

### III.—SELECTED PASSAGES FROM THE PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1888.

46 & 47 *Vict. c. 57* [1883] }  
 48 & 49 *Vict. c. 63* [1885] } *Consolidated.*  
 49 & 50 *Vict. c. 37* [1886] }  
 51 & 52 *Vict. c. 50* [1888] }

#### 46 & 47 VICT. C. 57.

*An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks.*  
 [25th August 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same; as follows :

#### PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883 (*a*).

Division of Act into parts.

2. This Act is divided into parts, as follows :—

Part I.—PRELIMINARY.

Part II.—PATENTS.

Part III.—DESIGNS (*b*).

Part IV.—TRADE MARKS (*b*).

Part V.—GENERAL.

Commencement of Act.

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.

#### PART II.—PATENTS.

##### *Application for and Grant of Patent.*

Persons entitled to apply for patent.

4.—(1.) Any person, whether a British subject or not, may make an application for a patent.

(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

(*a*) By sect. 29 of the Amending Act of 1888 (51 & 52 *Vict. c. 50*) this Act and the three Amending Acts of 1885, 1886 and 1888 may be cited collectively as the Patents,

Designs and Trade Marks Acts 1883 to 1888.

(*b*) Not included in the present reprint.

Whereas doubts have arisen whether under the principal Act a patent may lawfully be granted to several persons jointly, some or one of whom only are or is the true and first inventors or inventor; be it therefore enacted and declared that it has been and is lawful under the principal Act to grant such a patent. (48 & 49 Vict. c. 63, s. 5.)

Power to grant patents to several persons jointly.

5.—(1.) An application for a patent must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed; and must be left at, or sent by post to, the patent office in the prescribed manner.

Application and specification.

(2.) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification.

Whereas sub-section two of section five of the principal Act requires a declaration to be made by an applicant for a patent to the effect in that sub-section mentioned, and doubts have arisen as to the nature of that declaration, and it is expedient to remove such doubts: Be it therefore enacted that:

The declaration mentioned in sub-section two of section five of the principal Act may be either a statutory declaration under the Statutory Declarations Act, 1835, or not, as may be from time to time prescribed. (48 & 49 Vict. c. 63, s. 2.)

(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4.) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

The requirement of sub-section four of section five of the Patents, Designs, and Trade Marks Act, 1883, as to drawings shall not be deemed to be insufficiently complied with by reason only that instead of being accompanied by drawings the complete specification refers to the drawings which accompanied the provisional specification. And no patent heretofore sealed shall be invalid by reason only that the complete specification was not accompanied by drawings but referred to those which accompanied the provisional specification. (49 & 50 Vict. c. 37, s. 2.)

The same drawings may accompany both specifications.

(5.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

Reference of application to examiner.

6. The comptroller shall refer every application to an examiner, who shall ascertain and report to the comptroller 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.

Power for comptroller to refuse application or require amendment.

7.—(1.) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not, or have not, been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject matter of the invention, the comptroller may refuse to accept the application, or require that the application, specification, or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the comptroller so directs, bear date as from the time when the requirement is complied with.

(2.) Where the comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions (if any), the application shall be accepted.

(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

(5.) If, after an application for a patent has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification bearing the same or a similar title, the comptroller, if he thinks fit, on the request of the second applicant, or of his legal representative, may, within two months of the grant of a patent on the first application, either decline to proceed with the second application or allow the surrender of the patent, if any, granted thereon.

Time for leaving complete specification.

8.—(1.) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months (c) from the date of application.

(2.) Unless a complete specification is left within that time the application shall be deemed to be abandoned.

(c) As to extension of time, see below at the foot of sect. 12.

9.—(1.) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

Comparison of provisional and complete specification.

(2.) If the examiner reports that the conditions hereinbefore contained have not been complied with, the comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4.) Unless a complete specification is accepted within twelve months (*d*) from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, unless the Court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed.

10. On the acceptance of the complete specification the comptroller shall advertise the acceptance; and the application and specification or specifications with the drawings (if any) shall be open to public inspection.

Advertisement on acceptance of complete specification.

11.—(1.) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the Patent Office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date, or on the ground 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

Opposition to grant of patent.

(*d*) As to extension of time, see below at the foot of sect. 12.

provisional specification and the leaving of the complete specification, but on no other ground.

(2.) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and any person so giving notice and being, in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

12.—(1.) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the comptroller shall cause a patent to be sealed with the seal of the Patent Office.

(2.) A patent so sealed shall have the same effect as if it were sealed with the Great Seal of the United Kingdom.

(3.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months (e) from the date of application, except in the cases hereinafter mentioned, that is to say—

(a.) Where 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.

(b.) 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 applicant.

Whereas under the principal Act, a complete specification is required (by section eight) to be left within nine months, and (by section nine) to be accepted within twelve months, from the date of application, and a patent is required by section twelve to be sealed within fifteen months from the date of application, and it is expedient to empower the comptroller to extend in certain cases the said times: Be it therefore enacted as follows:

A complete specification may be left and