent practical application of it in an invention productive of beneficial results. The principle laid down in the cases (*b*) decided upon this point cannot be better stated than in the language of Mr. Justice Grove in *Philpott v. Hanbury (c)*. "I am willing to rest my definition or description of what anticipates a patent on this: that there must be a publication which, when read by persons versed in the trade, skilful and well acquainted with the trade (I might even limit it, perhaps, to those in the trade who are most skilled—the higher class of skilled workmen), would enable them to understand it. If it be such, it anticipates the patent. If it is a mere suggestion, if it is so erroneous in the description, that they cannot, by reasonable application of the mind, find out what it means, it does not anticipate the patent. But if it reasonably discloses what the invention is, so that a person skilled in the trade can practice the invention from it, then I am of opinion that there is anticipation."

Imported
foreign books.

The importation of a foreign book into this country, containing a description of an invention, would not be sufficient to defeat a subsequent patent for it, unless the work was actually published and sold here prior to the date of the patent; or deposited in some place to which the public can, and naturally do, resort for information upon such subjects. In either case the book must be written in a language generally understood.

(y) 1785, Dav. P. C. 61; 1 Web. P. C. 64; 1 Carp. P. C. 53.

(z) 1818, 2 B. Moo. 449; 8 Taunt. 375; 1 Web. P. C. 244.

(a) Cp. also *Gibson v. Brand*, 1842, 1 Webs. P. C. p. 628; per Tindal, C. J., *The Househill Co. v. Neilson*, 1843, 1 Web. P. C. 718, n.; *R. v. Steiner*, 1851, 40 Newton's London Journal, 71.

(b) *Betts v. Menzies*, 1857, 1 E. & E. 1038; 10 H. L. C. 157; 31 L. J. Q. B. 233; *Hills v. Evans*, 1862, 31 L. J. Ch. 463; 8 Jur. N. S. 529; 6 L. T. N. S. 93; *Betts v. Neilson*, 1868, L. R. 3 Ch. 429; 37 L. J. Ch. 321; *Neilson v. Betts*, 1871, 5 H. L. 2; 40 L. J. Ch. 317; *Plimpton v. Malcolmson*, 1875, per Jessel, M. R., 3 Ch. D. 566.

(c) 1885, 2 P. O. R. at p. 43.

Heurteloup's Patent (d). The deposit of a foreign work in the British Museum, containing the specification of a French patent for an invention, in great part the same as that for which a patent had subsequently been obtained in England, was sufficient to vitiate the latter patent on the ground of want of novelty.

The Househill Company v. Neilson (e).—Lord Brougham's statement, "It must not be a foreign book," is qualified and explained by the succeeding clause "but published in England."

Otto v. Steel (f).—Here the defendant sought to give in evidence, in proof of anticipation, a French book which was in the Inner Library of the British Museum. It was held by Mr. Justice Pearson that as the defendant adduced no evidence of such book having been actually used, or of any other copies of it having been introduced into England, it was inadmissible. On this point Justice Pearson said: "The question is, whether or not this book has been published in this country in such a way as to become part of the public stock of knowledge in this country. It is not, to my mind, necessary for that purpose to show that it has been read by a great many people, or that any person in particular has got from it the exact information which it is said would have enabled Dr. Otto" (the plaintiff) "in this case to have made his engine. But to my mind it must be published in such a way as that there may be a reasonable probability that any person, and amongst such persons Dr. Otto, might have obtained that knowledge from it."

Jones v. Berger (g). "I think it is an objection to the patent, and not evidence simply of an objection, that there has been a previous patent and a specification enrolled, and therefore published, being enrolled, containing the invention." Cases on prior publication in specifications.

Muntz v. Foster (h). If a patentee has had his mind furnished with the material of his invention by a prior specification, and has merely put it into a more detailed shape, it would neither be a new invention, nor would he be the first and true inventor.

Dobbs v. Penn (i). A patent granted to A. for "improve-

(d) 1836, 1 Web. P. C. 563.

(e) 1843, 1 Web. P. C. 718, n.

(f) 1886, 3 P. O. R. 109. If a person has drawn a picture of a machine without describing it, and published that picture in a book, and that picture was one which any mechanist would understand, and make a machine from that picture alone, then a person cannot take out a patent in respect of a machine substantially the same: per the Master

of the Rolls, *Herrburger v. Squire*, 1889, 6 P. O. R. 194. See also *Lang v. Gisborne*, 1862, 21 L. J. Ch. 769; and *Plimpton v. Malcolmson*, 1875, L. R. 3 Ch. D. 531.

(g) 1843, 1 Web. P. C. 550; 6 Scott, N. R. 219, per Maule, J.; cp. *Cornish v. Keene*, 1835, per Tindal, C. J., 1 Web. P. C. 510; *King v. Anglo-American Brush Co.*, 1889, 6 P. O. R. 423.

(h) 1844, 2 Web. P. C. 107.

(i) 1849, 3 Exch. 427.

Prior publica-
tion in
specifications.

ments in the construction of racks and pulleys for window blinds, and other useful purposes," besides claiming a mode of making the frames by constructing them in a particular manner of drawn open metal tubes, claimed a mode of fixing the pulley in the frame by turning the knob of the spindle upon which the pulley revolved, and thereby of screwing a piece of metal, made to slide within the frame, tight to the edge of the frame, by which means the pulley spindle became firmly fixed to the frame. By a patent previously granted to B., the same object was effected by a similar method, but with the addition merely of a piece of thin metal, called an escutcheon, which worked outside the frame; but the specification stated that the pulleys might be made without the escutcheon. It was held that the two patents were substantially the same as to one of the things claimed, and therefore that A.'s patent was void.

Betts v. Menzies (i). "To defeat a new patent, it must be clear that the antecedent specification disclosed a practical mode of producing the result, which was the object and effect of the subsequent discovery."

Publication
by provisional
specification.

Lawrence v. Perry (j). The plaintiff, as assignee of a patent for "improvements in lead and crayon holders," brought an action for infringement against the defendants, who alleged that there had been prior publication of the invention, *inter alia*, by fifteen specifications. It was held by Justice North, that two of these specifications anticipated the plaintiff's patent, which was therefore declared invalid. In dealing with one of the specifications, his lordship said (*k*), that the "publication of a provisional specification may be a sufficient anticipation of a subsequent patent is clear from the remarks of Sir George Jessel in *Stonor v. Todd (l)*, if any authority were necessary on such a point. In this case I find a clear description how to construct an instrument which is completely covered by the first claiming clause of the plaintiff, and this is, in my opinion, quite sufficient to prevent their being subsequent first and true inventors within the realm of the instrument so described." Anticipation of an invention by a foreign specification published in England has already been mentioned on the last page. A leading case upon the subject is:—

United Horse Nail Co. v. Stewart & Co. (m). The only ques-

(i) 1858-62, 10 H. L. C. 117, per Lord Westbury.

(j) 1885, 2 P. O. R. 179.

(k) At p. 187.

(l) 1876, L. R. 4 Ch. D. 58; 46 L. J.

Ch. 32.

(m) 1885, 2 P. O. R. 133, per Lord Kinnear, distinguishing *Plimpton v. Spiller*, 1876-77, L. R. 4 Ch. D. 286, where an American book, said to have been de-

tion, therefore, is whether the American specification has been shown to have come within the knowledge of persons interested in the subject-matter in this country. *A.*'s evidence is that a full copy of the specification and drawings, as contained in a volume which he exhibited, was deposited in February, 1876, in the Library of the Patent Office; that the library is open to the public, and that the volume was so placed as to be accessible to all persons making use of the library. It appears to me that a specification deposited for so long a time in the public library of the Patent Office must be considered to have been brought within the knowledge of persons interested in the subject of the patent.

American
specification
in Patent
Office
Library.

A strong *prima facie* case of novelty, attested by commercial success, will not be defeated by the mere production of models anticipating the patentee's invention—no proof being given as to the persons by whom the instructions under which, and the purpose for which, such models were made (*n*).

In *Herrburger v. Squire* (*o*), an invention which was held to be merely the adjustment in a more beneficial manner of the distance between two of the working parts of a known machine, was held to be anticipated by a drawing in a previous specification which showed the same position of parts, though the subject of that invention was the substitution of metal for wood.

Where the only anticipation alleged is by description in a specification or otherwise, it must be such as would enable any competent person to make from it the machine for which protection is claimed (*p*).

Previous
description
must be
adequate.

A patentee does not anticipate himself by merely telling the public before the date of his patent that a particular result is desirable without disclosing any means of attaining it (*q*).

A patent is not anticipated by prior specifications dealing with analogous applications of the same subject-matter, but not describing a practical mode of producing the patented article (*r*).

posited in the Patent Office Library, was held by the Court never to have been there in the sense of being accessible to that portion of the public which consists of persons conversant with this particular subject.

(*n*) *Ehrlich v. Ihlee*, 1888, per Kekewich, J., 5 P. O. R., at pp. 206, 207.

(*o*) 1888, 5 P. O. R. 393.

(*p*) *Ehrlich v. Ihlee*, per Cotton, L. J., 5 P. O. R. 450. In this case it appeared that circular cards and longi-

tudinal bands were both well known and used in looms; and that longitudinal bands had been long used in musical instruments. It was held that there was invention in applying the circular cards to musical instruments.

(*q*) *Thomson v. Batty*, 1889, 6 P. O. R. 84.

(*r*) *Thomson v. American Braided Wire Co.*, 1889, 6 P. O. R. 518; *Winby v. Manchester, &c., Steam Tramway Co.*, 1889-90, 6 P. O. R. 559; 7 P. O. R. 30.

German specifications in Patent Office Library.

Harris v. Rothwell (t).—Two specifications, in the German language, of German patents for plaiting and knitting machines, together with drawings, were deposited in the Patent Office Library, the one considerably more than two years, and the other forty days, before a patent obtained in England. Entries of such specifications were duly published in the Patents Journal amongst the list of German Patents, and described therein as patents for plaiting and knitting machines, a footnote being appended to the list stating that the specifications might be consulted at the Free Public Library of the Patent Office. It was held that having regard to the facilities of access to the library, to the information given in the Patents Journal, and the length of time during which the specifications had been available for inspection, the question whether there had been previous publication in England so as to avoid the English patent must be answered in the affirmative; and that in determining a question of prior publication, it was immaterial whether the publication was in German or in English, or in any other language, so long as it was in a language generally understood (*u*).

Novelty—is it a question of evidence or construction.

Is the novelty of an invention a question of evidence or of construction? It is thought that the following proposition accurately expresses the law upon this subject (*x*).

Where the two inventions are described in common language which the judge is sure that he understands, and are plainly identical, “novelty” is a question to be determined by the Court alone; but where in the description of the two conflicting inventions there occur terms of art or commerce, upon which experts must be examined and evidence led, “novelty” is a question of fact, and must be determined by the jury if there be one.

(3) *Prior User.*

Prior user.

Prior user of an invention in public, by the public, or by the inventor himself, is sufficient to invalidate a subsequent grant.

(*t*) 1886, 3 P. O. R. 383; also 1888, 4 P. O. R. 225.

(*u*) Page 389; cp. also *Lang v. Gisborne*, 1862, per Romilly, M. R., 31 Beav. 135; 31 L. J. Ch. 769. Observations on that case per Jessel, M. R., in *Plimpton v. Malcolmson*, 1875, L. R. 3 Ch. D. 561; *United Telephone Co. v. Harrison*, 1882-83, L. R. 21 Ch. D. 720; 51 L. J. Ch. 705.

(*x*) *Bramah v. Harcastle*, 1789, Holroyd, 81; 1 Carp. P. C. 168; *Cornish v. Keene*, 1837, 1 Web. P. C. 519; 2 Hodg. 294; 3 Bing. N. C. 588; *Elliott v. Aston*, 1840, 1 Web. P. C. 222; *Muntz v. Foster*, 1844, 2 Web. P. C. 107; *Booth v. Kennard*, 1856-57, 2 H. & N. 95; *Betts v. Menzies*, 1857-58, 10 H. L. C. p. 152, per Lord Westbury, L. C.; *Thomas v. Foxwell*, 1858-59, 5 Jur. N. S. 37; 6 Jur. N. S. 271.

The reasons for this rule cannot be better stated than in the language of Hindmarch (*y*), "A public use of an invention is sufficient to avoid a subsequent patent for it for three reasons: *firstly*, because the public use of an invention is evidence of a public knowledge of it; *secondly*, because the Statute of Monopolies expressly requires that an invention granted by patent shall be such as others (than the inventor), at the time of making the patent or grant, *do not use*; and *thirdly*, because every patent expressly requires that the invention comprised in it shall be new as to the public use of it." Reasons for the rule.

The novelty of an invention is destroyed by prior public user of the same or a similar invention. Prior public user.

Carpenter v. Smith (*z*). This was an action for the infringement of a patent for improvements in locks. It was shown that a lock substantially the same as the plaintiff's had been put upon a gate in a public place, and used by Mr. Davies for many years before the date of the patent. Verdict for the defendants *nisi prius*. Motion for a new trial on the ground of misdirection dismissed by the Court of Exchequer (*a*).

There must be *user* of the invention, and there is no user in the eye of the law without evidence of both *disclosure* and *actual use*. Disclosure with user.

Dollond's Patent (*b*). Case for the infringement of a patent for a new method of making the object-glasses of refracting telescopes. At the trial it was proved that one Dr. Hall had made such glasses in 1720, but had not disclosed the secret. The patent was supported. Cases.

Bentley v. Fleming (*c*). Case for the infringement of a patent of 21st December, 1841, No. 9207, for improvements in machinery for making cards for carding cotton, &c. It was contended by the defendant that the patent was avoided by the public use of the machine in a public room before the grant, and that a machine which was in complete working order for a long period before the grant was not the subject for a patent. Justice Cresswell overruled both objections, and as to the latter, which

(*y*) Page 108.

(*z*) 1842, 1 Web. P. C. 534, 540; 9 M. & W. 300.

(*a*) Cp. *Stead v. Williams*, 1843, 2 Web. P. C. 136; *Stead v. Anderson*, 1846, 2 Web. P. C. 146; *Heath v. Smith*, 1854, 2 Web. P. C. 268; 3 E. & B. 256; 2 C. L. R. 1584; 18 Jur. 601; 23 L. J. Q. B. 167; *Re Adamson's Patent*, 1856, 6 De G. M. & G. 420; 25 L. J. Ch. 456.

See an interesting comment on *Carpenter v. Smith*, in Hindmarch, p. 111.

(*b*) 1776, cited 2 H. Bl. 470, 487; Parl. Rep. 182; 1 Web. P. C. 43. See also this case commented upon in Godson, *Patents for Inventions*, p. 62; and in *Boulton and Watt v. Bull*, 1793-99, Dav. P. C. 162.

(*c*) 1844-45, 1 Car. & K. 587; 1 C. B. 479.

is the one in point, said, "You cannot contend that if a man were to keep his invention shut up in a room for twenty years, that circumstance merely would deprive him of his right to obtain a patent for it."

Betts v. Menzies (d). Here the plaintiff had manufactured a quantity of the capsules—which were the subject-matter of his patent—before the date of the patent, but the manufacture was not carried on openly in the course of business, and none of the capsules had been sold. Held, that there was no "user" of the invention.

User in public
necessary.

Again, the invention must have been used *in public*. The language of Baron Pollock, in *Croysdale v. Fisher* (e), is of considerable importance, as bearing upon the definition of the term "public." "It is obvious that in almost all cases of user, it does not profess that there is a publication to the world, as there is in the case of a specification, or in the case of a book that is largely disseminated; because the more, perhaps, as different modes of refinement, variations and improvements continue to multiply, the more does it happen that one portion of the manufacturing world does not know what is going on or what is being done by another portion. Certainly, still more does the public not know with very great nicety, unless concerned either as manufacturers or traders, what is going on in the different laboratories or manufactories attached to any particular trade. When it is said that a process has been disclosed, or an invention has been disclosed by means of user, it is not necessary that such user should be a user by the public proper, provided only there is a user in public, that is to say, in such a way as contradistinguished from a mere experimental user, with a view of patenting a thing which may or may not be existing."

Test of prior
user sufficient
to avoid
patent.

In *Humpherson v. Syer* (f), Lord Justice Fry suggests what, it is submitted, will be found to be an accurate test whether or not there has been prior public user of an invention. Is it a fair conclusion from the evidence that some English people, under no obligation of secrecy, arising from confidence or good faith towards the patentee, knew of the invention at the date of the patent?

(d) 1857-62, 8 E. & B. 937; 1 E. & E. 990, 1008; *Betts v. Neilson*, 1868-71, per Lord Chelmsford, L. C., 3 Ch. 431.

(e) 1884, 1 P. O. R. at p. 21.

(f) 1887, 4 P. O. R. 407. In *Tickelpenny v. Army and Navy Co-operative Society*, 1888, 5 P. O. R., at p. 410, Kekewich, J., doubted whether, having regard to *Humpherson v. Syer*, *supra*, the

mere preparation and discussion of plans between directors and their architects could be an anticipation. See instances of prior user, *Hutchison v. Pattullo*, 1888, 5 P. O. R. 351; *Podmore v. Wright & Co.*, 1888, *ibid.* 380; *Hollins v. Capper & Co.*, 1888, *ibid.* 289; *Edmond's Patent*, 1889, 6 P. O. R. 353.

Notorious prior user of an invention may invalidate subsequent letters patent, although such user has been discontinued before the date of the patent grant (*g*). If the prior user, however, was discontinued under such circumstances that the invention was entirely lost sight of, and unknown to the public, a different question would be raised (*h*).

Jones v. Pearce (*i*). The patent related to the application of the suspension principle to the wheels of carriages. At the trial it appeared that a pair of wheels on the suspension principle had been made by a Mr. Strutt in 1814, and applied to a cart used for carrying stones on the public roads. Mr. Justice Patteson directed the jury: "If this wheel, constructed by Mr. Strutt's order in 1814, was a wheel on the same principles, and in substance the same wheel as the other for which the plaintiff has taken out his patent, and that was used openly in public, so that everybody might see it, and the use had continued up to the time of taking out the patent (*k*), undoubtedly that would be a ground to say that the plaintiff's invention was not new. But if you are of opinion that Mr. Strutt's invention was an experiment, that he found it did not answer, and ceased to use it altogether, and abandoned it as useless, and no one else followed it up, and that the plaintiff's invention which came afterwards was his own invention, and remedied the defects of Mr. Strutt's wheel, then there is no reason for saying that the plaintiff's patent is not good."

Mere experimental user.

Murray v. Clayton (*l*). "I am not aware of any principle or authority upon which the exhibition of a useless machine, which turns out a failure, can be held to affect the rights of a patentee who has made a successful machine, although there may be a degree of similarity between some of the details of the two machines."

A worthless and abandoned experiment may be an anticipation of a subsequent invention if it describe that invention in terms which fully and sufficiently disclose it, and the manner in which it is to be practised (*m*).

(*g*) *The Househill Co. v. Neilson*, 1843, 1 Web. P. C. 709, 710, 717; *Morgan v. Windover*, 1888, 5 P. O. R. 296.

(*h*) Cp. Lord Lyndhurst, L. C., at p. 717, *supra*; also *Carpenter v. Smith*, 1841-42, per Alderson, B., 1 Web. P. C. 534; *Shaw v. Jones*, 1889, 6 P. O. R. 336.

(*i*) 1832, 2 Coop. Ch. Ca. 58; 1 Web. P. C. 121.

(*k*) As to this, see the comment of Baron Alderson in *Carpenter v. Smith*, *ubi supra*.

(*l*) 1872-73, per James, L. J., L. R. 7 Ch. at p. 581.

(*m*) *Kaye v. Chubb*, 1888, 5 P. O. R. 641; cp. *Haslam Co. v. Hall*, 1888, 5 P. O. R., at p. 19; *Barlow v. Baylis*, 1870, Griffin P. C. 44.

Experimental
user.

The utilisation for electric lighting of a product previously discovered in experiments unconnected with electric lighting, has been held to be good subject-matter for a patent (*n*).

The novelty of an invention is not destroyed by prior experimental, or confidential user.

Lewis v. Marling (*o*). Action for the infringement of a patent for certain improvements on shearing machines. It was proved by the defendant that the specification of a similar machine had previously been enrolled in America, that a model of an exactly similar machine had been exhibited to three or four persons in England, and that a manufacturer in England had commenced the construction of a machine from the American specification. Patent supported (*p*).

Bentley v. Fleming (*q*). If the inventor of a machine lend it to another in order to have its qualities tested, and that other use it for some weeks in a public workroom, this is not giving the invention such publicity as to deprive the inventor of his right to obtain letters patent for it.

Newall v. Elliott and Glass (*r*). "Is an experiment performed in the presence of others, which not only turns out to be successful, but beneficial, in the particular instance, necessarily a gift of the invention to the world? We think it is not. . . . A necessary and unavoidable disclosure to others, and, as here appears, if it be only made in the course of mere experiments, is no publication; although the same disclosure, if made in the course of a profitable use of an invention previously ascertained to be useful, would be a publication."

Confidential
user.

Morgan v. Seaward (*s*). Patent for certain improvements in steam engines, and in machinery for propelling vessels. It was proved at the trial that before the date of the patent, Galloway,

(*n*) *Edison & Swan Co. v. Holland*, 1888, 5 P. O. R. 482.

(*o*) 1829, 4 C. & P. 55; 1 Web. P. C. 492; 1 Carp. P. O. 477; also 10 B. & C. 26; 5 M. & R. 69; cp. *Bramah v. Hardcastle*, 1789, Holroyd, 81; 1 Web. P. C. 44, n.

(*p*) The decision in this case has been doubted (cp. *Carpenter v. Smith*, 1 Web. P. C. 543; and *Morgan v. Seaward*, 1 Web. P. C. 190; 2 M. & W. 553); and to say, as Lord Tenterden is reported, in 4 C. & P. 52, to have said, that an invention must be generally known or used in order to avoid a subsequent grant of it by patent; would certainly be inaccu-

rate. It is sufficient if it was publicly known or used before the date of the patent. *Carpenter v. Smith*, 1842, 1 Web. P. C. 534, per Abinger, C. B.

(*q*) 1844, 1 C. & K. 587; cp. also *Galloway v. Bleaden*, 1839, 1 Web. P. C. 524, per Tindal, C. J.; *Smith v. Davidson*, 1857, 19 C. B. 691; *Hills v. London Gas Light Co.*, 1860, 5 H. & N. 336.

(*r*) 1858, 4 C. B. N. S. p. 293; 27 L. J. C. P. 337, per Byles, J. See also *In re Adamson*, 25 L. J. Ch. 456.

(*s*) 1837, 2 M. & W. 544; 1 Web. P. C. 187; H. & M. 55; 1 Jur. 527.

the patentee, ordered an engineer, under an injunction of secrecy, to make two pairs of paddle wheels upon the principle of the patent. The wheels, when completed, were packed at the engineer's factory and sold to and exported by the plaintiff, who was the assignee of the patent, and the managing director of a foreign company by whom the paddle wheels were used *abroad*. The plaintiff paid the engineer for the wheels. It was held: that there was no use of the machine as a machine in England, or indeed abroad, *before* the date of the patent; and that there had been no use or exercise "in public" of the mode of constructing the machine.

The novelty of an invention is destroyed by the prior public sale in this country of the same or a similar invention, whether manufactured here or abroad (†). Prior public sale.

Wood v. Zimmer (u). Here the patent was for a new mode of making verdigrease, to be called *British Imperial Verdigrease*. It was shown that the patentees had sold an article composed precisely in the same manner as that for which the patent had been obtained, under the name of *Dutch Imperial Green*. The patent was pronounced against.

Losh v. Hague (x). The publicly making and selling an article to one individual, though there be no demand or use for it by the public, will vitiate a subsequent patent.

Hancock v. Somervell (y). An invention may come into public use by being handed about the country for the purpose of attracting customers, although no actual sale has taken place.

Jensen v. Smith (z). J., in 1878, took out a patent for a lubricating apparatus, and in 1885, brought an action against S. for infringing it. It was proved at the trial that, prior to the date of the patent, lubricators substantially similar to the patented invention had been sold in England by the agents of a foreign firm; and that lubricators substantially similar to the patented invention had been used by a firm of engineers in England on

(†) *Lister v. Norton*, 1886, 3 P. O. R. 208—210; *Deutsche Nähmaschinen-Fabrik &c. v. Pfaff*, 1890, 7 P. O. R. 16.

(u) 1815, 1 Holt, N. P. C. 60; 1 Web. P. C. 44; 1 Carp. P. C. 294; cp. the language of Gibbs, C. J., in this case. See also *Germ Milling Co. v. Robinson*, 1886, 3 P. O. R. 254, 399.

(x) 1838, 1 Web. P. C. 205.

(y) 1851, 39 New. Lon. Jour. 158;

cp. also *Mullins v. Hart*, 1852, 3 Car. & K. 297; *Oxley v. Holden*, 1860, 8 C. B. N. S. 666; 30 L. J. C. P. 68, where Byles, J., expressed the opinion that the offering even a sample for sale was a user; *Lister v. Norton*, 1886, 3 P. O. R. 208—210; *American Braided Wire Co. v. Thomson*, 1888, 5 P. O. R. 120.

(z) 1885, 2 P. O. R. 249; *Fletcher v. Arden*, 1888, 5 P. O. R. 46.

machines used by them. It was held by Kay, J., that the patent was bad upon both grounds.

In *The American Braided Wire Co. v. Thomson* (a), the owners of a patent for improvements in bustles or dress improvers, which consisted substantially in the application of tubular sections of braided hard wire to bustles, brought an action against the defendants, alleging that they had infringed, and asking for an injunction. The defendants admitted that they had made bustles identical with those made in accordance with the patent, but denied infringement, and alleged that the patent was invalid on the grounds (*inter alia*) that the alleged invention was not useful, and had been anticipated by prior user and publications, including among the latter the specification of one J., which specified certain applications of braided wire to satchel handles and other articles, and mentioned that the material might be applied to bustles. The defendants tendered no evidence in support of their allegations of inutility and prior user. It was held at the trial, that the alleged invention was only the application of the material specified by J. to an analogous purpose pointed out by the specification, and that the method of clamping the wires adopted by the plaintiffs was not sufficiently of an inventive character to save the patent. The plaintiffs appealed. On the appeal further evidence was admitted as to the state of public knowledge at the date of the patent, from which it appeared that one L. had specified the application of braided hard wire to cushions and pillows, that it was known that hard wire could be braided in the same manner as soft wire, *i. e.*, in a tubular form on a core, but that there had not been any use of tubular sections of braided hard wire within the realm. It was held that the invention was not anticipated by either of the alleged prior publications of J. and L., and that it was good subject-matter of a patent.

Anticipation may be proved by single witness.

Anticipation may be proved by a single witness. In *Badham v. Bird* (b), the owner of a patent for improvements in combined man-hole covers and ventilators for sewers, brought an action for alleged

(a) 1888, 5 P. O. R. 113. In considering whether there is invention in applying an old article to a new subject, it is very material to consider whether the article is only described in print or is actually to be seen and handled, *S. C.*, at p. 123. Affirmed on appeal, 1889, 6 P. O. R. 518.

(b) 1888, 5 P. O. R. 238. See also *Germ Milling Co. v. Robinson*, 1886, 3 P. O. R. 254, 399. It is not necessary or proper to prove multiplied instances of anticipation, if one or two are sufficient. *Cole v. Sagu*, 1888, 5 P. O. R. 489; reversed on question of subject-matter, 6 P. O. R. 41; *op. Thomson v. Batty*, 1889, 6 P. O. R. 84.

infringement. The defendant put in issue the validity of the patent on the ground, amongst other things, of anticipation by prior user. At the close of the examination of the plaintiff, who was called as first witness, the defendant's counsel undertook to prove user of articles admitted to be similar in all essential points to the patented article. A witness was accordingly examined on behalf of the defendant who had superintended the manufacture of such articles for some years prior to the date of the patent. The learned judge dismissed the action.

SECT. 4.—UTILITY, &c.

The grounds on which patents are granted (c), the common law (d), the Statute of Monopolies and all the recorded decisions (e), upon the point before and since the passing of that Act, make it clear that the subject-matter of a valid patent grant must be "useful and beneficial to the public." The absence of utility, as of novelty, in any *material* part of the invention claimed, will be fatal to the patent (f).

Young v. Rosenthal (g). This was an action for the infringement of a patent for improvements in stays and corsets. Mr. Justice Grove charged the jury in the following terms:—"I think in law utility means an invention better than the preceding knowledge of the trade as to a particular fabric. It does not mean abstract utility. Therefore, even if you are of opinion . . . that stays are very bad things, you must not say this is useless because stays are bad things."

Losh v. Hague (h). This was an action for the infringement of

(c) See Form of Grant, p. 531.
 (d) Shephard's Abridgment, Part III. 61; Coke, 3 Inst. 184.
 (e) *Darcy v. Allin*, 1602, Noy, R. 182; *Edgeberry v. Stephen*, 1691, 1 Web. P. C. 35; Dav. P. C. 36; *Rex v. Arkwright*, 1785, Dav. P. C. 138; 1 Web. P. C. 72; *Turner v. Winter*, 1787, Dav. P. C. 151; 1 Term Rep. 605; 1 Web. P. C. 80; *Boulton v. Bull*, 1795, 2 H. Bl. 498; *Huddart v. Grimshaw*, 1803, 1 Web. P. C. 86; Dav. P. C. 278; *Manton v. Manton*, 1815, Dav. P. C. 348; *Bovill v. Moore*, 1816, Dav. P. C. 399; *Hill v. Thompson*, 1817-18, 8 Taunt. 401; 2 B. Moo. 457; 1 Web. P. C. 249; *Lewis v. Marling*, 1829, 10 B. & C. 28; 4 C. & P. 58; 1 Web. P. C. 497; *Minter v. Wells*, 1834, 1 Web. P. C. 129; *Russell v.*

Cowley, 1835, 1 Web. P. C. 467; *Morgan v. Seaward*, 1837, 2 M. & W. 562; Mur. & H. 61; 1 Jur. 529; 1 Web. P. C. 597; *Re Cutler's Patent*, 1839, 1 Web. P. C. 426; *Crane v. Price*, 1842, 4 M. & G. 605; 1 Web. P. C. 411; *Walton v. Bateman*, 1842, 1 Web. P. C. 623; *Pow v. Taunton*, 1844, 9 Jur. 1056; *Simpson v. Holliday*, 1864, 20 New. Lon. Jour. N. S. 107, 120.

(f) *Lewis v. Marling*, 1829, 1 Web. P. C. 496, per Bayley, J., p. 496; *Morgan v. Seaward*, 1837, 1 Web. P. C. 197, per Alderson, B.; also 2 M. & W. 561, per Parke, B.; *United Horse Nail Co. v. Swedish Horse Nail Co.*, 1889, 6 P. O. R. 8.

(g) 1884, 1 P. O. R. 34.

(h) 1838, 1 Web. P. C. 202.

Utility.

Cases.

Meaning of utility.

Cases on
"utility."

a patent for certain improvements in the construction of wheels for carriages to be used on railways. The defendants pleaded, *inter alia*, "that the said supposed improvements are only trifling and insignificant alterations in the mode of making wheels before then known and in public use, and are not legal subjects for the grant of the said letters patent." In directing the jury, Chief Baron Abinger said, "I observe one of the pleas states that the improvements are something trifling and insignificant. If that is the improvement, you will consider whether it is worth a patent or not."

Neilson v. Harford (k). An invention to support a patent must be productive practically of some beneficial result, no matter how great, provided it is sufficient to make it worth while (the expense being taken into consideration) to adopt it.

Tetley v. Easton (l). Where a machine can do that which apparently no other machine can be got to do, it must be pronounced useful, even though its cost is very considerable.

Haworth v. Hardcastle (m). In an action for the infringement of a patent, the jury found as follows: "The invention is new and useful upon the whole; but they also find that the machine is not useful in some cases for taking off goods." Verdict for the plaintiff, subsequently supported by the Court of Common Pleas.

Cornish v. Keene (n). This was an action for the infringement of a patent for improvements in the manufacture of elastic goods or fabrics. Chief Justice Tindal said: "It is a circumstance in the case that it is found useful for surgical purposes. The patent, however, is not taken out for that purpose, and it would not be sufficient, in order to maintain the patent, on the ground of its being an improvement, to show that it was an improvement, in surgical cases, for bandages only, because the patent is not only confined to that, but they must also prove that it is generally an improvement with respect to the general uses of that fabric or manufacture which was intended, that is, with respect to braces, garters, and other articles that are made of it."

Evidence of
utility.

Lucas v. Miller (o). "As to the utility, I have not heard much said; and if anything had been said I should have answered it as I have intimated already, by saying that better evidence of the

(k) 1841, 1 Web. P. C. 314.

(l) 1852, Macr. P. C. 63.

(m) 1834, 1 Web. P. C. 483; 1 M. & Sc. 732; 1 Bing. N. C. 189.

(n) 1835, 1 Web. P. C. 506; cp. also

Easterbrook v. The G. W. Rail. Co., 1885, 2 P. O. R. 201; *Badische Anilin v. Levinstein*, 1885, 2 P. O. R. 73.

(o) 1885, 2 P. O. R., per Kay, J., at p. 160.

utility of an invention cannot possibly be had than the fact that the defendant has attempted to infringe it." Attempts to infringe.

Pecuniary success, especially where the improvement claimed rests wholly or partially upon increased cheapness in production, is cogent, but not conclusive, evidence of utility (*p*). Pecuniary success.

It may be shown, for example—as may happen in the history of even the most original and valuable inventions—that the inventions first claimed were immediately superseded by simpler constructions involving the same principle (*q*).

The mere fact of a thing being done which has not been done before is not sufficient to justify a patent. It must be a question whether there be sufficient invention to justify a monopoly being granted by the Crown (*r*). Amount of invention.

Where there has been for some time a long unsatisfied demand, and then suddenly an article springs into existence and satisfies it, the length of time during which the demand has remained uncomplished with, is matter from which it may be inferred that it is ingenuity alone which has enabled the inventor to surmount the obstacle that otherwise would seem from the mere existence of the unsatisfied demand to have existed somewhere or in some shape (*s*).

The *utility* of an invention is a question of fact (*t*).

Where the judge of first instance held on the evidence that there was utility, the Court of Appeal refused to disturb his judgment (*u*). Utility a question of fact.

Where there is general utility in an invention, it is necessary to show very little utility to support a second claim, which is only subsidiary, and it is not a fatal objection to the patent that one part of the claim is not so useful as the other (*v*). Utility of separate claims.

In *United Horse Nail Co. v. Swedish Horse Nail Co.* (*x*), a patent was, however, held void on the ground that a part of the invention separately and distinctly claimed was of no utility. Material part of invention of no utility.

(*p*) *American Braided Wire Co. v. Thomson*, 1888, 5 P. O. R. 113; *Ehrlich v. Ihlee*, 1888, 5 P. O. R. at p. 205; *Cole v. Saqui*, 1888, 5 P. O. R. 495; *Siddell v. Vickers*, 1888, *ibid.* 95; *Blakey v. Latham*, 1889, 6 P. O. R. 29; *Badische Anilin v. Levinstein*, 1887, 4 P. O. R. 449; *Edison Co. v. Holland*, 1889, 6 P. O. R. 257.

(*q*) *Cp. Renard v. Levinstein*, 1864, 11 L. T. N. S. 505; *Otto v. Linford*, 1881, per Jessel, M. R., 46 L. T. p. 41; *United Telephone Co. v. Bassano*, 1886, 3 P. O. R. at p. 313.

(*r*) *Britain v. Hirsch*, 1888, 5 P. O. R. 226.

(*s*) *Gosnell v. Bishop*, 1888, per Bowen, L. J., 5 P. O. R. at p. 158.

(*t*) *Hill v. Thompson*, 1817, 3 Mer. 630; 1 Web. P. C. 237; *Bloxam v. Elsee*, 1825, 1 C. & P. 565; *Cornish v. Keene*, 1835, 1 Web. P. C. 506; *Macnamara v. Huise*, 1842, 2 Web. P. C. 128, n; Car. & M. 471.

(*u*) *Siddell v. Vickers*, 1888, 5 P. O. R. at p. 430.

(*v*) *Ehrlich v. Ihlee*, 1888, 5 P. O. R. 203, 455.

(*x*) 1889, 6 P. O. R. 8.

Subsequent inventions destroying utility.

A patent is not to be defeated because subsequent inventions have improved the patented article, or because, in consequence of such improvements, practically no articles were made in accordance with the specification (*y*).

Subject-matter must be vendible,

The subject-matter of a valid patent grant must be vendible—because, otherwise, the invention will not be *used*, and will therefore not give any new employment to the people, and the public will receive no benefit from the invention; and because the intent of the patent is to reward the inventor by means of the profit arising from making and selling the patent articles during the continuance of the privilege (*z*).

—and generally convenient.

An invention which is “mischievous to the State, to the hurt of trade, or generally inconvenient,” cannot be the subject-matter of a valid patent (*a*).

Upon the grounds set forth in this proposition would be avoided a patent for an invention altogether useless: *Morgan v. Seaward* (*b*); and it has been said, a patent taken out so extensively as to deprive mechanics of the materials used in their trades (*c*); or to embrace *methods that may thereafter be discovered* of arriving at the result patented (*d*); and any patent for illegal inventions, such as a housebreaker’s implement (*e*).

(*y*) *Edison Co. v. Holland*, 1889, 6 P. O. R. 277; *Thomson v. Batty*, 1889, 6 P. O. R. 84, 100.

(*z*) Hindmarch, pp. 101, 102; Godson’s Patents for Inventions, pp. 65, 66; cp. also per Heath, J., in *Boulton v. Bull*, 1795, 2 H. Bl. 463; per Abbott, C. J., in *R. v. Wheeler*, 1819, 2 B. & Ald. 349; *Cornish v. Keene*, 1835, 3 Bing. N. C. 570.

(*a*) 21 Jac. 1, c. 3, s. 6.

(*b*) 1835–37, 2 M. & W. 544.

(*c*) Godson on Patents for Inventions,

p. 87.

(*d*) Cp. *Walton v. Potter*, 1841, per Tindal, C. J., 1 Web. P. C. 601; 3 M. & G. 411; 11 L. J. C. P. 138; *Crossley v. Potter*, 1853, Macr. P. C. 245; *Curtis v. Platt*, 1863, per Lord Westbury, L. C., L. R. 3 Ch. D. 139; also 8 L. T. N. S. 657; 33 L. J. C. P. 255; 11 L. T. N. S. 245; 35 L. J. Ch. 852; L. R. 1 H. L. 337; *Dudgeon v. Thompson*, 1877, 30 L. T. N. S. 244; L. R. 3 App. Cas. 34.

(*e*) Hindmarch, p. 142.

CHAPTER V.

THE PATENT OFFICE.

SECT. 1. PATENT OFFICES BEFORE ACT OF 1852.

SECT. 2. THE GREAT SEAL PATENT OFFICE, 1852—1883.

SECT. 3. THE PATENT OFFICE UNDER ACT OF 1883.

WE propose to give in this Chapter an account of the offices in which the business of obtaining patents for inventions has been and is now conducted. In doing this the chapter will most conveniently be divided up in the periods marked out by the Act of 1852 and the Act of 1883.

SECT. 1.—PATENT OFFICES BEFORE ACT OF 1852 (a).

Under the early procedure for taking out letters patent for inventions—which was regulated partly by statute (27 Hen. VIII. c. 11),

(a) The account given is applicable to the procedure as it existed about 1837. For a satirical account of which, see Bentham, *Manual of Political Economy*, Chap. III., and Dickens' *Poor Man's Tale of a Patent*.

The history of patents is said to begin in the reign of Edward III., who appointed a committee to enquire into a scheme for obtaining the Philosopher's Stone, and granted a patent on it. Little or nothing is known at present of the number of patents granted from that date down to 1617, which is the date of the Woodcroft Series. There are three papers in *The Antiquary* (July, August, and September, 1885, by T. Fairman Ordish) relating to early English inventors in the reigns of Elizabeth and James I., and from glimpses which we obtain of early inventions in such works as the "*Pleasant History of First Inventors*" Lond. 1686, and Turner's "*History of Remarkable Providences*," Part III., London, 1697, it is evident that foreigners were in the habit of bringing their inventions over to England, presumably on account of the better protection afforded

them by the common law. That the majority of inventions were actually brought over by the foreign inventors themselves, or imported by travellers from abroad, is probable. The Statute of James evidently is intended as an encouragement to the introduction of new arts in order to foster trade rather than as any acknowledgment of the inherent rights of an inventor in his own invention. The benefits which accrued from the Huguenot settlements in the reign of Elizabeth were probably felt at the time, and a similar protection had been accorded the weavers of Brabant in the reign of Edward III. There has been no systematic search made through the records prior to the time of Elizabeth, hence it is unsafe to dogmatise; but many works dealing with the subject of patents ignore the existence of such an early period.

The proviso of the patent, making it incumbent upon the inventor to file a description of his invention, was the most important modification of the patent system between 1621 and 1851.

Petition and
declaration
lodged at
Home Office.

Reference to
Attorney-
General.

Report of
Attorney-
General.

Queen's
Warrant.

Patent Bill
Office.

Queen's Bill.

Signet Office.

Privy Seal
Office.

and partly by long established practice—there were six offices through which an application for a patent passed, before the grant was issued under the Great Seal. The petition and declaration were lodged at the *Home Office*. There was then a reference of the petition to the *Chambers of the Attorney or Solicitor-General* (b) for report. Upon the report of the law officer, the report was taken, with the petition, back to the Secretary of State for the Queen's warrant. This was an echo of the report, and gave authority to the law officer to prepare a bill. The warrant then issued, and was taken to the *Patent Bill Office* as an authorization for the preparation of the Queen's Bill. The Patent Bill Office was in Old Buildings, and afterwards in Serle Street, Lincoln's Inn: it was an office of the Attorney and Solicitor-Generals for the preparation of bills for patents which were to pass the Great Seal, and was usually, but incorrectly, called the Patent Office. The clerks of the Patent Bill Office were appointed by the Attorney-General for the time being, and prepared all bills for patents as his deputies. The Queen's Bill, which was a draft of the patent, having been duly prepared, and two copies engrossed, one for the Privy Seal Office, and one for the Signet Office, was taken to the Home Office, and laid before her Majesty by the Secretary of State for the sign manual, which was always affixed at the commencement of the instrument. The Queen's Bill was next taken to the *Signet Office* (c) to be passed (d). The signet was a royal seal which was always in the custody of the Secretary of State, and he had clerks under him called clerks of the signet, whose duty it was (d) to pass the Queen's Bill on to the *Privy Seal Office* within eight days after its receipt at the Signet Office. There were at first four clerks of the signet, who attended, in person or by deputy, in rotation for three months at a time; but the office of one was abolished, and the attendance of the remaining clerks was fixed at four months a year. The business of the office was chiefly transacted, however, by the record clerk. The Queen's Bill, which was compared with copy previously filed, was filed at the Signet Office as the warrant to the clerk of the signet to prepare the Signet Bill, and issue it to the Lord Privy Seal. The Signet Bill having been completed, was taken to the *Privy Seal Office*, which was in the same building as the Signet Office; and

(b) Caveats were also entered at the chambers of the law officer.

(c) At 28, Abingdon Street, West-

minster, and afterwards at Somerset House.

(d) 27 Hen. VIII. c. 11, s. 1.

the clerk of the Privy Seal, under the provisions of 27 Hen. VIII. c. 11, sect. 2, prepared the Privy Seal Bill, which, having been duly sealed by the Lord Keeper, or one of his officers in the case of his absence, was taken to the *Letters Patent Office*—the Patent Office properly so called—in Quality Court, Chancery Lane. Here the patent was prepared by the clerk of patents, in pursuance of the Privy Seal Bill, which then went to the *Lord Chancellor's Office* (e), and in due course the impression of the Great Seal was attached to it.

Patent Office.

Lord Chancellor's Office.

The fees on obtaining an English patent amounted to about 100*l.*; but if a protection was required in Scotland or Ireland, separate applications had to be made, and the fees were about 300*l.* in all. See *infra*, pp. 551—555.

The policy of this multiplication of offices is thus stated by Lord Coke (f): “Such was the wisdom of prudent antiquity that whatsoever should pass the Great Seal, should come through so many hands, to the end that nothing should pass the Great Seal, that is so highly esteemed and accounted of in law, that was against law or inconvenient; or that anything should pass from the King anyways, which he intended not, by undue and surreptitious means” (g). This reasoning obviously lost its force when letters patent came to be granted at the peril of the grantee, and when, after the introduction of the practice of enrolling a specification, the patentee was judged upon his own deed; but the number of offices was not reduced till the Patent Law Amendment Act of 1852, and these offices seem largely to have existed for the purpose of extracting fees from the patentee at the various stages. Under that statute they were reduced to the Office of the Commissioners of Patents, in which all proceedings took place.

Policy of multiplication of offices.

After having passed the Great Seal, the patent itself was delivered to the grantee, in order that he might have evidence of his title, and immediate possession of his privilege; and the patent was then enrolled from the Privy Seal Bill upon the rolls. The patent rolls were kept about two years in the *Enrolment Office*; thereafter they were transferred to the *Petty Bag Office*, along with the Privy Seal Bills and dockets, and having remained there till they were about fifteen years old, were finally sent to the *office of the Rolls*

Enrolment Office.

Petty Bag Office.

(e) Formerly, the Privy Seal Bill went to the Hanaper Office, but this stage was afterwards dispensed with—the Hanaper fees being paid over by the Clerk of Patents at the Great Seal.

(f) 2 Inst. 556.

(g) Compare 27 Hen. VIII., c. 11, Appendix, p. 624.

Office of Rolls Chapel.

Enrolment.

Differences between Enrolment Office, Rolls Chapel, and Petty Bag Office.

Chapel, together with the Privy Seal Bills. In one of these three offices was also enrolled the specification, which, from about 1712 to 1852, a patentee was required to enrol within six months after the date of his grant. Up to 1st January, 1849, a specification might be entered at the Enrolment Office, the Petty Bag Office, or the Rolls Chapel, indifferently at the option of the patentee. There were, however, differences between these offices in points of detail. (1.) A specification intended to be enrolled in the Enrolment Office required to be acknowledged before a Master (ordinary or extraordinary) in Chancery. At the Petty Bag and Rolls Chapel Offices, no acknowledgment was demanded. (2.) After 1 & 2 Vict. c. 94, the Rolls Office became a branch of the Public Record Office, created by that statute, and an enrolment could be proved by an authenticated copy, whereas a specification in the Enrolment or Petty Bag Office required to be proved by an examined copy. (3.) At the Enrolment Office, specifications were entered upon what were called the Close Rolls, because upon those writs close were enrolled. In each of the other offices there was a roll, called the Roll of Specifications and Surrenders, upon which specifications and other instruments were entered together. (4.) By an alteration introduced by Lord Langdale, M. R., a party inspecting the rolls at the Rolls Chapel Office was allowed to take extracts from, or copy any part of, the enrolment of a specification in pencil. This facility was not enjoyed at either of the other offices. (5.) After 1st January, 1849, all specifications were, by order of Lord Langdale, M. R., enrolled at the Enrolment Office.

SECT. 2.—THE GREAT SEAL PATENT OFFICE, 1852 TO 1883.

Origin of 15 & 16 Vict. c. 83.

The Patent Law Amendment Act, 1852, was founded practically upon three bills, which were under consideration by a Select Committee of the House of Commons in 1851: (1) Lord Granville's Bill, (2) Lord Brougham's Bill, and (3) these two bills modified and consolidated by Mr. Webster, at the request of the Committee (*g*). In the last-named bill, it was proposed that the Patent Offices should be reduced to two in number. Mr. Webster thus expressed his views upon the matter before the Select Committee (*h*):—

“According to this bill, there would be but two offices.

(*g*) See a full account of the history of the Patent Law Amendment Act, 1852, *infra*, pp. 53 *et seq.*, and see Appen-

dix, pp. 646—669.

(*h*) Report, &c., 1851, pp. 373, 374.

The Attorney-General expressed himself very anxious, in a consultation I had with him, the Solicitor-General being present, that there should be but one office; that appeared to me to be impracticable; first of all, there must be an office in the nature of a Record Office, to which the public should not be admitted; secondly, there must be an office which might be called the Commissioners' Office, to which the public will be admitted. Those two offices would register one against the other, and I think you could not reduce the number to less than two with security to the public. Then, having regard to the existing offices, the only office which is, in its present state, well adapted to the business, is the Great Seal Patent Office, and inasmuch as the patent is to bear date from the day of application, I think that the first application should be made at the Great Seal Office, and that that should be, as much as possible, the office of record, because the Lord Chancellor, in the event of any application being made to him, would have the original application in the same office with the warrant for granting the patent, which he must have also in his own office, unless the present practice be entirely changed: therefore I would suggest that the first application should be made to the Great Seal Patent Office, as the last must be there, and that all the intermediate proceedings, viz., the advertisement and the consulting of documents and indices by the public, and everything of a public nature, should be at what we may call the Commissioners' Office. I would suggest, therefore, that the petitions, declarations, and provisional specifications should be left at the Great Seal Patent Office. In consequence of a conference with the Attorney and Solicitor-Generals, and with Lord Granville, the bill was altered so as to leave it open to the commissioners to regulate all the proceedings from the commencement; but a strong desire exists to have the bill made as certain and definite as possible, and I think it will be found more convenient for the first step to be taken at the Great Seal Patent Office, inasmuch as the last step must be taken there."

In the parliamentary session of 1851, Mr. Webster's Bill, owing to its being returned too late from the House of Commons, was lost. But in the following year two other Bills were prepared, one for Lord Colchester—the Government having changed—the other for Lord Brougham, and the two resulted in the Patent Law Amendment Act of 1852, which constituted the Patent Commission. Sect. 1 provided that the commission should consist of Constitution

of Patent
Commis-
sion.

certain *ex officio* commissioners, viz.: the Lord Chancellor, the Master of the Rolls, and the law officers of the Crown for England, Scotland, and Ireland, together with such other person or persons as may be from time to time appointed by Her Majesty by warrant under the sign manual (*i*). The consolidated Bill contained a provision for the appointment of examiners, which was struck out by the committee of the House of Commons, under the supposition that special commissioners would be appointed under sect. 1 above mentioned. Lord St. Leonards, L. C., Sir John Romilly, M. R., Sir Frederick Thesiger, A.-G., and Sir Fitzroy Kelly, S.-G., were the first four acting commissioners, and they brought the act into operation by various rules and orders issued from time to time. The first section of the Act, however, empowering the appointment of special commissioners became a dead letter; the law officers of Scotland and Ireland were excluded and compensated; and the practical result was to devolve the whole responsibility upon the Lord Chancellor, the Master of the Rolls, and the Attorney and Solicitor-Generals of England, whose other official duties were so numerous and engrossing as to prohibit their affording that attention to the development of a system confessedly so difficult as to be incapable of adequate administration without the co-operation of persons practically acquainted with its requirements (*k*).

Offices under
15 & 16 Vict.
c. 83.

Under the provisions of the Patent Law Amendment Act, 1852, three separate offices for the passing of patents might have been either continued in operation or newly constituted—the Great Seal Patent Office, the office of the Attorney-General for making the warrants, both of which were already in existence, and the office of the commissioners, which was new. The commissioners, however, upon consideration, decided that one office only should be constituted for the whole business of passing the patents, and

(*i*) It is said that an actual attempt was made by the law officers to give effect to this provision, and that application was made to the Royal Society, Chemical Society and Institute to advise on the selection of one member from each society to act as examiners. As, however, it was proposed that the services should be given gratuitously, the proposal fell through. See Bramwell's *Expediency of Protection for Inventions*, 1875, p. 54.

(*k*) Report, &c., 1872, Appendix (p. 156). The sums paid by way of compensation to the Irish law officers,

the Lord Advocate of Scotland, and their clerks, will be found in the Commissioners' Reports from 1854 to 1876 inclusive, when they were discontinued. In their Report of 1854 the commissioners say: "The law officers of Scotland and Ireland, not being in England at the commencement of the Act, took no part in the proceedings, and as the functions of these officers in respect of patents for inventions are entirely abolished, it is not to be supposed they will be called upon at any future time to act as commissioners": p. 3.

Accordingly, they ordered ^(l) that their office should be combined with the Great Seal Patent Office; and by a subsequent order the Attorney and Solicitor-General directed that the warrant of the law officer should be made in the combined offices. The commissioners appointed the clerk of the patents for the time being to be the clerk of the commissioners, and upon him the whole duties of the office came to be imposed. They also, with the consent of the Treasury under the Act, appointed a staff of clerks, and an officer designated the superintendent of specifications, for the printing of specifications and other works. In pursuance of these orders the whole business of the commissioners relating to patents, from the petition for the allowance of provisional protection to the printing, publication, and sale of the specification, was conducted in one office. By the consolidation of the three offices a large saving was effected in the salaries of officers and clerks, and in the rent and furnishing of offices; the business was placed under the immediate control of the Lord Chancellor and the commissioners: they communicated with one office. Simplicity and uniformity of practice was secured, and the applicant had the great advantage of one office of resort and for information in all stages of the patent ^(m).

One office for patents.

The 4th section of the Patent Law Amendment Act, 1852, enacted that it should 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 the said Act." The offices originally provided were the ground-floor rooms of the offices in Southampton Buildings, Chancery Lane, theretofore occupied by the Masters in Chancery, abolished by 15 & 16 Vict. c. 80.

Under the Act of 1852, the work of the Patent Office was as follows: It was divided into several departments, *the front or public office*, in which applications, &c., were left, and where office copies might be obtained or specifications inspected; the *Register office*, where documents were registered before being transmitted to the law officers; the *printing department*, under the superintendent of specifications; and the *sale department*, which was simply a warehouse, with some clerks who kept a record of the sales. There was a strong room, where patents were kept for fourteen years

Work of Patent Office under 15 & 16 Vict. c. 83.

(l) First set of Regulations, dated 1st October, 1852, r. VI. Cp. also Report, &c., 1865, p. 26.

(m) On 1st January, 1876, the Act 38 & 39 Vict. c. 93 came into operation,

transferring to the Commissioners of Patents all powers, duties, and authorities of the Board of Trade under the Copyright of Designs Act.

prior to sending to the Record Office. Also the Free Library and the Museum at South Kensington.

Procedure
under Act of
1852.

The procedure consisted of several stages (*n*) ; applications were made personally at the Patent Office, were duly registered, and then sent on to the law officers, who reported on them. On the receipt of the returned document from the law officers, notices to proceed were published in the Commissioners of Patents Journal, and at one time in the Gazette, and notices of opposition, if any, were entered and transmitted to the law officers for hearing. Then there might also be opposition before sealing, in which case the office acted in a similar manner. When all oppositions were removed, the patents were sent down by a messenger to be sealed, to the House of Lords, and thereafter were returned to the Patent Office, and kept till the agents or patentees called for them. Letters patent were often left for a long time in the Patent Office, on the ground of its security. All that was done, therefore, by the Patent Office, from the first application to the final sealing, was the mere receipt of documents, the advertising, and the transmitting them to the proper officer. Besides this "forwarding work," as it was called, the Patent Office prepared and published indexes (at first once a year, but latterly once a month), specifications, and the Commissioners of Patents Journal.

Indexes, &c.

Origin of
Patent
Museum.

The origin of the Patent Museum is thus traced by Mr. Cole, Secretary to the Science and Art Department, in his evidence before the Select Committee of 1865 (*o*). After the Exhibition of 1851, a considerable amount of public opinion began to be formed on the necessity of industrial education ; memorials were presented from the great towns of England, noticing the advantages of the *Conservatoire des Arts et Métiers*, and the Central School of Arts and Manufactures at Paris, and praying that a great central college should be established in London, and that a museum of arts and manufactures should be formed at the college. These memorials were supported by resolution passed by the chief British jurors at the Paris Exhibition, and by the report of a committee appointed by the Commissioners of 1851 to consider the best mode of aiding in establishing a museum of inventions. Mr. Bennet Woodcroft (*p*), at that time professor of machinery at University College,

(*n*) For a tabular statement of the procedure, see p. 208, note (*b*), where an extract from the Register of Patents is given.

(*o*) Report, &c., 1865, pp. 116 *et seq.*
(*p*) Bennet Woodcroft's Evidence, *ibid.* at p. 3.

had a collection of models, partly belonging to himself, and partly lent to him for use at his lectures. Upon being appointed assistant to the Commissioners in 1852, he transferred some of those models to his own room at the Patent Office. The interest of the engineering public was aroused, and a very large number of other models was supplied to the Commissioners of Patents. The Commissioners of the Exhibition of 1851 were also in possession of many valuable models. The whole collection was preserved first in Kensington Palace, then in Gore House, and afterwards in the Iron Museum—popularly known as “The Boilers”—which was erected for the purpose of receiving it. This Patent Museum, which was opened to the public in 1855, had no connection with the Board of Trade, or the Science and Art Department, and it consisted solely of the collections given by the exhibitors of 1851 and the patent models belonging to Mr. Bennet Woodcroft and the Commissioners of 1851. It was found necessary, however, to remove the Science and Art Department out of Marlborough House in order to provide for the repairing of that place for the Prince of Wales, and the Marlborough House establishment, which had been open for four years, was then moved up to South Kensington, Parliament granting a vote of £10,000 for that particular purpose.

The Museum at Marlborough House having thus been transferred to the iron building, the Commissioners of 1851 handed over their collection to the charge of the Science and Art Department, and the rules which were in force at Marlborough House were put into force at Kensington. Owing, however, to a dispute between the Commissioners of Patents and the Science and Art Department, as to a rule enforced by the latter, making a charge of 6*d.* for admission to the Museum on three days of the week, part of the Museum buildings at South Kensington was reserved for the Commissioners of Patents and called the Patent Museum, to which the public were admitted without charge.

Mr. Bennet Woodcroft was superintendent of the Museum, as well as of specifications.

In 1855 the Commissioners of Patents established a public library of research within the Patent Office. It embraced works of science in all languages, the publications of the commissioners, and publications connected with patented inventions throughout the Colonies. The library increased so rapidly by purchases and loans that there was soon not even standing room, and readers complained that they could not open out the drawings for the number of per-

Origin of
Patent Office
Library.

sons who came. The library was choked up with a confused mass of specifications, some of the floors were nearly, and many of the tables were entirely, covered with books; and in consequence of the very cramped state of the room, and the impossibility of properly exhibiting the specifications, many inventions were frequently re-patented (*q*).

Journal.

From the commencement of January, 1854, the Commissioners of Patents Journal was published on the evenings of Tuesday and Friday in each week; it contained the following information:— (1) grants of provisional protection for six months; (2) inventions protected for six months on deposit of a complete specification; (3) notices to proceed for patent; (4) patents sealed; (5) patents extended; (6) lists of foreign patents; (7) official advertisements and various notices.

Indexes.

Under sect. 8 of 16 Vict. c. 5, the commissioners purchased for 1,000*l.* (*r*) Mr. Bennet Woodcroft's chronological and alphabetical indexes of all the specifications of patents enrolled in Chancery from 1617 to 1st October, 1852—14,359 in number. These were published in three imperial octavo volumes (*s*).

Specifications.

The whole series of specifications of patents for reaping machines, from the first enrolled 4th July, 1799, firearms, cannon, shot, shells, cartridges, weapons, accoutrements, and the machinery for their manufacture, from the earliest recorded, 15th May, 1718, and the drawings accompanying the same, were printed and published. The old specifications of patents for the consumption of smoke in furnaces, and for the making of drainage tiles applicable to sewerage, were by order of the Home Secretary, and the specifications of patents for improvements in propelling ships, were by order of the Board of Admiralty, republished. Pending the publication of the old specifications, printed certified copies, for

(*q*) Cp. also the evidence before the Select Committee on Patent Office Library and Museum, 1864, p. 34, *Answer* 661. "At the present time you cannot get your books in the library; you cannot get your specifications, and when you go to buy them you have to wait two or three hours, and then to send again, because they lie all piled one on top of another, so as not to be accessible. The rooms in the houses hired in Cursitor Street are so crowded that her Majesty's Commissioners of the Board of Works, through their architect and surveyor, have re-

fused to allow them to be loaded any more, lest they should break down. The floors are sprung one inch now. The iron store room at the back of the Patent Office, which is a mere temporary thing, is so full that the passages are being filled full of parcels of those specifications."

(*r*) Cp. Report of the Commissioners for 1852-53, p. 21. See a description of Mr. Bennet Woodcroft's Index, Report of Committee, 1851, p. 221.

(*s*) The sale branch was formerly in Southampton Buildings, and was afterwards removed to Cursitor Street.

evidence in Courts of justice, for the use of counsel, and for other purposes, of any of the old specifications might be obtained on application at the Patent Office, the applicant paying the cost of putting the drawings upon the stone, and colouring the number of prints he might require, and the commissioners paying the cost of letterpress and paper, or, in the absence of drawings, the applicant paying the cost of letterpress and paper.

Indexes of all specifications filed in the Patent Office under the new law were also made in continuation of Mr. Bennet Woodcroft's collection, and were published periodically. The chronological, alphabetical, and subject-matter form adopted by Mr. Woodcroft was followed. At first abstracts of the subject-matter of specifications were made under the authority of the law officers, and printed from time to time. Those abstracts were prepared by junior barristers, manufacturers, and others, patent agents being disqualified from making them. On 17th December, 1866, however, the Commissioners of Patents made an order (t), throwing this work on the inventor, and virtually on patent agents, who had no inducement to do it well, and frequently discharged the duty in a most perfunctory manner. There was no one whose duty it was to see that the abridgment was in conformity with the provisional specification. The rule was that the applicant with his specification deposited an abridgment or abstract of it, and then abstracts were published (u) in quarterly, and from 1st January, 1871, in weekly, volumes, and advertised in the Commissioners of Patents Journal. The weekly publication of abstracts adopted in 1871 gave increased facilities to persons making searches. Each number contained an index of the names of the applicants belonging to the abridgments in that number, and also an index of the subjects, and each successive index included all the preceding ones up to the end of the year, so that a person would not have to look at the indexes of twenty or thirty numbers, but could obtain all that he wanted from the index of the last number.

Before the specifications of patents were printed by the commissioners, the subject-matter index was prepared from the titles only; afterwards it was made from the specifications themselves.

(t) See Commissioners' Report, 1866, p. 9.

(u) The volumes for the years 1867 and 1868, were published under the title of "Descriptive Index." In 1869 it was

changed to "Chronological and Descriptive Index of Patents applied for and Patents granted." The publication was discontinued in 1875.

Indexes to specifications.

Abridgments.

Abstracts left by applicants.

How subject-matter indexes prepared.

Copies of specifications sent to Edinburgh and Dublin.

Printed certified copies of all the specifications filed in the office, from 1st October, 1852, onwards, with coloured printed copies of drawings, were sent to the office of the Director of Chancery in Edinburgh, and the Enrolment Office of the Court of Chancery in Dublin, pursuant to the Act of 1852, and the Act of 16 & 17 Vict. c. 115, and these copies were open to the inspection of the public in the respective offices.

Assignments, &c.

Certified copies of all the patents passed since the commencement of the Act, and of the record books of assignments and licences, with copies of such assignments and licences, were also sent to the Chancery Offices in Edinburgh and Dublin, pursuant to the Act.

SECT. 3.—THE PATENT OFFICE UNDER ACT OF 1883.

With the view of providing for the due administration of the new Act, which invests the Patent Office with some of the functions of a Court of law, a joint committee was appointed in the autumn of 1883 by the Board of Trade and the Treasury, to advise as to the re-construction of the staff of the Office of the Commissioners of Patents, and as to the formation of a properly qualified staff of examiners. The recommendations of the committee having been generally approved, a staff, including the majority of the officers of the Commissioners of Patents staff, was appointed by the Board of Trade, with the approval of the Treasury, under the 82nd and 83rd sections of the Act, in readiness to undertake the work of the new office, which was open to the public at 10 a.m. on 1st January, 1884, as required by the third section of the Act (*v*).

Comptroller-General.

The whole office is under the control of the Comptroller-General of Patents (*x*), subject to the Board of Trade.

Examiners.

There is a large staff of examiners, who perform the examining functions thrown upon the office by the new Act. The growth of the examining staff is thus traced by the present Comptroller-General, in his evidence before the Select Committee of 1887 (*y*).

“Assistant-examiners” are the “examiners” of the Act.

“We started with one superintendent, with one assistant, and twenty assistant examiners. They are called in the Act examiners, but in the office assistant examiners. Then we found

(*v*) See 1st Report of the comptroller-general, 1884, pp. 3, 10, Appendix A. There were numerous competitors for the first application under the new Act. No. 1 was eventually obtained by a Scotchman who came from

Glasgow, and arrived at the Patent Office overnight, and was the first person to enter the Office at its opening at 10 a.m. on the following morning.

(*x*) Mr. H. Reader Lack.

(*y*) Report, &c., 1887, p. 10.

that the superintendent was not able to manage the whole of the work, and he had two assistants, who were called examiners. We also had to increase the number of the staff, but it was a long time before we could get them. In 1884, the Treasury gave us permission to work overtime for so many months. At the end of 1884, we found that we were still not up to time, and we appointed another examiner, and some additional assistant examiners, bringing them up at the present time to one superintendent, one assistant, three examiners, and six assistants to examiners or supervisors, who are allowed a special duty pay (z) to assist the examiners. We have really one superintendent, one assistant superintendent, and three examiners, and then each examiner has two assistant examiners to assist; that is the present staff, and forty-six assistant examiners."

The distribution of the business of the Patent Office among these officials may now be shortly described. Upon the receipt of the application, after numbering and dating the application, the first thing that has to be done by the Patent Office is the examination of the specification and the application left with it. The papers are sent up from the registry-room to an official superintendent, who sorts them out according to the subjects which have been allotted to the different examiners. The examining staff, it should be remarked, is divided into three groups, and different subjects are assigned to different assistant examiners in those groups. The duties of the assistant examiner at this stage are as follows:—(1) to see that the formal documents are in proper order; (2) to ascertain whether the nature of the invention has been fairly described, and the application, specification and drawings, if any, have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention; (3) to see that the specification describes one invention only. Under subsect. 5 of sect. 7 of the Act of 1883, the examiner was required to report to the comptroller as to the similarity of rival applications, in order that notice of interference, as it was called, might be given to the applicants. The reason for inserting that provision, which was done in committee, was this: patent agents said that there was a period in the existence of an application, that is, during the period of provisional protection, when they knew nothing about what was being done, while the Patent Office was in possession of that information, and therefore they

Distribution of business among examiners.

Duties of assistant examiners

Rival applications.

(z) £50.

thought it only reasonable, when the examiner was looking through the applications for patents, that he should use some part of his knowledge for their advantage, and give the second person notice that a prior application had been made, in order that he might not waste his time and money in going on with the second application, if he thought fit. This notice of interference saved him the trouble of constantly watching the Patent Office Journal to see whether anything like his own was coming out, and directed his attention to a particular number of a particular year. The procedure relating to notices of interference had, however, many disadvantages. (a) If the second applicant published his complete specification before the first, the latter could adopt as his invention all the matter of the second application, though he might not otherwise have thought of it; (b) notice of interference was sometimes given when there was in reality no similarity; (c) on the other hand, owing to the necessary generality of the provisional specification, similarity between two inventions sometimes escaped notice; (d) this procedure made a serious drain on the examiners' time, and it was estimated that no less than ten assistant examiners were employed solely in carrying out this particular work. On the recommendation, therefore, of the Committee of 1887, sub-sect. 5 of sect. 7 was repealed by the Act of 1888, sect. 2.

Notice of
interference.

Difficulties.

Report.

If the assistant examiner is satisfied that the specification and drawings have not been prepared in the prescribed manner, he makes a report to that effect by a minute attached to the specification. That minute is sent to one of the examiners, who either personally or by one of his duty paid assistants looks over it in a general way to see whether he thinks the assistant examiner is right. If he is right, the papers are passed over to the letter department, where a letter is drafted from the examiner's report, and is then sent down to be signed either by the comptroller-general or by the chief examiner, who therefore see all the requirements made by the office.

In the event of the examiner differing from the opinion of the assistant examiner as to the sufficiency of a specification, &c., the matter would be discussed by them, and in the event of their being unable to agree would be settled by the chief examiner.

If the assistant examiner reports that the requirements have been complied with, the specification is revised by one of the examiners, in accordance with an official minute of the Board of

Trade in 1884. The Committee of 1887 recommended that a revision from time to time of a percentage sufficient to ascertain that the work was being carefully and intelligently performed would meet all the requirements of the case. But this recommendation does not appear to have been yet adopted. The examiner's report would here be at once passed on to the letter department.

When the answer to the objection communicated by letter is received, it is registered according to date, and is then sent from the registry to the room of the same examiner who first dealt with it. If the applicant requests to be heard, or if the comptroller refuses the application and offers a hearing, the applicant and the examiner or assistant-examiner are heard at the Patent Office before the comptroller or chief examiner, from whose decision an appeal lies to the law officer. In the case of such an appeal, all the papers are transmitted to the law officer's clerk.

Hearing before comptroller.

Where a complete specification is left after a provisional, the two are referred to the same assistant examiner who had the first application. His duties are to see whether the complete specification has been prepared in the prescribed form, and to satisfy himself that the invention particularly described in the complete specification is substantially the same as that which is described in the provisional. The examiners used at first to examine the claims, but the comptroller-general was instructed by the law officers, on 31st March, 1885, that the examiners had no power under sect. 9, sub-sect. (1), to deal with the claims at the end of the complete specification, that their duty was confined to seeing that there were claims, and that they were not to compare them, or see that the description bore out the claims of the specification.

Second report of examiner where complete specification left subsequently.

The question is again considered whether a complete specification claims more than one invention (sect. 33). This point, however, has been dealt with on the provisional primarily, and is only indirectly dealt with on the complete, by the examination as to similarity with provisional.

The examining staff also assist the comptroller-general as expert assessors in the case of oppositions under sect. 11, and of amendments of specifications under sect. 18.

Duties of examiners in hearings before the comptroller.

The assistant examiner who reports whether the complete corresponds with the provisional specification, at the same time makes the index and the abridgment notes. Formerly, the abridgment

Index and abridgments.

Abridgments
of specifica-
tion.

work was done out of the office by special abridgers, and supervised by a small staff in the Patent Office. Since the 1st January, 1884, however, the assistant examiners have produced the abridgment and the index notes as they go along. The proceeding is as follows: When a complete specification has been passed by an assistant examiner, he writes an abridgment of the specification on a form for the purpose, and then, upon another form, he assigns the specification to one or more of the index headings in the key. This index and abridgment is further checked by the examiner or his deputy who checks the report.

At the present time, the indexing of a complete specification is completed by the assistant examiner to whom the specification is referred. The applications received at the office are distributed over a large number of headings in order to facilitate search; and the work of seeing that each application is fully indexed is considerable. When, however, the abridgment and the subject-matter index forms for any particular application have been filled in and countersigned, there is a complete index to that specification or abridgment for any publication the Patent Office may produce.

Patent
Museum
transferred
to Science
and Art
Department.

In accordance with sect. 41 of the Act of 1883, the Patent Museum (s) and its contents were, on 1st January, 1884, transferred to the Science and Art Department, South Kensington, under whose management it has since remained (a). It no longer forms a separate section, but has been incorporated with the General Science Collections of the South Kensington Museum. The Department of Science and Art may at any time require a patentee to furnish them with a model of his invention, on payment to the patentee of the cost of the manufacture of the model, the amount to be settled in case of dispute by the Board of Trade (b). This power is rarely, if ever, exercised at the present time.

Models.

Library.

In addition to the printed specifications of British and many foreign and colonial patents, the library contains the best collection of works relating to the applied sciences at present accessible to the

(s) The Patent Museum is a collection of models, apparatus, and machines which have been the subject of patents.

(a) It is open to the public *free* daily, and the hours of admission are as follow:—

During January, February, November, and December, 10 a.m. to 4 p.m.

During March and October, 10 a.m.

to 5 p.m.

During April, May, June, July, August, and September, 10 a.m. to 6 p.m.

The reading rooms of the free public library in the Patent Office are open daily from 10 a.m. till 10 p.m., except on Sundays, Good Friday and Christmas Day.

(b) Act 1883, sect. 42.

general public, and is especially rich in foreign technical and periodical literature. The annual number of readers is not far short of 100,000.

The following is a list of the more important of Patent Office publications so far as they relate to patents:—

Publications
of Patent
Office Acts
and Rules.

1. The Patents, Designs, and Trade Marks Acts and the Rules made thereunder.

2. Specifications.

(a) 1617—1852:—

Specifications of inventions, disclaimers, &c., enrolled under the old law from A.D. 1617 to September 30th, 1852, comprised in 13,561 blue books, or 690 thick volumes. Specifications.

(b) 1852—1883:—

Specifications of inventions, disclaimers, &c., deposited and filed under the Patent Law Amendment Act, from October 1st, 1852, to December 31st, 1883, comprised in about 130,000 blue books, or 3,005 thick volumes.

(c) 1884 (*and subsequent years*):—

Accepted complete specifications, amendments, &c., under the Patents, Designs, and Trade Marks Act, 1883 (*c*).

3. Indexes.

Indexes.

(a) Under the old law from 1617—1852:—

Chronological Index of titles. 2 Vols.

Name Index. 1 Vol.

Subject-matter Index (*d*).

(*c*) Down to the end of 1875 the specifications were printed uniformly in pica type, on paper of imp. 8vo. size, with outline lithographic reproductions of the drawings the same size as the originals. In 1876 a new system was adopted, whereby a smaller type was used, and the size of the drawings reduced by photo-lithography to the imp. 8vo. or 4to. size. The specifications were also put up into vols. of 100, for distribution among public libraries, &c., and each vol. was accompanied by a title page and index of authors and subjects. This index was discontinued in 1882. Prior to 1852 the provisional specification was unknown: from 1852 to 1883 all provisional specifications deposited were printed, but this was discontinued under sect. 4 of the 1885

Act. The number of these applications which never become patents is now nearly one half of the whole number of applications. The drawings are now mounted on a sheet of blank paper, so that they may be read continuously with the specification. The familiar blue covers have been discontinued since 1888. Only specifications of patents *in force* or dated *during last fourteen years* are kept in stock or will be printed at the expense of the office. Specifications of earlier patents which are out of print will be reprinted only at the cost of the purchaser.

(*d*) The following is a fuller account of the subject-matter Indexes:—

(i) Subject-matter Index of patents of invention, A.D. 1617—1852, 2 pts. (prepared from titles only).

Reference Index of patents of inventions, pointing out the books in which specifications, law proceedings, and other subjects connected with inventions have been noticed.

Appendix to the Reference Index, containing abstracts from such of the early patents and signet bills, as, in the absence of enrolled specifications, describe the nature of the invention.

- (b) Under the Patent Law Amendment Act from 1852—1883 :—

Chronological Index of titles, 1852—1868.

Chronological and Descriptive Indexes, 1867—1873.

Name Indexes, 1852—1883.

Subject-matter Indexes (*d*), 1852—1883.

- (c) Under Patents Act, 1883, from 1884 to date :—

Name Indexes of applicants.

Subject-matter Indexes of applications, compiled from titles only, 1884—1887.

Subject-matter Indexes of accepted complete specifications (*d*).

Illustrated
Official
Journals.

4. Journals.

- (a) The Illustrated Official Journal (*e*) of the Patent Office,

- (ii) Subject-matter Index of patents applied for and patents granted, 1852—1883.

The Indexes for the years 1852—1870 were prepared from the specifications, and were in the form of a classified Index of subjects, accompanied by separate synopsis and key. The only Indexes for the years 1870—1873 were the Indexes intended to accompany the chronological and descriptive Indexes. From 1874 a fuller Index was again published down to 1883, the years 1882 and 1883 being made from titles only.

- (iii) Subject-matter Index of applications for patents, 1884—1887 (discontinued after this date).

- (iv) Subject-matter Index of accepted complete specifications, 1884—1886.

- (v) Monthly consolidated subject-matter Index (in course of publication).

(*d*) See note (*d*), *ante*, p. 65.

(*e*) The following is a list of the journals of the Patent Office, past and present.

- (i) Commissioners of Patents Journal, 1854—1883. 38 vols. imp. 8vo.

- (ii) Official Journal of the Patent Office, 1884—1888. 10 vols. imp. 8vo.

Continued now in the Illustrated Official Journal.

- (iii) Illustrated Journal of Patented Inventions (including complete specifications accepted), 1884—1887. Imp. 8vo.

Continued now in Illustrated Official Journal.

- (iv) Reports of Patent Cases (after Vol. 3, including Reports of Design and Trade Mark Cases), 1884—1888. 5 vols. imp. 8vo.

Continued now in Illustrated Official Journal.

- (v) Illustrated Official Journal (Patents), incorporating Nos. (ii), (iii) and (iv). From 1889, in continuation. Imp. 8vo.

The Commissioners' Journal commenced in January, 1854, and was published on the evenings of Tuesday and Friday in each week. It contained in-

published every Saturday, contains (1) applications for patents; (2) acceptances of provisional specifications; (3) acceptances of complete specifications; (4) patents sealed; (5) patents on which renewal fee has been paid; (6) patents void through nonpayment of renewal fee; (7) amendments; (8) abandoned and void applications; (9) designs registered; (10) official notices, advertisements and rules; (11) price lists of printed specifications; (12) index of names of applicants; (13) index of titles of applications; (14) Illustrated Journal of Patented Inventions; (15) Reports of Patent, Design, and Trade Mark Cases.

5.—(a) Catalogue of the Library of the Patent Office, arranged alphabetically in two volumes—Vol. I. Authors; Vol. II. Subjects. Catalogues, &c.

(b) Index to all inventions patented in England from 1617 to 1852 inclusive, arranged under the greatest number of heads, with parallel references to inventions and discoveries described in the scientific works of various nations, as classified by Professor Schubarth.—By B. Woodcroft, F.R.S.

(c) Supplement to letters patent for inventions, granted from 1617 to 1852, consisting for the most part of reprints of scarce pamphlets.

6. Abridgments of specifications, with a key thereto (*f*).

Abridgments.

formation relating to each stage of patent procedure from the date of application to the voiding of the patent. In addition, the patent lists of leading foreign countries and colonies were translated and printed, with their laws and regulations, and much other useful information. In 1884 the scope of the work was restricted entirely to an official record of the various stages through which a patent has to pass. In the same year the Illustrated Journal, containing abridgments of all complete specifications accepted, and the Reports of Patent Cases, both new publications, were issued, the latter originally as a supplement to the Official Journal, but subsequently as a separate publication. In 1889 these three journals were merged into one, and the price of the amalgamated journal was fixed at 6*d.* for each number. Each section, however, at the end of the year forms a separate volume. The index to official section is divided into two parts,

Part I. being the name index of applicants for the year; Part II. recording the different stages subsequent to the acceptance of the provisional specification. An inventor, therefore, by the annual payment of 1*l.* 15*s.* obtains—
I. A name index of all applications for the year. II. A record of all official stages through which an application has to pass. III. An illustrated abridgment of accepted complete specifications. IV. Reports of all patent cases occurring in the year.

(*f*) Abridgments (in classes and chronologically arranged) of specifications of patented inventions, from the earliest enrolled to those published under the Act of 1852.

These books are of 12mo size, and each is limited to inventions of one class only. They are arranged so as to form at once a chronological, alphabetical and subject-matter index to the class to which they relate. Before applying for

Sale Office.

The Sale Office took the place of the Stationery Office in 1884, as the sole office for the sale of the Patent Office publications.

Contents of library.

In addition to the printed specifications, indexes, and other publications of the Patent Office, the library contains a collection of the leading British and foreign scientific journals, transactions of learned societies, and text-books of science and art.

a patent it is generally advisable to consult the classes of abridgments of specifications which relate to the subjects of the invention, and by the aid of these works to select the specifications which it may be considered necessary to examine in order to ascertain if the invention is novel. The preface of each volume explains (in most cases) the scope of the series of abridgments which it contains.

The majority of classes have been prepared as far as 1866, many as far as 1876, and a few down to 1883. The prefaces in the early volumes often contain a valuable introduction to the history of the Act, and are of considerable literary and antiquarian value. Since 1884 abridgments of specifications have appeared in the Illustrated Journal in chronological order.

CHAPTER VI.

OUTLINE PROCEDURE TO OBTAIN A PATENT.

It is proposed in this chapter to give a general account of the procedure to obtain letters patent, without any reference to the statutes and judicial decisions. These are fully considered in the general body of this work, and in the notes to the Acts of 1883—1888.

Scope of chapter.

A patent may be applied for—

(1) By one or more inventors;

The application.
Inventors.

(2) By one or more inventors with applicants who are not inventors, and in this case a corporate body may be one of the joint applicants;

(3) By an importer from abroad, and apparently in conjunction with other applicants, if desired;

Importers.

(4) By an inventor with or without other applicants under the international and colonial arrangements, whereby the patent, when obtained, dates back to the date of the first foreign application.

International arrangements.

The applicants desirous of taking out a British patent must first of all leave at the Patent Office an application in the proper form, which can be obtained either there or through any money order office in the United Kingdom.

Form of application.

The application (see Form A. to Patents Rules, 1890, Appendix, p. 737) consists of a declaration by the applicant that he is in possession of an invention for "improvements in," &c., or as the case may be, setting out the title of the invention; 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; and it concludes with a prayer that a patent may be granted in respect thereof.

Declaration.

Where an application is made by two or more persons jointly, the declaration must state which one of the applicants, or, if necessary, which two or more of them, is or are the inventor or inventors.

Joint application.

Importers.

The word "inventor" includes the *importer* of an invention communicated from abroad. An applicant for letters patent for a communicated invention ought to make use of Form A1 of the Patents Rules, 1890, *infra*, p. 738. But it would appear that an importer is entitled to make the declaration in Form A. (see p. 737), and not to disclose the fact that he is an importer. This point, however, has not been judicially decided. Advantage is taken by agents of the law as to importers, who, in the case of inventions communicated by clients abroad, frequently make the application in their own names on Form A1, and when the patent is sealed assign it, if desired, to their clients.

Communications from abroad.

Signature of applicant.

Authority to agent.

The application must be signed by the applicant himself, or, if more than one applicant, by each applicant, all further proceedings may be conducted through an agent duly authorized in writing. This authority may be given at the time of signing the application, or at any other time. Where one of the applicants is a company or corporation, the secretary or other principal officer should, after his signature, add the words, "for the ——" (naming the company or corporation). If a firm are applicants, each member of the firm should sign the application.

Applications under International Convention, &c.

An application under the international or colonial arrangements must be made within seven months from the date of the first foreign application, and must be signed by the person or persons by whom such first foreign application was made. It must be on Form A2 (see p. 739), and must be accompanied by a provisional or complete specification, like other applications. It must also be accompanied by a copy or copies of the specification and drawings, as filed in the patent office of the foreign state or British possession in respect of the first foreign application, duly certified by the official chief of such patent office, or otherwise verified to the satisfaction of the comptroller. There must also be a statutory declaration as to the identity of the invention in respect of which the application is made with the invention in respect of which the said first foreign application was made, and if the specification be in a foreign language, a translation must be annexed to and verified by the statutory declaration (a).

Provisional or complete specification?

When filling up the proper form of application, the applicant should decide whether to leave a provisional (b) or a complete specification (b) in the first instance.

(a) Patent Office Circular.

(b) For forms, see p. 740.

The relative advantages of these two courses may be briefly stated.

An application for provisional protection involves less immediate outlay, and thus costs less to an applicant who desires for any reason to abandon his application before the date at which a complete specification becomes due.

Advantages of filing provisional specification with application.

The provisional specification is not accessible to the public until the complete specification has been accepted; and if the application for any reason is not completed, it is never open to the public at all. In case an inventor is unable or unwilling to proceed with his application, or is from any cause unwilling to do so, the provisional specification is not published. He is thereby enabled to repeat his application at any subsequent period he may think fit; always provided he has not by his own act rendered a subsequent application invalid by publication, by sale or user, or otherwise; and that between the date of his two applications an application has not been made by another inventor for an invention wholly or partly covering his.

In a provisional specification only a general description of the nature of the invention is required. The inventor has, therefore, time to mature the details of his invention, and is also able without the expense of a disclaimer to leave out of his complete specification any part of his invention which may have been anticipated.

A provisional specification is of use when an inventor—(a) wishes to bring his invention into the market at a trifling cost, and test its commercial value before patenting it; or (b) is still undecided as to whether he will file applications for letters patent abroad; or (c) desires to have before him the exhaustive report of the Patent Office Examiner in the United States in determining what to claim in his complete specification; or (d) when through fear of anticipation he desires to secure an early date for an invention, the details of which he has not had time to mature.

Only one invention may be comprised in a patent, but it is not competent for any person in an action or other proceeding to take any objection to a patent upon this ground when the specifications have been passed by the examiner.

Only one invention in patent.

When a person making application for a patent includes therein by mistake, inadvertence, or otherwise, more than one invention, he may, after the refusal of the comptroller to accept such application, amend it so as to apply to one invention only, and may make application for separate patents for each such invention accordingly. Every such application bears the date of the first application, unless

the comptroller otherwise orders, when the later applications may bear date on the days they are actually made.

Advantages
of complete
specification
in first
instance.

A provisional specification, on the other hand, protects an applicant merely against the objection that his invention has been anticipated by his own publication and use of it, before letters patent have been granted to him. It gives him none of the rights of a patentee. He cannot prosecute infringers unless and until he has obtained a patent, and even then an action will not lie in respect of any infringement committed before the date of the publication of the complete specification.

But after the acceptance of the complete specification, and until the date of sealing, or the expiration of the time for sealing the patent, the applicant has all the privileges of a patentee except an immediate right to institute legal proceedings.

Infringements committed after the acceptance of the complete specification are actionable; and an action may be brought whenever a patent has been sealed. After the acceptance of a complete specification an inventor is entitled to mark his invention as patented.

The mode of procedure by filing a provisional specification, although less expensive in the first instance, ultimately costs a little more than that by filing a complete specification at once, as two specifications have to be drawn. The stamp fees are the same in each case, 1% being upon the application form and 3% upon the complete specification. There is no stamp on the provisional.

A complete specification may with advantage be filed at once by an applicant whose invention is fully matured, who is anxious to put it in the market at once, and to secure himself from infringement, and who has decided for what foreign patents to apply.

Procedure at
the Patent
Office.

Date and
number of
application.

Upon the application being left at the Patent Office, the applicant gets an official receipt, bearing the date of application and a number, which become the date and the number of the patent itself, when ultimately granted. The specifications when filed have to be in duplicate.

Communica-
tions through
post.

Papers may be transmitted to the Patent Office through the post by prepaid letter.

The application is advertised in the Illustrated Official Journal.

Each application is numbered in the order of its receipt; the numbers beginning with 1 at the commencement of every year.

First re-
ference to
examiner.

Every application is referred by the comptroller to an examiner, who ascertains and reports to him whether: (1) the nature of the

invention has been fairly described; (2) the application, specification, and drawings, if any, have been prepared in the prescribed manner; (3) the title sufficiently indicates the subject-matter of the invention; and (4) whether the specification describes more than one invention. Examiner's report.

These are the only points which the examiner has to ascertain. He is neither required nor entitled to pronounce upon the novelty or utility of the invention as described in the specification. No report as to novelty or utility.

The comptroller-general, however, may refuse to grant a patent for any invention of which the use would, in his opinion, be contrary to law or morality, and from such refusal no appeal is provided. Refusal of patent.

If the examiner report against the applicant upon any of the points mentioned above, the comptroller-general may require that the application, specification, or drawings be amended before he proceeds with the application. Amendment required.

Against this decision the applicant may appeal to the law officer, whose judgment is final. The fee payable for such an appeal is 3% on Form T., Patents Rules, 1890 (a).

Before the Act of 1888, if, after an application had been made, but before a patent had been sealed, an application was made accompanied by a specification bearing the same or a similar title, it was the duty of the examiner to report to the comptroller whether the specification appeared to him to comprise the same invention. If the examiner reported in the affirmative, the comptroller was required to give notice to the applicants that the examiner had so reported, and thereafter might refuse to seal a patent to the second applicant. This refusal was liable to be appealed against to the law officer upon the usual terms. The Act of 1888 abolished these "notices of interference" (b), as they were called. Former notices of interference.

If, however, the examiner report in the affirmative upon each of the issues submitted to him, the application is accepted, and notice of such acceptance is given to the applicant. The number of the application and the name of the applicant is advertised in the Illustrated Official Journal (c). Acceptance of application, &c.
Advertisement of application.

Subsequent procedure varies according as a provisional or complete specification is left in first instance by the applicant. An applicant who has filed a provisional specification only must, within When provisional specification left in first instance.

(a) See p. 586 and p. 749.

(b) See also p. 62.

(c) In case of any alteration in the title of the application it is again advertised in full.

- Filing of complete specification subsequently.** nine months from the date of his application, deposit at the Patent Office a complete specification particularly describing (a) the nature of the invention, and (b) the best method known to the inventor of carrying it out, and ending with a distinct statement of the invention claimed. The comptroller has power to extend for one month, but no longer, the time for filing the complete specification, if he is satisfied that the delay required is reasonable. The fee payable for such extension is 2%.
- Extension of time.**
- Abandoned application.** Unless a complete specification is left within the prescribed or extended time, the application is deemed to be abandoned.
- A list of the numbers of abandoned applications is published monthly in the Illustrated Official Journal.
- The complete specification.** A complete specification filed by an applicant who has already obtained provisional protection bears a stamp duty of 3%. It is filed in duplicate, and is at once referred by the comptroller to an examiner, in order to be compared with the provisional specification.
- Report of examiner.** If the examiner reports that the complete specification (1) does not fairly describe the invention; (2) does not terminate with a distinct claim or claims; (3) claims more than one invention; or (4) is substantially larger than that contained in the provisional, the comptroller may refuse to accept it unless and until amended to his satisfaction.
- Amendment required.** From such a refusal the applicant may, on payment of a fee of 3%, appeal to the law officer, who may reverse or vary the order of the comptroller, and whose decision is final.
- Complete specification must be accepted in twelve months.** Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept), the application becomes void.
- Extension of time.** The comptroller will, however, enlarge the time for a period not exceeding three months on payment of fees of 2%, 4%, or 6%, according as the period does not exceed one, two, or three months.
- Examination of claims.** Provided the specification ends with a statement of the invention claimed, distinct from the description of the invention, there is no power in the Patent Office to examine into the conformity of the claims put forward by the patentee with the description of the invention which he has given. There must be a real statement of the invention claimed; and if there is such a statement, it is not competent for the Patent Office to inquire whether it goes beyond or is in conformity with the description of the invention.
- When provisional**

tion in the first instance, the necessary documents and drawings must be filed, and the full fee of 4*l.* is payable at once, being 1*l.* on the application and 3*l.* on the complete specification. specification not filed.

When the complete specification, whether filed alone in the first instance or in pursuance of a previous provisional specification, has been accepted, the comptroller at once advertises the acceptance, and hands it to the Queen's printers for publication. The specification is usually printed within three weeks from the date of acceptance; and as a patent is not sealed until after the expiration of two months from the publication of the acceptance of the complete specification, there is ample time for inspection and if need be opposition by the public. Acceptance of complete specification.
Specification printed.

The duplicates of the complete specification and the provisional (if any) and the application are open to public inspection from the date of the advertisement of the acceptance of the complete specification. Inspection.

Printed copies of complete specifications may be purchased at the Patent Office (Sale Branch) for a small sum, generally not exceeding one shilling for each copy.

The patent, if unopposed, is sealed about ten weeks after the acceptance of the complete specification. Sealing.

Within two months after the advertisement of the acceptance of a complete specification, any person may oppose the grant of a patent on any one or more of the following grounds:— Opposition:

(1) That the applicant had obtained the invention from the opponent, or from some person of whom he is the legal representative; Grounds of.

(2) That the invention had been patented in this country on an application of prior date;

(3) That the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional and the leaving of the complete specification, but on no other ground.

The rules and practice relating to opposition may be shortly stated as follows:— Notice of opposition.

Having settled the ground of his opposition, an opponent should fill in the proper form, Form D, Patents Rules 1890 (*d*), which

(*d*) Appendix, p. 741.

may be obtained at the Patent Office, and which should be signed by himself.

A notice of opposition must state the grounds on which the person giving it intends to oppose the grant of a patent, and the opponent's address for service in the United Kingdom.

If one of the grounds of opposition is that the invention has been patented in this country on a prior application, the title, numbers, and date of the patent so granted must be specified in the notice. A notice of opposition bears a stamp of 10s.

Who may
oppose.

Any person may oppose before the comptroller-general, but only persons having a special interest in the patent will be heard on an appeal to the law officer.

Procedure.

On receiving notice of opposition, the comptroller forwards a copy of the notice to the applicant.

Statutory
declarations.

Within fourteen days after the expiration of two months from the advertisement of the acceptance of the complete specification, an opponent may file statutory declarations in support of his opposition, and must deliver to the applicant a list thereof.

Within fourteen days from the delivery of such list, the applicant may leave at the Patent Office statutory declarations in answer, and deliver to the opponent a list thereof, and within seven days from such delivery the opponent may file statutory declarations in reply, giving the applicant a list of such declarations as before.

Further
evidence.

No further evidence may be left on either side except by leave of the comptroller, or by written consent of the parties duly notified to him.

The comptroller's leave will not be obtained unless he is satisfied that the further evidence it is desired to leave was not reasonably obtainable, or was not within the knowledge of the party within the time previously allowed.

The comptroller has power to extend the times above mentioned on such terms as he thinks fit.

The hearing.

On the completion of the evidence the comptroller, on the application of either party, appoints a time for the hearing of the case, and gives the parties seven days' notice of such appointment.

Each party has to pay a fee of 1*l.* for the hearing.

The comptroller has no power to allow costs.

Comptroller's
decision.

The comptroller's decision is given in writing, is duly notified by him to the parties, and may be appealed against to one of the law officers.

Any person intending to appeal (a) to the law officer must file in the Patent Office a notice of such intention within fourteen days from the date of the decision appealed against, or within such further time as the comptroller may allow. Appeal to law officer.

Such notice states the nature of the decision appealed against, and also whether the appeal is from the whole or a part, and if so what part of such decision.

A copy of the notice of appeal must be sent by the appellant to the law officer's clerk, at Room 549, Royal Courts of Justice, London, and also to the respondent. Upon notice of appeal being filed, the comptroller transmits all the necessary papers to the law officer's clerk, who gives at least seven days' notice to the parties of the time and place appointed for the hearing of the appeal.

The evidence used on appeal to the law officer is the same as that used at the hearing before the comptroller. Evidence.

No further evidence may be given (save as to matters which have occurred or come to the knowledge of either party after the date of the decision appealed against), except with the law officer's leave upon application for that purpose. Further evidence.

The law officer is required, at the request of either party, to order the attendance at the hearing on appeal, for the purpose of being cross-examined, of any person who has made a declaration in the matter to which the appeal relates, unless, in his opinion, there is good ground for not making such order. Cross-examination of declarants.

When such an order is desired, a list of the persons whose attendance is required should be left with the law officer's clerk, with a request for an order; and copies of the list and the request should be sent to the other side. Any person requiring the attendance of a witness for cross-examination must tender to such witness a reasonable sum for conduct money. Conduct money.

The law officer, in making an order as to costs, may either fix the amount, or direct by whom and in what manner the amount of such costs shall be ascertained. Costs.

If the law officer's order as to costs be not complied with in the time fixed therein, or within fourteen days after the amount has been fixed or ascertained, the party to whom such costs are to be paid may apply to the law officer for an order for payment. To enforce this order it may be made a rule of the High Court of Justice, when the processes of execution to enforce orders of the High Court are available. Enforcement of order for costs.

(a) See Form T, p. 749.

Any notice or other document required to be given to the law officer's clerk may be sent by a prepaid letter through the post.

The fee payable by an appellant from the comptroller to the law officer is 3%.

Sealing of the patent.

If no opposition be entered, or if opposition, though entered, is successfully met, the comptroller will cause a patent to be sealed with the seal of the Patent Office, and dated as of the day of the original application.

The term of a patent is fourteen years from its date.

Every patent, when sealed, has effect throughout the United Kingdom and the Isle of Man.

Delay in sealing patent.

A patent must issue within fifteen months from the date of application. To this rule there are three exceptions:

(1) When the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct.

(2) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative, and sealed at any time within twelve months after the death of the original applicant.

(3) If the comptroller has allowed an extension of time for the leaving or acceptance of the complete specification, he may allow a further extension of time equal to the sum of the extensions allowed in leaving and accepting the complete specifications, after the said fifteen months for the sealing of the patent.

Renewal fees.

The privilege granted by a patent under the Act of 1883 will expire at the end of four years, unless a certificate of renewal has been obtained.

The following is a list of the fees payable on Form J., Patents Rules, 1890 (a).

On a certificate of renewal—

Before the end of 4 years from the date of patent (b)	- £50
" " 8 years " " (c)	- 100

(a) See Appendix, p. 744.

(b) *I. e.*, the date of application.

(c) In the case of patents dated prior to 1884, on which a £50 fee has been paid, the annual fees are (if a £100 fee be not paid before the end of the *seventh* year)—

	\$
Before the end of the 7th year	10
" " 8th year	10
" " 9th year	10
" " 10th year	15
" " 11th year	15
" " 12th year	20
" " 13th year	20

or in lieu of the above, the following annual fees:—

Before the expiration of the—

	Renewal fees.
4th year from the date of the patent - - -	£10
5th year " " - - -	10
6th year " " - - -	10
7th year " " - - -	10
8th year " " - - -	15
9th year " " - - -	15
10th year " " - - -	20
11th year " " - - -	20
12th year " " - - -	20
13th year " " - - -	20

A patent ceases if the patentee fails to make the prescribed payment within the prescribed times.

If, nevertheless, in any case, by accident, mistake, or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the comptroller for an enlargement of time.

Enlargement
of time for
payment of
renewal fees.

The comptroller shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee (d) for enlargement not exceeding 10%, enlarge the time accordingly, subject to the following conditions:—

(a) The time for making any payment shall not be enlarged for more than three months.

(b) If any proceeding shall be taken in respect of an infringement of the patent, committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

Infringement.

In case the last day for paying one of the prescribed fees should fall on Christmas Day, Good Friday, or on a Saturday, or on a day observed as a holiday at the Bank of England, or as a public fast or thanksgiving day, the fee may be paid on the day next following.

If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at

Loss of
patent.

(d) The fees at present prescribed are—

For an enlargement not exceeding 1 month.....	£ 3
" " " 2 months.....	7
" " " 10 months.....	10

any time cause a duplicate thereof to be sealed, on payment of a fee of 2*l.*

Amendment
of specifica-
tion, &c.

Specifications and drawings may be amended by way of disclaimer, correction, or explanation. Shortly stated, the practice is as follows :—

The applicant leaves at the Patent Office a written request, Form F., Patents Rules, 1890 (*e*), stating the nature of the proposed amendment, and his reasons for the same. The Patent Office fee is 1*l.* 10*s.* or 3*l.*, according as the application to amend is made before or after the sealing of the patent.

The request and the proposed amendment are advertised in the Official Journal (*f*). Any person may give notice at the Patent Office of opposition to the amendment. Such notice should be in Form G., Patents Rules, 1890 (*g*), and bears a stamp of 10*s.* The comptroller gives notice of the opposition to the applicant, and hears and decides the case, subject to an appeal to the law officer, whose decision is final. Only an interested party will be heard in opposition before the law officer.

Where notice of opposition is not given or is not prosecuted, the comptroller determines whether the proposed amendment should be allowed. The decision of the comptroller may be appealed against to the law officer, as before.

No amendment will be allowed that materially enlarges the scope of the invention originally claimed.

Clerical errors can be amended at any time. The application is made on Form P., Patents Rules, 1890 (*h*).

(*e*) See Appendix, p. 742.

(*f*) The fee for correction of a clerical error is 5*s.* up to, and 1*l.* after, the seal-

ing of the patent.

(*g*) See Appendix, p. 742.

(*h*) See Appendix, p. 747.

CHAPTER VII.

APPLICATIONS FOR PATENTS.

THE law and practice as to applications for letters patent will be fully treated in different parts of this work, and need not be recapitulated here in detail. Scope of chapter.

A general account of the application has already been given in the last chapter.

It is therefore proposed simply to state the chief points which arise in this connection, and to refer the reader to the chapters or headings where they are fully considered.

It may be laid down as a general rule, that any one may be an applicant for letters patent. (See note to sect. 4, sub-sect. (1), of the Act of 1883, p. 428.) Who may be patentee.

Infancy, lunacy, and coverture create no incapacity. (Page 512.) Persons under disability.

As to declarations on behalf of infants, lunatics, &c., see sect. 99, p. 512.

Possible exceptions to this general rule in the case of the sovereign, an alien enemy, a beneficed clergyman, and a person who has arrived at a discovery by information officially acquired, are noticed at pp. 428, 429. Possible exceptions.

Two or more persons may make a joint application. (Sect. 4, sub-sect. (2), p. 427.) Joint applicants.

As to co-ownership of patents, see pp. 192—194.

The importer of an invention from abroad, as well as an inventor, may be an applicant under sect. 4, sub-sect. (1) (see pp. 430—433); but not under sect. 103 and the International and Colonial arrangements. (See p. 517.) Importer of invention.

The legal representatives of a deceased inventor may apply for letters patent, or may proceed with an application already made. Legal representative.
As to the practice in such cases, see p. 491.

As to applications under sects. 103 and 104 of Patents Act, 1883, and the International and Colonial arrangements, see pp. 516—518, and pp. 408—416. Application under sects. 103 and 104.

**Rival appli-
cations.**

In case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications does not prevent the sealing of a patent on an earlier application. (Act of 1883, sect. 13, p. 451.)

As to rival applications, see pp. 438 and 440.

**Examination
and amend-
ment of
applications.
Forms.**

As to the examination and amendment of applications, see sects. 6 and 7, pp. 436—439.

The various forms of application for letters patent will be found in the Appendix, pp. 737—739. They are the Forms A, A1, A2, of the Patents Rules, 1890.

Procedure.

The procedure connected with applications is discussed at pp. 69 *et seq.*, and also in the notes to sects. 4—7, pp. 427—440.

As to fees, see p. 486, and also p. 550.

CHAPTER VIII.

SPECIFICATION OF AN INVENTION.

SECT. 1. ORIGIN AND DEVELOPMENT OF SPECIFICATION.

SECT. 2. THE TITLE.

SECT. 3. PROVISIONAL SPECIFICATION.

SECT. 4. COMPLETE SPECIFICATION AND CLAIMS.

(1) *Relation of Provisional and Complete Specifications.*

(2) *Sufficiency of Complete Specification.*

(3) *Construction of Complete Specification.*

(4) *The Claims.*

SECT. 5. AMENDMENT OF SPECIFICATION.

(1) *Former Law as to Amendments, Disclaimers, and Clerical Errors.*

(2) *Existing Law.*

(a) *Amendment generally.*

(b) *Disclaimer pending Action.*

SECT. 1—ORIGIN AND DEVELOPMENT OF SPECIFICATION.

THE instruction of the public in the manufacture or exercise of a patented invention has always been considered part of the motive or policy of the grant, and different means of attaining this object have been adopted at different stages in the history of patent law. The earliest practice, and that to which Lord Coke refers, was to insert in the grant a proviso requiring the inventor and his assignee to take apprentices during the last seven years of the term, and to teach them "the knowledge and mystery" of his invention (a).

There was, however, no obligation upon a patentee to define clearly the objects to which his patent extended, and the public at once were exposed to the danger of unconsciously infringing the privilege, and had no security for acquiring the invention on the

Specification
the con-
sideration for
the grant.

Formerly no
specification.

(a) See 1 Web. P. C. p. 36. Buck's invention.

expiration of the patent (*a*). The only indications to the public of the scope of the invention were the short recitals in the letters patent themselves. And there is little doubt that a patent without such a recital, and also without a condition requiring a specification or description of the invention in some way or other for the use of the public, would be absolutely void for want of consideration (*b*).

Introduction
of proviso for
specification.

The description of inventions which were formerly contained in patents were, however, very meagre and unsatisfactory (*c*), and the practice being found inconvenient, it became the custom, near the end of the reign of Queen Anne, to insert a proviso into all patents, obliging the patentee within a given time after the date of his grant, to "particularly describe and ascertain the nature of his invention, and in what manner the same is to be performed," by an instrument under his hand and seal, called a "specification," and to enrol the said specification in the Court of Chancery. The authority by which this clause was introduced does not appear, and was not, at any rate, parliamentary. It was probably suggested by the Attorney or Solicitor-General of the day (*d*). According to Webster (*e*), the earliest patent containing the proviso for a specification was that granted 3rd October, 1711 (*f*), to John Nasmyth. The specification or description of a patent invention by instrument enrolled, is not required either by the common law or by the Statute of Monopolies, but is only a condition or proviso which is contained in the patent itself.

Nasmyth's
Patent, 3rd
October,
1711.

After the grant of the patent, with the proviso as above, the enrolment of the specification could not be dispensed with except by Act of Parliament. Such an Act was passed in 1813 (53

(*a*) It must, however, be remembered that though at common law no instrument was required to be enrolled, it was nevertheless necessary that the party should be in possession of a mode of putting his invention into practice, for otherwise the patent would be void for false suggestion and failure of consideration. (Web. P. C. p. 8, n.)

(*b*) Hindmarch, p. 151.

(*c*) See the form of grant, p. 530.

(*d*) Report, &c., 1829; Appendix, p. 170; Web. Letts. Pat. p. 6, n. (*o*). It is to be observed that some years before this a duty upon all parchment writings was granted to the Crown. It may be that the obtaining of an extra duty upon the specification was one of the objects in providing for the enrolment of a sepa-

rate deed of specification. See the memorandum at end of Nasmyth's Specification, A.D. 1711, No. 387.

(*e*) 1 P. C. p. 36, n. (*e*).

(*f*) An inspection of the specifications at the Patent Office bears out Webster's statement. The date of enrolment of the specification was the 1st April, 1712, as appears from the printed specification, No. 387, A.D. 1711. Nasmyth's case was not, however, consistently followed at first, but very soon it became usual to insert the proviso for enrolment of a specification in all cases. The specification in Nasmyth's case was extremely short, being only a few lines, not more than the recital of the invention in the letters patent, usual at the time.

Geo. III. c. 179), in the case of James Lee, who had obtained patents in 1812 for certain new methods of preparing hemp and flax, with provisoes for the enrolment of specifications within fifteen months of their dates respectively (*g*). An Act of Parliament was obtained dispensing with these provisoes and substituting others, on the grounds that if the specifications should be enrolled in the usual manner, foreign agents might obtain copies of them and send them abroad.

James Lee's
Patent Act,
1813.

The substituted conditions are of sufficient interest to justify citation. The patentee was required by the Act, instead of enrolling his specification, to deliver the same to the Lord Chancellor within fifteen months from the date of the first patent, with an affidavit that the whole of the invention and the method of using the same was therein described. The specification and affidavit were then to be enclosed in a cover, under the seal of the Lord Chancellor, and lodged in the office of one of the Masters of Chancery, to be nominated by the Lord Chancellor, and were to be preserved by that master. (Sect. 1.) The said packet was not to be removed from the custody of the said master on any pretence, except by order of the Lord Chancellor, who was empowered to call for and open the same whenever it might be necessary, on account of applications for patents for inventions of a similar nature; or on account of any trial at law; and after such use being made, the packet was to be sealed up again and deposited with the master as before. (Sect. 2.) Two copies of the said specification, with affidavits by the patentee that they were true copies, were to be delivered under cover, sealed by the patentee, one to the Lord Chancellor of Ireland (who was required to deposit the same in the custody of one of the Masters of Chancery in Ireland), and the other to the Lord Chief Baron of the Exchequer in Scotland (to be deposited by him in the custody of the King's Remembrancer in the Exchequer in Scotland). (Sect. 3.) The said packets so deposited were to be kept as before directed, for the original, and might be opened and examined, when necessary, by the Lord Chancellor in Ireland and the Lord Chief Baron in Scotland, and then sealed up again and deposited as before. (Sect. 4.) The

Provisions in
place of
enrolment in
Lee's Patent
Act.

(*g*) Cf. Booth's Act, 1792, 32 Geo. III. c. 73. Booth intended to operate by machinery upon a tissue or web of carded wool, so as to interlace or entangle, and felt the fibres together, and thus form cloth, or rather felt, without the previous operation of spinning and weaving.

Booth's invention was tried on a large scale at Taunton, also near Salisbury, and again at Merton, near London, but without success, the felt not having any of the strength and durability of woollen cloth. (Report, &c., 1829; Appendix, p. 175.)

several packets so deposited were to be kept, as aforesaid, until the expiration of seven years from the passing of the Act, and were then to be enrolled by the persons having custody of the same and by the patentee or his executors, administrators, or assignees, in the Courts of Chancery in England, Scotland, and Ireland, as directed by the patents respectively. (Sect. 5.) The delivery of the said specifications, and the enrolment thereof within four months after the expiration of the seven years aforesaid, were to be deemed an effectual fulfilment of the provisoes in the patents. (Sect. 6.) A doquet or abstract of the said several letters patent, containing the date and the words in which the invention is therein described, was, within four months from the passing of the Act, to be enrolled in place of the specifications. (Sect. 7.) In case a specification of the invention was not duly enrolled in pursuance of each patent, within four months after the said term of seven years from the passing of the Act, the patent was to become void (*f*). (Sect. 8.)

Lord Eldon
on Lee's
Patent Act.

Referring to this case (*g*), Lord Eldon said that it was a very peculiar one, the Act being intended to secure to the State in time of war the benefit of a most important discovery, and added that, in his opinion, the Legislature would pause a long time before they passed such an Act in future.

Endeavours
to avoid
enrolment of
specification.

No private Act of the same kind appears to have passed subsequently (*h*). Applications to the Lord Chancellor to dispense with the enrolment of the specifications of letters patent were frequently made, but without success. Thus, in *Ex parte Koops* (*i*), a petition that the enrolment might be dispensed with, or some provision made for preventing the specification being made public, on the ground that foreigners would obtain the invention, was dismissed. In pronouncing judgment, Lord Eldon said: "As to the worth of the apprehension suggested, a man has nothing more to do than to pirate your invention in a single instance, and he will then force you to bring an action, and then the specification must be pro-

(*f*) Cf. Report, &c., 1829; Appendix, p. 178. "Mr. Lee's invention was tried on a large scale, but did not prove successful; it was intended to prepare flax for spinning, without previous dew rotting or water rotting": *Ibid*.

(*g*) *In re Lacy*, 29 Rep. Arts, N. S. 250; Web. P. C. 431.

(*h*) *In Ex parte Koops*, 1802, 6 Ves. 595, Lord Eldon said: "Either upon this or some other case in the last session a

clause for this purpose (in dispensing with the enrolment of a specification) was inserted in an Act of Parliament, and upon the motion of Lord Thurlow, upon reasons applying not only to that but to all cases, and seconded by Lord Rosslyn, the clause was universally rejected, and rejected, as it appeared to me, upon very substantial grounds, in which I readily concur."

(*i*) 1802, 6 Ves. 595.

duced. But with regard to the king's subjects a very strong objection occurs, which makes it necessary that the specification should be capable of being produced. They 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 specification, alleging an infringement of his patent, when, if those persons had seen the specification, they never would have engaged in their project. The enrolment is, therefore, for the benefit of the public."

Specifications were formerly framed in the manner usual with deeds-poll (*k*), commencing "To all to whom these presents shall come," &c.

The difficulty of preserving inventions from foreign piracy led, about 1819, to the introduction of a Bill into the House of Commons for concealing the specifications of all inventions for which patents were granted, from public inspection, in order that they might not be sent abroad (*l*). It was thrown out. A few years later (1822) a petition was presented to the House of Commons, praying for some amendments in the law relative to patents for inventions, and a Bill was brought in for that purpose. One of its principal provisions was to give security to the inventor from the time of his first application for a patent during a certain time allowed for making experiments before the date of the patent. This measure, however, was lost on the second reading (*m*).

Policy of
concealing
specifications.
Foreign
piracy.

The risk of piracy was not, however, the only, or the chief, disadvantage of the methods of enrolling specifications which prevailed from the reign of Anne till 1852. It was attended with serious inconveniences to the public as well as to the patentee. Specifications were originally enrolled in the Enrolment Office, the Rolls Chapel, or the Petty Bag Office, at the option of the grantee, and could thus be discovered and inspected by the public only after laborious searches. The statutes, 11 & 12 Vict. c. 94, s. 14, and 12 & 13 Vict. c. 109, s. 15, which directed their enrolment in the Enrolment Office of the Court of Chancery alone, left the evil without a remedy, so far as former specifications were concerned. Again, a patentee was not obliged to enrol his specification for a certain time, usually six months, after obtaining his patent. The result was well stated by a witness in his evidence before the Com-

Specifications
might be
enrolled in
three offices.

(*k*) See Appendix, p. 854.

(*l*) See also Act of 1883, sect. 44.

(*m*) See Appendix p. 179 of the Report, &c., 1829.

mittee of 1851 (*m*). "A man gets hold of an idea; he runs immediately to the Patent Office before he has made any attempt to perfect his process. He gets a protection for six months, and he goes about examining every publication connected with the particulars, and getting all the information he can; and when the time for delivering in his specification comes he has entirely altered the original view he entertained."

Provisional
protection
under Act of
1852.

The Patent Law Amendment Act, 1852, adopted a practice in force in several continental countries, and which was strongly recommended by most of the witnesses who gave evidence before the Committees of 1829 and 1851, provided that a petition for the grant of letters patent should be accompanied by a statement in writing, describing the nature of the invention which it was sought to patent: this statement was called the provisional specification (*n*). The effect of the procedure prescribed by the Act was that a patentee might use his invention for six months without prejudice to his patent by that user, but he obtained no rights against the public until his patent had been sealed, and even then the patent would not relate back to acts done in the interval. The patentee was only protected against the consequences of his own publication, and then might employ workmen and obtain machinery, without the risk of being betrayed (*o*).

Provisional
specification.

Complete
specification.

In lieu of a provisional specification, an inventor was empowered to deposit, in the first instance, an instrument in writing under his hand and seal, called a complete specification, particularly describing and ascertaining the nature of his invention, and in what manner it was to be performed. The effect of such deposit was to protect the invention for a period of six months from the date of the application, and to give the applicant during such period the like powers, rights, and privileges as might have been conferred upon him by letters patent for such invention, duly sealed as of the day of the date of such application (*p*).

Provisional
protection
and specifi-
cations under
Patents Acts,
1883—1888.

Under the Patents Acts, 1883—1888, substantially the same procedure prevails, except that (1) the provisional protection extends, not as before, for a term of six months from the date of application, but for the period between the date of application and the date of sealing (*q*); and, (2) that if the applicant does not leave a com-

(*m*) Mr. John Fairrie, p. 145, Answer 916.

(*n*) Act of 1852, sect. 6.

(*o*) *Ibid.* sect. 8; and see *Ex parte Bates and Redgate*, L. R. 4 Ch. 578 (per Lord

Hatherley, L. C.).

(*p*) Patent Law Amendment Act, 1852, sect. 9.

(*q*) Act of 1883, sect. 14.

plete specification in the first instance he may leave it at any subsequent time within nine months from the date of application (*r*), or within such extended time, not exceeding one month, after the said nine months, as the comptroller may, on payment of the prescribed fee, allow (*s*).

Under the Act of 1885 (*t*) it is provided that where an application for a patent has been abandoned or become void, the specification or specifications and drawings (if any) accompanying or left in connection with such application shall not at any time be open to public inspection, or be published by the comptroller. All the provisional specifications under the Act of 1852 were published.

Provisional specifications of abandoned application now secret.

SECT. 2.—THE TITLE.

The title of a patent is intended to, and must, disclose the subject-matter of the invention (*u*).

Under the Patents Act, 1883 (sect. 6), the duty is imposed upon the official examiner (to whom an application for letters patent is referred) of ascertaining and reporting upon the sufficiency of the title, and if his report is adverse, the Comptroller-General may refuse the application, unless and until it is amended to his satisfaction. This refusal may be appealed against to the law officer, whose decision is final.

Report of examiner on title.

Insufficiency in an applicant's title is not a ground of opposition; and in view of the power to require and admit amendments vested in the Comptroller-General by sect. 7 of the present Act, it is improbable that many applications for letters patent will be finally rejected for defects in the title. But an inventor may still bring upon himself considerable trouble and delay by failure to frame his title with care. It will be advisable, therefore, to refer to the leading cases bearing upon the subject.

The title of an invention ought accurately to describe the nature of it, and should neither be so large as to include anything more than the patentee has actually invented, nor so narrow as to exclude any part of the invention (*x*).

Title must describe nature of invention.

Mere generality in the terms of a title, if the description was not in any respect inaccurate, was formerly held to be no ground for avoiding a patent already granted (*y*). Where, therefore, a

Mere generality not fatal to patent.

(*r*) Act of 1883, sect. 8, sub-sect. 1.

(*s*) Act of 1885, sect. 3.

(*t*) Sect. 4.

(*u*) *Househill Co. v. Neilson*, 1843, 1

Web. P. C. 678.

(*x*) Hindmarch, p. 43.

(*y*) *Cook v. Pearce*, 1844, per Tindal, C. J., 8 Q. B. 1064, reversing the deci-

patent had been taken out "for improvements in carriages," and the invention consisted in an improvement in pinion shutters which could only be used in some kinds of carriages, the title was held by the Exchequer Chamber to be sufficient.

But *semble*,
a ground for
amendment.

But Tindal, C. J., who delivered the judgment of the Court, observed that an objection to such a title might well have been taken on the part of the Crown before it granted a patent for the invention; and in *Newall v. Elliott* (s), Pollock, C. B., stated that he had, when Attorney-General, refused an application for a patent for "an improvement in locomotion," on the ground that the title was too general.

Title indefi-
nite or too
large.

Objection will in all probability be taken to a title which is so large and indefinite in its terms as to be calculated to deceive any person reading it as to the extent or object of the grant (a).

Thus, in *Cochrane v. Smethurst* (b), a patent had been granted for "a method or methods of more completely lighting cities, towns and villages." The invention consisted in improvements in street lamps. The title was held to be too large.

So, in *Campion v. Benyon* (c), when a patent had been obtained for "a new and improved method of making and manufacturing double canvas and sailcloth with hemp and flax, without any starch whatever," and it appeared that sailcloth had been made without starch before, it was held that the title was too large, as it embraced more than the patentee had actually discovered.

Bloxam v. Elsee (d) is another illustration of the point in question. This was an action for the infringement of two patents for "an invention of making paper in single sheets, without seam or joining, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length." It appeared, however, that the machine described in the specification would work to one width only. It was held by the Court of King's Bench that the consideration for the grant was the invention of a machine for making paper in sheets of width and length varying within the limits designated, and that there had been a failure in a material part of the patentee's representation.

sion of Denman, C. J., *ib.* at p. 1050; and *cp.* *Sturtz v. De la Rue*, 1828, 1 Web. P. C. 83; 5 Russ. 322; *Nickels v. Haslam*, 1844, 13 L. J. C. P. 146; 8 Scott, N. R. 97; *Beard v. Egerton*, 1846, 3 C. B. 97; 15 L. J. C. P. 270; *Reg. v. Mill*, 1850, 10 C. B. 379; *Crossley v. Potter*, 1853, Macr. P. C. 242; *Hills v. London Gas Light Co.*, 1860, 5 H. & N.

370.

(s) 1864, 13 W. R. 15.

(a) *Cp. Hindmarch*, p. 46; *R. v. Else*, 1785, 1 Web. P. C. 76.

(b) 1816, Dav. P. C. 354.

(c) 1821, 6 B. Moo. 71; *Brunton v. Hawkes*, 1821, 4 B. & Ald. 352—358.

(d) 1825, 6 B. & C. 169, 178; *cp. Felton v. Greaves*, 1829, 3 C. & P. 611.

Again, in *Bainbridge v. Wigley* (e), the title of the patent was "certain improvements in the flageolet or English flute, whereby the fingering will be rendered more easy, and notes produced that were never before produced." At the trial it appeared that, while the instrument was a great improvement, only one new note was produced. Lord Ellenborough held that there was a failure of the consideration for the patent, which was fatal to the grant.

The generality of the words in a title may be restricted by the specification (f).

Title may be restricted by specification.

The specification cannot, however, so extend the meaning of the title as to make the grant include anything not within the natural and ordinary meaning of the language made use of in the patent to describe the invention (g).

Variance between title and specification.

Illustrations.—1. The title of a patent was, "An invention for the improved application of air to produce heat in fires, forges and furnaces where bellows and other blowing apparatus are required." The invention consisted in passing the air from the blowing apparatus into an artificially heated receptacle, and then into the furnace. It was objected, on the trial of an action for the infringement of this patent, that it was doubtful whether the patent was for the invention of the application of hot air, or only for an improved mode of applying hot air. Upon this question coming before the Court of Exchequer, it was held that, although the title of the patent was ambiguous, it was sufficiently explained by the specification, and was not at variance with it, as was the case in *R. v. Wheeler* (h).

Cases.

2. *R. v. Wheeler* (i) was a *scire facias* for the repeal of letters patent "for a new and improved method of drying and preparing malt." In the specification, the patentee claimed to be the inventor, not of a method of drying or preparing malt, but of a method of giving to it, when previously prepared, some qualities which it did not possess before, or which it possessed only in a very slight degree, viz., the qualities of being soluble in water, and colouring the liquor in which it should be dissolved, which latter was the object in view. This was to be effected by a second and additional process, the application of a very high degree of heat.

(e) 1810, Parl. Rep. 1829, 197; 1 Carp. P. C. 270.

(f) *Hornblower v. Bolton*, 1799, Dav. P. C. 230; *Newton v. Voucher*, 1851, 21 L. J. Ex. 305; 6 Ex. 866.

(g) *Hindmarch*, p. 47.

(h) *Neilson v. Harford*, 1841, 8 M. & W. 806; cp. *Beard v. Egerton*, 1846, 3 C. B. 97.

(i) 1819, 2 B. & Ald. 345. See next illustration.

Variance between title and specification.

It was held by the Court of King's Bench that the invention mentioned in the specification was so entirely different from that mentioned in the patent as that the latter remained wholly undescribed and unspecified (*k*).

3. In *Rex v. Metcalf* (*l*)—another *scire facias*—the defendant had obtained a patent for the manufacture of hair brushes which were described as “tapering.” The specification described a method of making brushes in which the bristles would be of unequal length. Lord Ellenborough said: “If the word tapering be used in its general sense, the description is defective; there is no converging to a point. If the term has had a different meaning annexed to it by the usage of trade, it may be used in its perverted sense.” No such evidence having been given, Lord Ellenborough directed the jury to find that it was not a *tapering*, but only an unequal, brush, and there was a verdict for the Crown.

4. In *Fisher v. Dewick* (*m*), tried before Coltman, J., the patent was for improvements in machinery for making bobbin net-lace. Sir John Campbell, for the defendant, objected that the title misdescribed the subject-matter, the invention being only for making a spot during a particular part in the process, and being useless where that addition was not wanted: and he said the title should have been, “for a mode of making spots in bobbin net-lace.” But the learned judge said: “Is the invention applicable to anything but the making of bobbin net-lace? and is it not an improvement?” and he overruled the objection, and the Court of Common Pleas supported his ruling, Tindal, C. J., observing that it could not, without great refinement, be said that the invention was not an improvement in the manufacture of bobbin net-lace.

5. In *Croll v. Edge* (*n*), a patent had been granted “for certain improvements in the manufacture of gas for the purpose of illumination, and in the apparatus used when transmitting and measuring gas.” A specification was enrolled in which the words “therein and” were interpolated between “used” and “when.” The Court of Common Pleas held that the patent was bad.

“The title,” said Maule, J., “did not profess to comprehend improvements in any apparatus used in making gas. The patentees, in representing to the Crown the nature of the invention

(*k*) *Ubi supra*, at p. 351.

(*l*) 1817, 1 Web. P. C. 141 n.; 2 Stark. R. 249.

(*m*) 1838. Not reported on this point, but cited by Pollock, A.-G., in the course

of his argument in *Cook v. Pearce*, 8 Q. B. 1056.

(*n*) 1847-50, 19 L. J. C. P. 261; 9 C. B. 479, 490, 492.

which they had discovered, did not give the Crown notice that they claimed the exclusive use of any apparatus for making gas. When the body of the specification is looked at, one main part of the patentee's claim consists of what may be, and probably is, a new mode of manufacturing clay retorts—an apparatus used in the manufacture, and not in the transmitting and measuring, of gas. No patent at all has been granted to them for that. It seems to us that they have specified for a more extensive and a different patent from that which was granted to them."

6. In *Oxley v. Holden* (o), the title of the patent was for "improvements in the doors and sashes of carriages." In his specification the inventor stated: "I have shown my invention as applied to railway carriage doors and window fittings, although equally applicable to the doors and windows of any other carriages, or in any position where windows and doors are subject to jar and vibration." It was objected that the specification claimed more than the patent. But the Court of Common Pleas overruled this objection. "The invention," said Erle, C. J., "specified and claimed, is truly an improvement in the doors and windows of carriages, not the less because it is also applicable to other doors and windows. It seems to us reasonable that the claim should be construed with reference to the title, and confined accordingly to the doors and windows of carriages."

The amendment of the title of letters patent is very fully and clearly dealt with by Sir Richard Webster, A.-G., in two recent cases, *Dart's Patent* (p) and *Jones's Patent* (q). It may be desirable to notice them in turn.

Amendment
of title.

Dart's Patent (p). Here the question was—what is the proper course to be adopted where the applicant desires to omit a part of his invention, as covered by the original title prior to the time that the complete specification has been accepted by the office?

Decisions of
law officer.

Webster, A.-G., said, "If the applicant merely desires to omit part of the invention described in the original title and provisional specification, I do not see that any amendment of the title and provisional specification is of necessity required, as I think that a

(o) 1860, 8 C. B. N. S. 666, 705; cp. *Patent Bottle Envelope Co. v. Seymer*, 1858, 23 L. J. C. P. 22; *Parkes v. Stevens*, 1869, L. R. 8 Eq. 358; *Wright v. Hitchcock*, 1870, L. R. 5 Ex. 37.

(p) Griffin, P. C. p. 307; cp. Trans. I. P. A., Vol. V. pp. 52—56, A. V. Newton.

(q) *Ib.* p. 313.

proper disclaiming clause might be inserted in the complete, indicating that part only of the invention originally covered by the title of the provisional was intended to be claimed. But should the applicant think that some risk to the validity of his patent might be occasioned by such a course being adopted, it is open to him to lodge a complete, omitting the part desired to be left out, and open to the Patent Office, under the powers of sub-sects. 7 and 9 (of the Patents Act, 1883), to permit the original application and provisional to be amended by striking out the part which it is no longer desired to retain.

“It must, however, be distinctly understood that such an amendment in the title and provisional ought, in my opinion, to be confined to excision only, and not to amendment or other explanation, and the excision must be such as does not extend the scope of the title”^(r).

Jones's Patent (s). In this case a question of some difficulty was raised on a point of practice. Application was made for letters patent on September 18th, 1885. The application and provisional specification having been accepted by the Patent Office, a complete specification was lodged on June 18th, 1886, being at the expiration of the usual period of nine months and no extension of time having been obtained under the Act of 1885.

After lodging the complete specification, and before it was accepted by the Patent Office, the applicant desired to amend the complete specification in certain particulars. The Comptroller-General declined to allow the proposed amendments, and from this decision an appeal was brought.

Upon the hearing, a preliminary question arose as to whether, under the circumstances, any amendment of the specification could be admitted, except under sect. 18, and consequently as the application to amend had not been advertised, whether any amendment could properly be made.

Webster, A.-G., said, “The language of sect. 18 of the Act is somewhat obscure, but I am of opinion, having regard to the earlier sections, particularly 7 and 9, that sect. 18 was intended to apply

Amendments
when under
sects. 7 and
9 or sect. 18.

(r) In this case an incidental question arose respecting the payment of a fee required by the Patent Office on *Dart's Application*. Webster, Att.-Gen., said: “The matter is not exactly for me to determine, but in the view which I take, viz. that this matter ought to be dealt

with under sects. 7 and 9, and not under sect. 18, I am of opinion that no fee was properly chargeable as in the case of an application to amend.”

(s) *Ubi supra*; and Transactions of the Inst. of Pat. Agents, Vol. V. at p. 55.

to the amendment of specifications after they had become public property. Any other amendments must, in my opinion, be dealt with under sects. 7 and 9 and not under sect. 18."

In re Brown (t) was an application for letters patent for "improvements in casks and tubs." The specification stated that the invention was applicable to barrels, casks, tubs and analogous vessels; the claims were for a peculiar method of fastening in the heads and bottoms of vessels formed of staves.

The Comptroller-General required the applicant to amend his title by inserting the words "and analogous vessels."

On appeal, however, Webster, A.-G., passed the patent with the original title and said that he expressed no opinion as to whether the applicant could claim anything more than that which was covered by his title and claims, but inasmuch as he had elected to stand by his title and the claims were specific that was sufficient.

SECT. 3.—PROVISIONAL SPECIFICATION.

The provisional specification was introduced by the Patent Law Amendment Act, 1852, of which sect. 6 required a specification describing the nature of the invention to be left with the petition for letters patent. Origin of.

The specification was then referred to one of the law officers who, if satisfied as to its sufficiency and formal correctness, certified that the applicant's petition should be allowed, and in due course the desired grant was made (u).

Under the Act of 1852, it was a condition of the patent grant that the patentee should file, within six months, a full specification particularly describing and ascertaining the nature of the invention and in what manner it was to be performed. On the patentee's failure to comply with this condition, his letters patent were to become void. Proviso for filing specification under Act of 1852.

According to this mode of procedure an inventor received from the Crown the consideration for disclosing his invention before he had fully disclosed it (v).

Under the Act of 1883, this process was reversed, and the filing

(t) 1887, Griffin, A. P. C. 1.

(u) For the formal steps, see an example, p. 208, note (b).

(v) See Transactions of the Inst. of Pat. Agents, Vol. IV. p. 155, G. G. M. Hardingham.

of a complete specification became a condition precedent to the sealing of a patent.

Office of provisional specification under the Act of 1852.

Sect. 6 of the Patent Law Amendment Act, 1852, provided as follows: "There shall be left (at the office of the commissioners) 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 invention;*" and sect. 8 made the grant of provisional protection depend upon the law officer "being satisfied that the provisional specification" did accurately "*describe the nature of the invention*" (x).

The sufficiency of the provisional specification turned, therefore, upon the meaning which was to be attached to the words in italics.

Law officer's rule.

The following rule of practice was adopted by the law officers: "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" (y).

Scope of provisional specification.

The scope of the provisional specification under the Act of 1852, was clearly defined in several leading cases. "The office of the provisional specification," said Byles, J., in *Re Newall and Elliott* (z), "is only to describe generally and fairly the *nature* of the invention, and not to enter into all the minute details as to the manner in which the invention is to be carried out: otherwise the provisional specification must be as full as the complete specification, and drawn with as much care and deliberation."

In a subsequent case between the same parties (*Newall v. Elliott* (a)), Pollock, C. B., expressed himself more fully to the same effect:

"The object of the statute, which requires a provisional specification, is nothing more than a legislative recognition of the custom which called upon every patentee when he applies for the patent to give some notion of what his invention is. That has been followed up by an Act of Parliament requiring it to be done; but the object in both cases is to ascertain the identity of the invention, and to make it certain that the patentee shall ultimately obtain his patent for that invention which he presented to the Attorney-General in

(x) This the law officer certified by a "certificate of allowance."

(y) There is an interesting discussion on the effect of this rule upon the statutory provisions in the Transactions of

the Institute of Patent Agents (Vol. I. pp. 68 *et seq.*, W. Spence).

(z) 1858, 4 C. B. N. S. 269.

(a) 1864, 10 Jur. N. S. at p. 955.

the first instance. . . . I have no doubt that the object of the Act of Parliament was not to ascertain the entirety of the invention, but the identity of the invention, so as to enable the Attorney-General, and in fact to enable a jury ultimately to determine whether the invention fully specified was the same invention as that which was presented to the notice of the Attorney-General by the provisional specification."

In the same case (*b*), Channell, B., added: "I entirely adopt the test which my Lord Chief Baron suggested—that the question is as to the identity of the invention, which is disclosed by the full specification with that of which a short note or minute was made in the provisional specification."

The Act of 1883, s. 5, sub-s. 3, repeats in substance the provisions of sect. 6 of the Patent Law Amendment Act, 1852; the language of Byles, J., in *Re Newall and Elliott* (*c*), was adopted by Kay, J., in a recent leading case (*d*), and, generally, the tests of the sufficiency of a provisional specification remain unaltered.

Office of provisional specification under Act of 1883.

"A provisional specification was never intended to contain a complete and exhaustive description of the invention. It was intended to be sufficiently specific to disclose the nature of the invention, so as to protect the inventor until the time for filing the final or complete specification, but permitting him, in the meantime, to perfect any details, to modify, supplement, and develop his invention, always keeping within what I may call the ambit of his invention, as disclosed in his provisional specification" (*e*).

SECT. 4.—COMPLETE SPECIFICATION AND CLAIMS.

1. *Relation of Provisional and Complete Specifications.*

The relation between the provisional and the complete specification has already been touched upon (*f*), but may with advantage be briefly referred to again.

Relation of provisional to complete specification.

The office of the provisional specification is to describe "the nature of the invention" which it is sought to patent. Nothing more is required in it. The object of its introduction was to enable

(*b*) *Ubi supra*, at p. 960; cp. *Penn v. Bibby*, *Penn v. Jack*, 1866, per Lord Chelmsford, L. C., L. R. 2 Ch. 134.

(*c*) *Ubi supra*.

(*d*) Cp. *Lucas v. Miller*, 1885, per Kay, J., 2 P. O. R. at p. 159.

(*e*) *Woodward v. Sansum*, 1887, per Cotton, L. J., 4 P. O. R. at p. 178; followed in *Siddell v. Vickers*, 1888, 5 P. O. R. at p. 426; and cp. *Stonor v. Todd*, 1876, per Jessel, M. R., 4 Ch. D. at p. 59.

(*f*) *Supra*, p. 96.

an inventor to obtain protection for his invention for a period of six months, during which time he might use and publish it without prejudice to any letters patent subsequently granted therefor.

The office of a complete specification is very different. It must "particularly describe and ascertain the nature of the invention, and in what manner the same is to be performed" (*g*).

The contrast between the provisional and the complete specification is marked and clearly defined in plain language alike by the Patent Law Amendment Act, 1852, and by the Act of 1883.

Effect of
variance
under present
Act.

The question whether, under the Act of 1883, nonconformity between the provisional and the complete specifications may invalidate a patent granted under that Act, has given rise to considerable discussion, and cannot yet be said to have been finally settled (*h*).

Rules of law
as to variance.

The following rules are thought to present an accurate statement of the law as to variance between the provisional and complete specifications:—

Keeping in view the offices of the provisional and complete specifications respectively, the Court will construe the former with the aid of the knowledge of what has been claimed by the latter, and will decide whether, on a fair interpretation, each essential part of the claim is covered by the provisional specification (*i*).

There is no variance where the inventions described by the two documents are substantially one and the same (*k*), or where the excess, if any, in the complete specification is attributable to the legitimate functions of that document (*l*), or where the complete specification is a legitimate development of the provisional (*m*).

By way of illustration, reference may be made to one or two leading cases.

Cases.

In *Penn v. Bibby* (*n*), the provisional specification described the

(*g*) Cp. *Moseley v. The Victoria Rubber Co.*, 1887, per Chitty, J., 4 P. O. R. at p. 248.

(*h*) *Siddell v. Vickers*, 1888, per Cotton, L. J., 5 P. O. R. at p. 426. And see *Woodward v. Sansum*, 1887, 4 R. P. C. p. 166. In *Goulard and Gibbs' Patent* (1889, 6 P. O. R. 215), a discrepancy between the provisional and complete specifications as amended, was held to be a fatal variance: cp. *King v. The Anglo-American Brush Corporation*, 1889, 6 P. O. R. 414; and cp. Trans. I. P. A., Vol. VI. p. 53, Mr. J. C. Mewburn.

(*i*) *Siddell v. Vickers*, 1888, per Cotton, L. J., 5 P. O. R. at p. 98. "The question is not whether the provisional is defective, but whether the complete is excessive." S. C.

(*k*) *Moseley v. The Victoria Rubber Co.*, 1887, per Chitty, J., 4 P. O. R. at p. 251; cp. *Walling v. Stevens*, 1886, 3 P. O. R. 37, 41.

(*l*) *Ibid.*

(*m*) *Horrocks v. Stubbs*, 1886, 3 P. O. R. pp. 233, 236; *Moseley v. Victoria Rubber Co.*, *ubi supra*; *Woodward v. Sansum*, 1887, 4 P. O. R. at p. 178.

(*n*) 1866, per Lord Chelmsford, L. C., 2 Ch. at pp. 130, 135.

nature of the invention in the most general terms to consist in employing wood in the construction of the bearings and the bushes for the shafts of screw and submerged propellers. The complete specification described a particular mode of employing wood to prevent the parts of a propeller shaft which are within the bearings from coming in contact with the metal of the bearings, and to cause them to revolve against pieces of wood, and between the inner surfaces of the metal bearings and the outer surfaces of the propelling shaft. The claim at the end of the specification was, "the employing of wood in the construction of the bearings and bushes for propelling shafts as herein described." It was argued for the defendant that if the words "herein described" were to be disregarded, the patent was void, as the claim would then be for the employment of wood in every possible way in the bearings and bushes of propellers; on the other hand, if those words limited the claim to the precise description in the specification, that was not what was described in the provisional specification, and the plaintiff had, therefore, obtained a patent for one thing, and specified another. Lord Chelmsford's judgment in this case is instructive.

Variance of provisional and complete specifications.

Penn v. Bibby.

"There can be no doubt," says his lordship, "that the claim in the specification must be read with the limitation produced by the words "herein described," and that the question thereupon rises whether this occasions a departure from the provisional specification so as to render the patent void.

"It seems clear that the office of the provisional specification is to describe the nature of the invention, not with minute particularity, but with sufficient precision and accuracy to inform the law officer what is to be the subject-matter of the patent.

"It is not at all necessary that the provisional specification should describe the mode or modes in which the invention is to be worked or carried out. That is left to the complete specification.

"Nor is it at all necessary that the complete specification should extend to everything comprehended within the provisional specification.

"It is clear, therefore, that unless the complete specification in this case claims something different from the provisional specification, the objection to the patent under consideration cannot prevail. But there is not the slightest foundation for the objection in point of fact, and each specification appears to me faithfully to fulfil its own office.

"But it was said that one part of the complete specification

Variance of provisional and complete specifications.

went beyond the provisional, and extended to something which could not be included in it, viz., the application of wood to the shaft, so as to revolve therewith, the provisional specification confining the employment of wood to the bearings and bushes. If wood applied in this manner to the shaft may be properly called a bearing, then there is no excess in this part of the specification. But if, strictly speaking, this application of wood would not come within the description of a bearing, then the answer to the objection is that it is not claimed, the claim being limited to the employment of wood in the construction of bearings and bushes. There is, therefore, no departure from the provisional specification in the complete specification."

Thomas v. Welch.

In *Thomas v. Welch* (o), an action for the infringement of a patent for sewing machines, the provisional specification stated that a certain instrument, or *another acting therewith*, acted to hold the work during the insertion of the needle, and again during its withdrawal. The complete specification contained drawings of sewing machines with details of parts thereof, and concluded with five separate claims. Thereafter the plaintiff disclaimed all the claiming clauses, and the amended specification stated "*g* is the instrument by which the work is held during the insertion of the needle." Three forms of *g* were described and the specification continued, "It is the arranging an instrument *g* as herein described, which while it is the means of holding the fabric during the insertion and withdrawal of the needle is also the means by which the step by step movement is given to the fabric or material for the succession of stitches, which constitutes *the* peculiarity of the invention." The words in italics were inserted for the first time in the amended specification, *the* taking the place of *another* in the original specification.

Erle, C. J., in delivering judgment, said: "The provisional specification describes an instrument and then says that this *or another acting therewith* acts to hold the work during the insertion of the needle. It is said that the complete specification contains nothing corresponding to this second alternative. Assuming that this is so (*p*), I do not think the objection ought to prevail. The difference is a slight one and injured nobody, and it may be

(o) 1866, L. R. 1 C. P. 192.

(p) His lordship, however, suggested another view: "it may be that one form of *g* mentioned in the complete

specification, which is in two parts, is what was referred to in the expression, 'and another acting therewith.'"

that the patentee had something in his mind when he filed his provisional specification, which he found afterwards would be useless. As he could not disclaim formally part of the provisional specification he might, I think in such a case as the present, have omitted it from his complete specification.”

Variance of provisional and complete specifications.

In *Wright v. Hitchcock* (q), an action for the improvement of a patent for “improvements in the manufacture of frills or ruffles, and in the machinery or apparatus employed therein,” the alleged variance consisted in the addition in the complete specification of the word *trimmings* to the words *frills* or *ruffles* which appeared alone in the provisional. Kelly, C. B., said: “By whatever name it is described the thing is in itself identical: it is something attached to any part of the dress, either of men or women, whether it is called the frill of a sleeve or the ruffle of a shirt or the trimming of a lady’s dress. These are all *ejusdem generis*, and the description is only important for the purpose of showing for what purpose the product may be ultimately used when it has been manufactured by means of the plaintiff’s invention.”

Wright v. Hitchcock.

The last case to which it is necessary to refer is *Lucas v. Miller* (r). Here the plaintiff, who was the patentee of an improved form of bicycle lamp, brought an action against the defendant for infringing this patent. The complete specification comprised a method of attaching washers to the lamp, which was not mentioned in the provisional specification. This the defendant alleged invalidated the patent. It was held, however, by Kay, J., that the patent was valid as the method of attaching the washers was only a matter of detail which the patentee had a right to add to his specified invention and not a separate invention.

Although a patentee putting in a provisional specification showing the nature of his invention is not bound to describe therein any mode of carrying it into effect, yet, if he does do so, and before filing his complete specification, discovers an improvement in such mode, or discovers a different mode, he is bound to give to the public, in his complete specification, the benefit of what he has discovered as to the mode of carrying the invention into effect (s).

It is essential that the nature of the invention described in the two specifications shall be the same, but upon principle and upon authority it is clear that improvements in the arrangement of mechanism, in the relative position and adaptation of the different

(q) 1870, L. R. 5 Exch. 37, 46.

(r) 1885, 2 P. O. R. 155.

(s) *Woodward v. Sansum*, 1887, per Cotton, L. J., 4 P. O. R. at p. 175.

Variance of provisional and complete specifications.

parts, with a view of producing the same results, the substitution of mechanical equivalents and modifications and developments within the scope of the invention set out in the provisional specification, are allowable, and cannot be successfully relied on for the purpose of invalidating a patent for disconformity (*t*).

Crompton v. Patents Investment Co.

In *Crompton v. The Patents Investment Co.* (*u*), Field, J., expresses himself to the same effect.

“If, in the course of the time between the complete and the provisional specification, (the inventor) discovers the invention he claims to be the inventor of can be better performed or better done or improved by any further addition to it, not in the shape of a new invention . . . it is not only his privilege, but it is his duty to the public, to do it, because the object of the complete specification, whether it is filed with the application or six months after, is to tell the public how the thing is done. That is the price which the man who wants to be a patentee has to pay to the public for it.”

Anglo-American Brush, &c. Co. v. Crompton.

An objection of variance should be stated in the particulars, and will probably be rejected unless it is so stated (*v*). A mere general allegation of disconformity is not sufficient. Thus, in *The Anglo-American Brush Electric Light Corporation v. Crompton* (*w*), the defendants delivered particulars of objection, of which one was as follows: “That the alleged invention described in the complete specification, as amended, is a different invention from that described in the provisional specification.” Bacon, V.-C., made an order for further and better particulars of the alleged disconformity, and this order was confirmed by the Court of Appeal. “The defendants,” said Cotton, L. J., “ought to give such particulars as would inform the plaintiffs of the nature and scope of this objection of nonconformity. This does not mean that the defendants must furnish the plaintiffs with the heads of what the defendants’ argument will be at the trial, but only such information as the plaintiffs may reasonably require in order to know precisely the nature of the case that will be raised against them. Each case must depend on its own circumstances.”

(*t*) *S. C.*, per Lopes, L. J., at p. 178; cp. *Lucas v. Miller*, 1885, 2 P. O. R. at p. 155.

(*u*) 1888, 5 P. O. R. at p. 397; af-

firmed on appeal, 1889, 6 P. O. R. 287.

(*v*) *Watling v. Stevens*, 1886, 3 P. O. R. at p. 152.

(*w*) 1887, 4 P. O. R. 27.

2. *Sufficiency of the Complete Specification.*

The aim of the legislature in requiring a patentee particularly to describe and ascertain the nature of his invention and the manner in which it is to be performed (*x*), appears to be threefold: (1) to prevent any person from inadvertently infringing the patent right during the term of the monopoly (*y*); (2) to put the public in possession of the patentee's secret on the expiry of the patent term (*z*); (3) to prevent patents being granted for known inventions (*a*).

Objects of complete specification.

Keeping clearly in view the purposes for which the complete specification exists, we shall find little difficulty in understanding its requisites.

Requisites of complete specification.

It will be seen that the whole case-law relating to the sufficiency of the complete specification can be discussed with reference to those heads.

Perhaps the shortest as well as the most comprehensive statement of the duty of a patentee with regard to the specification of the invention is, that he must treat the public generally with the utmost good faith.

Utmost good faith necessary.

The simplest breach of this duty is ambiguity in the complete specification.

Ambiguity—

“The object of the specification,” said Tindal, C. J., in *Walton v. Potter* (*b*), “is that it is the price which the party who obtains the patent pays for it, and it would be a hard bargain on the part of the public if he were allowed to clothe his discovery and his description in characters so dark and so ambiguous that no one could make from it when the fourteen years have expired, and he should not have paid the price for which he enjoyed the exclusive privilege, but that he should have it in his hands for as long a period as he chooses; and therefore it is always a proper answer, when a

(*x*) *Brunton v. Hawkes*, 1821, 4 B. & Ald. 556; *Walton v. Potter*, 1841, 1 Web. P. C. 595; *Thomas v. Welch*, 1866, L. R. 1 C. P. 201. One set of words may sufficiently disclose both the nature of the invention and the mode of performing it, as in *Boulton v. Bull*, 1795, Dav. P. C. 162; cp. *Edison Co. v. Holland*, 1889, per Cotton, L. J., 6 P. O. R. at p. 280.

(*y*) *Holmes v. L. & N. W. Rail. Co.*, 1852, per Jervis, C. J., Macr. P. C. 16; 22 L. J. C. P. 57; cp. *Morgan v. Seaward*, 1836, per Alderson, B., 1 Web.

P. C. 173; *Neilson v. Thompson*, 1841, 1 Web. P. C. 283; *Morton v. Middleton*, 1863, 1 Court of Sess. 3rd series, 721.

(*z*) *Arkwright v. Nightingale*, 1785, 1 Web. P. C. 60; Dav. P. C. 55; *Hornblower v. Boulton*, 1799, 8 T. R. 100; *Newbery v. James*, 1817, 2 Mer. 451; 1 Carp. P. C. 367.

(*a*) *Hills v. London Gas Light Co.*, per Pollock, C. B., 5 H. & N. 340.

(*b*) 1841, 1 Web. P. C. 595; cp. *Galloway v. Bleaden*, 1839, 1 Web. P. C. 524.

patent is set up, to say that you have not so described it that it may be understood."

in the de-
scription of
invention.

The specification in a patent, relating to a windlass, stated that the object was "to hold, without slipping, *a chain cable of any size.*" Before the date of this patent no cable-holder was known which would hold chains of different sizes, and the claim was for an invention by which a single windlass might raise cables of different diameters. It appeared that a windlass capable of holding a chain cable of a given size was not new. The Court of Queen's Bench held that the specification did not unequivocally show that the object was to construct a single windlass capable of holding different chain cables whatever their size, and that such a windlass was not therefore protected by the patent (c).

In *Gandy v. Reddaway* (d), the claim was for making *belts or bands for driving machinery of cotton canvas woven hard*, stitched and saturated with oil. The result of the evidence was that a workable belt for machinery could not be made out of the whole, but only out of a particular sub-division, of the class known as cotton canvas "woven hard," and there was no proof that a workman of ordinary skill would have rejected every other sort of "hard" canvas but that particular kind. It was held that in the absence of such proofs (e) the specification was insufficient.

Ambiguity in
statement of
proportions.

In the *Patent Typefoundry Co. v. Richards* (f), a suit to restrain from infringing a patent for "improvements in the manufacture of type," the specification stated, "The object of the invention is to make type harder, tougher, and more enduring by employing tin in

(c) *Hastings v. Brown*, 1853, 22 L. J. Q. B. 161; 1 E. & B. 450; Higgins's Dig. p. 196; cp. *Mackelcan v. Rennie*, 1862, 13 C. B. N. S. 59. In *Philpott v. Hanbury*, 1885, 2 P. O. R. at p. 38, Grove, J., suggested the following test of sufficiency in the language of a complete specification: "Is this specification such that a fair man willing or wishing to understand the specification can reasonably gather from it what the patentee considers his invention, and what he says, he prohibits the public from using?" A specification which does not differentiate the useful from the useless at its various stages is bad for ambiguity. *Badische Anilin und Soda Fabrik v. Levinstein*, 1885, 2 P. O. R. at p. 115, per Bowen and Fry, L.JJ., cp. *Fairburn v. Household*, 1886, 3 P. O. R. 128.

(d) 1885, 2 P. O. R. 49. On a question of sufficiency, instructions issued

by a patentee to workmen as to the mode of working his patented process are material. *Pooley v. Pointon*, 1885, 2 P. O. R. at p. 172.

(e) "If the language of a specification is clear enough to guide a competent workman, and enable him to obtain the desired result, we cannot see how a Court can hold the language insufficient in point of law. No doubt it is for the Court, and not for a workman to construe the specification, but if a workman says it is a sufficient guide to him, and the Court believes him, the Court must hold that as regards clearness of description the specification is in point of law sufficient," per Lindley, L. J., *Edison and Swan, &c. Co. v. Woodhouse*, 1887, 4 P. O. R. at p. 108.

(f) 1859, 1 Johns. 381.

large proportions with antimony and to greatly reduce or omit the use of lead. The best proportions I am acquainted with are seventy-five of tin, and twenty-five of antimony; but this may be to some extent varied; and when lead is also used, I find that it must not exceed fifty parts in one hundred of the combined metals employed."

A demurrer on the ground that this specification was bad for uncertainty was overruled.

"What I have to determine," said Wood, V.-C., "is whether this specification is so clearly and manifestly bad that no explanation by workmen or other experts . . . could induce the Court to hold that this is a new invention set forth with sufficient clearness and precision. . . . A person who takes out a patent for an invention which consists in the use of certain proportions is not, in my opinion, bound to say, 'I limit my claim to these precise proportions.' Even if the patentee had in terms absolutely tied himself down to 25 per cent. as a minimum in the place of 1 or 2 per cent.—supposing that to be the proportion previously used—a stranger would not be allowed to evade the patent by throwing in 23 or 24 per cent.

Reasonable latitude allowed.

"It will be for experts in the trade to say whether the production of a tough metal by using a large proportion of tin is a useful practice, whether anything of the kind was ever done before, and whether a variation from the given proportion to others slightly different, would not be a colourable evasion. These are all questions for a jury. The only opinion I express is *that the specification is not void on the face of it*" (g).

Not only is a reasonable latitude in the statement of proportion permissible, but there are cases in which the exact proportions are not necessary in order to make the complete specification intelligible.

Exact proportions sometimes unnecessary.

Thus, in the *British Dynamite Co. v. Krebs* (h), a suit for the infringement of a patent for "improvements in explosive compounds and in the means of igniting the same," the specification stated "the invention relates to the use of nitro-glycerine in an altered condition which renders it far more practical and safe for use. The altered condition of the nitro-glycerine is effected by causing it to be absorbed in porous unexplosive substances

(g) See also *Betts v. Neilson*, 1868-71, per Lord Westbury, 5 H. L. at p. 21.

(h) 1875-79, Goodeve, P. C. 88; cp. *Otto v. Linford*, 1881-82, per Jessel, M. R., 46 L. T. 40.

whereby it is converted into a powder, which I call dynamite or Nobel's safety powder." It was objected that there was no sufficient statement of the quantity of the liquid to be absorbed. The House of Lords, however, restoring the order of Fry, J., which had been reversed by the Court of Appeal, held that the specification was sufficient.

"When you speak," said Lord Cairns, L. C., "of a porous substance absorbing a fluid, if the porous substance is in one piece, you naturally expect that the absorption will continue up to the point when the porous substance can hold no more; and when the porous substance is to continue a powder, the act of absorption itself will show the point at which the absorption must stop, lest the absorbing substance should become not a powder but a paste."

Ambiguity in
the statement
of materials.

In *Ralston v. Smith* (i), objections were raised to the specification, and particularly with regard to the uncertainty of the material, the language of the amended specification being that the plaintiff took "a roller of hard metal or other suitable material."

Lord Westbury said, "I do not think those words 'or other suitable material,' contain anything like such a generality of direction as would be fatal to the patent; 'other suitable material'; no doubt would mean any material equally sufficient for the purpose with hard metal."

Upon the same principle of *ejusdem generis*, specifications referring to "other combustible matter" (k), and "other substances" (l), have been supported.

In *Macnamara v. Hulse* (m), where the specification stated that the invention consisted in an improved method of cutting or forming stone, or other suitable material, for paving roads, Lord Abinger, C. B., observed, "I think that the words 'any other suitable material' include a wood pavement, though probably the plaintiff never contemplated it."

In *Sturtz v. De la Rue* (n), a suit to restrain the infringement of a patent for "improvements in copper and other plate printing," the subject-matter was a method of preparing a glazed surface on paper by coating it with a mixture of white lead and size before the application of pressure. The specification directed that the white lead used should be "the finest and purest chemical white lead." The evidence showed that ordinary white lead would not answer

(i) 1865, 11 H. L. C. 248.

(k) *Bickford v. Skewes*, 1837-39, 8 L. J. Ch. 188; 4 My. & C. 498.

(l) *Crossley v. Beverley*, 1829, 9 B. &

C. 63.

(m) 1842, Car. & M. 471.

(n) 1828, 1 Web. P. C. 83; Goodeve, P. C. p. 448.

the purpose, and that only a purer material imported from Germany, and sold at one particular shop in London, would produce the required effect. It was held that the specification was insufficient.

“It is a principle of patent law,” said Lord Lyndhurst, L. C., “that there must be the utmost good faith in the specification. It must describe the invention in such a way that a person of ordinary skill in the trade shall be able to carry on the process. Here the specification says that there is to be added to the size certain proportions ‘of the finest and purest chemical white lead.’ A workman would naturally go to a chemist’s shop, and ask for ‘the finest and purest chemical white lead’; the answer which he would receive would be that there was no substance known in the trade by that name. He would be compelled to ask for the purest and finest white lead, and according to the evidence the purest and finest white lead that can be procured in London will not answer the purpose. It is said that there is a substance prepared on the continent, which is white lead or some preparation of white lead, and that by using it in the manner described in the specification the desired effect is produced. If that be so, the patentee ought to have directed the attention of the public to that circumstance. He ought to have said ‘the purest white lead which can be obtained in the shops of London will not do; but there is a purer white lead prepared on the continent, and imported into this country, which alone must be used.’ ‘The purest and finest chemical white lead’ must mean the finest and purest white lead usually gotten in the general market for that commodity, unless the public be put on their guard by a statement that what would be called very fine and pure white lead in the ordinary sense of the trade will not answer, but that the white lead used must be of a superlatively pure and fine quality prepared in a particular way, and to be gotten only in a particular place. If the article is not made in this country, but may be imported, it would be necessary to mention that circumstance.”

Full disclosure of materials necessary.

As to the effect of drawings annexed to the specification, the law upon the subject is now tolerably clear. It may be stated as follows:—

Drawings.

An inventor is not tied down to make such a specification as, by words only, would enable a workman of ordinary skill to make his invention, but is allowed to call in aid the drawings (if any) (o)

(o) Cp. *Boulton v. Bull*, 1795, per Rooke, J., 2 H. Bl. 481; *Ex parte Fox*, 1812, per Lord Eldon, L. C., 1 V. & B. 67.

which he annexes to the specification (*q*). The drawings are to be taken as part of the specification (*r*), and are admissible to explain an ambiguity in the written description of the invention (*s*).

Fairburn v. Household.

The extent to which drawings can be relied on where there is ambiguity in a complete specification was considered in the recent case of *Fairburn v. Household* (*t*).

The question at issue here was, whether the patentee of an invention for "improvements in fluid injectors" had sufficiently claimed in his specification a lift for water by means of steam, "lifting the water, in the first instance, by a divided column into a vacuum chamber."

The plaintiff admitted that the claim was ambiguous, but contended that the ambiguity was removed by words in the specification referring to the drawings, that the Courts were therefore thrown back upon the description in the specification and annexed drawing, that on going back to the description they would find a steam lifter *J.* referred to, which appeared in the drawing as a transverse tube, and that every one would know what the effect of that tube would be, viz. to divide the rising column of water, and so make it into a double column.

The Court of Appeal, however, repelled these contentions, and held that the plaintiff had not sufficiently in his specification indicated that he claimed the transverse pipe dividing the column of water.

"A man," said Cotton, L. J., "in his specification ought to point out that which he says is the essential invention comprised here in more definite and explicit terms so as really to show what his invention is, and what he has claimed by the specification."

Verbal errors in complete specification.

A specification is not vitiated by a mere verbal error in the specification which cannot mislead, as where air is called an imponderable substance, or sulphur a mineral (*u*), nor by a mistake in a matter foreign to the invention, nor by the inaccurate use of

(*q*) *Bloxam v. Elsee*, 1825, per Abbott, C. J., 1 C. & P. 564.

(*r*) *Morgan v. Seaward*, 1836, 1 Web. P. C. 173; *Morton v. Middleton*, 1863, 1 Court of Sess. 3rd Series, 722, 724. Indeed, it seems that a specification might formerly consist of drawings alone. *Foxwell v. Bostock*, 1864, 4 De G. J. & S. 303; *Poupard v. Fardell*, 1869, 18 W. R. 129, overruling *Ex parte Fox*, supra; cp. *Brunton v. Hawkes*, 1820, 1 Carp. P. C. 410, per Abbott, C. J.:

"If a drawing or figure enables work-

men of ordinary skill to construct the improvement, it is as good as any written description." Now, however, claims at least would also be required.

(*s*) *Hastings v. Brown*, 1853, 1 E. & B. 454; *Daw v. Eley*, 1867, L. R. 3 Eq. 500, n.

(*t*) 1886, 3 P. O. R. 263.

(*u*) *Neilson v. Harford*, 1841, 1 Web. P. C. 331; Higgins's Dig. p. 221; cp. *Minter v. Mower*, 1835, 1 Web. P. C. 141.

words which are explained by the context, as where the word "discolouring" was used to signify depriving of colour, and the word "baked" to signify crystallized (x).

"When it is stated," said Lord Westbury, L. C., in *Simpson v. Holliday* (y), "that an error in a specification which any workman of ordinary skill and experience would perceive and correct, will not vitiate a patent, it must be understood of errors which appear on the face of the specification or the drawings it refers to, or which would be at once discovered and corrected in following out the instructions given for any process or manufacture, and the reason is because such errors cannot possibly mislead (z). But the proposition is not a correct statement of the law if applied to errors which are discoverable only by experiment and further inquiry. Neither is the proposition true of an erroneous statement in a specification amounting to a false suggestion, even though the error would be at once observed by a workman possessed of ordinary knowledge of the subject."

What errors are immaterial.

The last form of ambiguity which it seems necessary to notice is intentional surplusage.

Intentional surplusage.

The insertion or representation of anything in a specification as being material, which is not so in fact, will vitiate the specification for insufficiency (a).

"It is incumbent on the patentee," said Ashhurst, J., in *Turner v. Winter* (b), "to give a specification of the invention in the clearest and most unequivocal terms of which the subject is capable. And if it appear there is any unnecessary ambiguity affectedly introduced into the specification, or anything which tends to mislead the public, in that case the patent is void."

So in *R. v. Arkwright* (c)—a *scire facias* to repeal a patent for improvements in the spinning jenny—where it was alleged that certain parts of the machine described were useless, Buller, J., directed the jury, "If those (parts) are of no use, but to be thrown in merely to puzzle, I have no difficulty in saying upon that ground alone that the patent is void. . . . If four things only

(x) *Derosne v. Fairie*, 1835, 1 Web. P. C. 158.

(y) 1865, 13 W. R. 578.

(z) The Courts do not encourage verbal objections to the wording of specifications in the case of patents, which have stood for a long time the test of inquiry. *Betts v. Neilson*, 1868-71, per Lord Westbury, 5 H. L. 21.

(a) *Huddart v. Grimshaw*, 1803, 1 Web. P. C. at p. 93; *Harmar v. Playne*, 1809, 11 East, 107; *Campion v. Benyon*, 1821, 6 B. Moo. 71.

(b) 1787, 1 Web. P. C. 80.

(c) 1785, 1 Web. P. C. at pp. 66, 70; cp. *Lewis v. Marling*, 1829, per Lord Tenterden, C. J., 1 Web. P. C. at p. 495.

were necessary instead of ten, the specification does not contain a good account of the invention.”

Misleading statements or omissions.

A patentee may break faith with the public by inserting in his specification statements which are misleading, and not merely ambiguous, or by failing to make a full and fair communication of his secret, and the best means of working it known to him at the time.

The cases which fall under this head may best be treated as illustrations of a series of short propositions.

Proposition.

I. It is the duty of anyone to whom a patent is granted to point out in his specification the plainest and most easy way known to the patentee at the time, of producing that for which he claims a monopoly, and to make the public acquainted with the mode which he himself adopts (*d*).

Specification must state plainest way of producing invention.

In *Savory v. Price* (*d*)—an action for the infringement of a patent for a method of making seidlitz powders—the specification gave three distinct recipes for preparing the ingredients, and then directed two scruples of each of the three ingredients resulting from those recipes to be dissolved in half a pint of water to produce the imitation of water from the medicinal springs at Seidlitz. It was proved that, by following the directions given in the specification, the result was obtained, and that it was new and useful. It appeared that the three recipes were only common processes for preparing three well-known substances, viz., Rochelle salts, carbonate of soda, and tartaric acid, which were sold in shops before the date of the patent, and those three substances being used as directed constituted the patent seidlitz powder, the specification did not give any name to the ingredients resulting from the three recipes, *but gave those recipes without comment, as if they were part of the method of making the seidlitz powder.* It was held that the patent could not be supported. “By reading this specification,” said Abbott, C. J., “we are led to suppose a laborious process necessary to the production of the ingredients, when, in fact, we might go to any chemist’s shop, and buy the same things ready made. The public are misled by this specification, which tends to make people believe that an elaborate process is essential to the invention.”

In the case of an invention of little novelty or merit, the obligation to specify the easiest and best mode of working it is peculiarly binding upon the inventor.

(*d*) *Savory v. Price*, 1823, per Abbott, C. J., 1 Ry. & Mo. 3; and 1 Web. P. C. at p. 83.

“When you have such a little trumpery invention (as this),” said Jessel, M. R., in *Hinks v. Safety Lighting Co. (e)*, “the whole merit of which is very small indeed, if you are to tell people how to do things better, you must tell them in a proper way without the exercise of any invention or much trouble.”

Again, in *Wood v. Zimmer (f)*, an action to try the validity of Zinck’s patent for “a method of making verdigris.” It appeared that the method described in the specification was sufficient to make the verdigris, but that Zinck had been accustomed *clandestinely* to put aquafortis, into the boiler whereby one of the ingredients (copper) was dissolved more rapidly, but the verdigris so produced was neither better nor cheaper than that made according to the specification. It was held that the patent was bad. In delivering judgment Gibbs, C. J., said:

Specification must disclose patentee’s own way of producing invention.

“It is said that the method described makes verdigris, and that the specification is, therefore, sufficient. The law is not so: a man who applies for a patent and possesses a mode of carrying on that invention in the most beneficial manner must disclose the means of producing it in equal perfection and with as little expense and labour as it costs the inventor himself. The price that he pays for the patent is that he will enable the public at the expiration of his privilege to make it in the same way and with the same advantages. If anything that gives an advantageous operation to the thing invented be concealed the specification is void. Now, though the specification should enable a person to make verdigris substantially as good without *aquafortis* as with it, still, inasmuch as it would be made with more labour by the omission of *aquafortis*, it is a prejudicial concealment and a breach of the terms which the patentee makes with the public.”

So, too, if the patentee make the article for which the patent is granted with *cheaper* materials than those which he has enumerated although the latter will answer the purpose equally well, the patent is void, because he does not put the public in possession of his invention or enable them to derive the same benefit which he himself does (*g*).

An inventor is not only at liberty, but is bound to give in his

Specification must disclose

(e) 1876, L. R. 4 Ch. D. 677; *Fletcher v. Arden*, 1888, per Bristowe, V.-C., 5 P. O. R. at p. 57.

(f) 1815, 1 Web. P. C. 82; cp. *R. v. Arkwright*, 1785, 1 Web. P. C. 66; *Tetley v. Easton*, 1852, Macr. P. C. 76.

“A man has no right to patent a prin-

ciple, and then give to the public the humblest instrument that can be made from his principle, and reserve to himself all the better part of it.”

(g) *Turner v. Winter*, 1787, 1 Web. P. C. 81.

best way of producing invention known to patentee at time of specifying.

specification the most improved state of his invention known to him up to the time of specifying (*h*).

In the case of a communicated invention, the importer and not the foreign communicator is, for the purposes of this rule as for other purposes, the patentee, and the completeness of the disclosure is judged by the state of his knowledge alone (*i*).

But an imported invention must be communicated with sufficient exactitude to enable the importer to describe it so that the public in England reading the specification may be able to understand it (*k*).

Proposition.
Method described must answer.

II. The specification must not contain a statement of any alleged method of producing the invention described therein which will not answer that purpose, and the deficiency of which is either known to the patentee, or would not be detected by an ordinary workman without further inquiry and experiment.

Thus in *Crompton v. Ibbotson* (*l*), the plaintiff's patent was for "an improved method of dyeing and finishing paper," and the specification described the invention to consist in conducting paper by means of cloth or cloths against a heated cylinder, and contained the following words: "which cloth may be made of any suitable material, but I prefer it to be made of linen, warp, and woollen weft." The patentee knew from repeated trials that no other substance would do.

Lord Tenterden, C. J., held that the specification was bad. "Other persons," said his lordship, "misled by the terms of this specification, may be induced to make experiments which the patentee knows must fail; and the public, therefore, has not the full and certain benefit of the invention."

In the same case, Bayley, J., observed: "A party knowing that given materials will not answer the purpose, he is bound in his specification so to word it as to prevent parties from trying experiments on that which he knows will not answer" (*m*).

(*h*) *Bovill v. Moore*, 1816, per Gibbs, C. J., Dav. P. C. 400; *Lewis v. Marling*, 1829, per Bayley, J., 10 B. & C. 26; *Crossley v. Beverley*, 1830, 1 Web. P. C. 117; *Jones v. Heaton*, per Tindal, C. J., 1 Web. P. C. 404, *n.*; *Morgan v. Seaward*, 1836, per Alderson, B., 1 Web. P. C. 174; *Walton v. Bateman*, 1842, 1 Web. P. C. 622.

(*i*) *Plimpton v. Malcolmson*, 1875, per Jessel, M. R., 3 Ch. D. 576.

(*k*) *Wegmann v. Corcoran*, 1878-79, per Fry, J., 13 Ch. D. at p. 77.

(*l*) 1828, 1 Web. P. C. 83.

(*m*) *S. C.*, 1 Carp. P. C. 462; cp. *Derosne v. Fairie*, 1835, 1 Web. P. C. 165, side-note. "A specification must state at least one method which will succeed." *Beard v. Egerton*, 1846-49, per Maule, J., 19 L. J. at p. 39: "If you describe in a specification two ways of doing a thing, and by one way it cannot be done, the specification is bad." In *Cole v. Saqui*, 1888, 5 P. O. R. at p. 494, Kekewich, J., said, "I can see no objection to a patentee stating in his

Perhaps the clearest statement of the law on this question is that given in *Simpson v. Holliday* (n). *Simpson v. Holliday.*

The patentee of an invention for "improvements in the preparation of red and purple dyes," stated in his specification: "I mix aniline with dry arsenic acid, and allow the mixture to stand for some time, or I accelerate the operation by heating it to, or near to, its boiling point." It was proved in evidence, and admitted by the plaintiff, that the operation would not succeed if conducted by the first of these methods, viz., without heat. Wood, V.-C., found that the specification was sufficient, and gave the following statement of the law. "If the Court had any notion whatever that (the first method) was put in with an intent to mislead, then without doubt or hesitation it would hold the patent to be bad, because there are two points in these cases of somewhat confused description in specifications which the Court mainly attends to—whether or no it has been put in with a fraudulent intent to mislead, which at once leads the Court to decide against the validity of the patent; or on the other hand whether, although put in innocently by mistake and without any fraudulent intent, it is such a description as will or can mislead any ordinary workman in the operation that he has to carry on."

On appeal, however, to the House of Lords, the findings of the Vice-Chancellor were reversed, and Lord Westbury, L. C., said (o):

"If the true construction of the specification be that two distinct processes are described as being both efficient, and are both claimed as part of the invention, but one is found upon trial to be inefficient and useless, it is plain that the patent has been granted on a false suggestion, and is therefore invalid and bad at law.

"If a specification alleges that a particular process which may be slow, troublesome, and expensive, is efficient, and the statement is untrue, the vice is not removed by the fact that the same specification also describes another process which is efficient, and which is stated to be speedy, certain, and economical."

specification that what he has invented with reference to some particular machine may be applied to other machines."

(n) 1864-66, Higgins's Dig. p. 194; 20 Newt. Lon. Jour. N. S. 108.

(o) S. C., 5 N. R. p. 340; cp. *Bickford v. Skewes*, 1841, 1 Web. P. C. 218; *Neilson v. Harford*, 1841, 8 M. & W. 806; *Morgan v. Seaward*, 1835-37, per Alderson, B., 1 Web. P. C. 174; *Hinks*

v. Safety Lighting Co., 1876, per Jessel, M. R., 4 Ch. D. at p. 615; *British Dynamite Co. v. Krebs*, 1875-79, per James, L. J., Goodeve's P. C. p. 90; *Otto v. Linford*, 1881-82, per Jessel, M. R., 46 L. T. p. 40; *Philpott v. Hanbury*, 1885, 2 P. O. R. 33; *United Horsenail Co. v. Stewart*, 1885, 2 P. O. R. 122, 132, 133; *Coles v. Baylis*, 1886, 3 P. O. R. p. 180; *Kurtz v. Spence*, 1888, 5 P. O. R. at p. 183.

Proposition.
Omission of
material part
of process.

III. The omission of any material part of a process is fatal to a specification.

Thus in a patent for trusses for ruptures, the patentee omitted what was very material for tempering steel, viz., rubbing it with tallow, and for want of that Lord Mansfield held the patent void (*p*).

Specification
should distin-
guish novel
and useful
elements.

A specification should distinguish between what is new and what is old (*q*), what is useful and what is useless (*r*), in the invention which it describes.

Novel ele-
ments to be
distinguished.

In *Holmes v. The L. & N. W. Rail. Co.* (*s*), the plaintiff had obtained a patent for "an improved turning table for railway purposes," all the component parts of which, except one, were comprised in a prior specification. The plaintiff claimed "the improved turning table hereinbefore described," without making any distinction between the various parts. The jury found that the introduction of certain suspending rods made the table a new instrument. The patent was, however, upset on the ground that the plaintiff had not complied with the rule which requires a patentee distinctly to state what is new and what is old.

Reasons for
this rule.

One reason for this rule is stated by Abinger, C. B., in *Carpenter v. Smith* (*t*). "It is required as a condition of every patent that the patentee shall set forth in his specification a true account and description of his patent or invention, and it is necessary in that specification that he should state what his invention is, what he claims to be new, and what he admits to be old; for if the specification states simply the whole machinery which he uses, and which he wishes to introduce into use, and claims the whole of that as new, and does not state that he claims either any particular part or the combination of the whole as new, why then his patent must be taken to be a patent for the whole, and for each particular part, and his patent will be void if any particular part turns out to be old, or the combination itself not new."

Protection of
patentee.

Protection of
the public
from actions

Another reason for the rule under consideration is thus defined by Cresswell, J., in *Gibson v. Brand* (*u*), "Every party is bound to

(*p*) *Liardet v. Johnson*, 1778, 1 Web. P. C. 53; *Potter v. Parr*, 1860, 2 B. & S. 216, n.

(*q*) *Manton v. Manton*, 1815, Dav. P. C. 349; *Carpenter v. Smith*, 1841, 1 Web. P. C. 532; *Crane v. Price*, 1842, 4 M. & G. 580, 608; *Tetley v. Easton*, 1853, Macr. P. C. 82, 87; *Newall v. Elliott*, 1864, per Pollock, C. B., 10 Jur. N. S. 956; *Renard v. Levinstein*, 1864,

per Knight-Bruce, L. J., 10 L. T. N. S. 177; *Dangerfield v. Jones*, 1865, 13 L. T. N. S. 144.

(*r*) *Easterbrook v. G. W. Rail. Co.*, 1885, 2 P. O. R. 210.

(*s*) 1852, Macr. P. C. 13; Higgins's Dig. 199.

(*t*) *Ubi supra*.

(*u*) 1842, 1 Web. P. C. 640; cp. *Manton v. Manton*, 1815, per Gibbs, C. J., Dav. P.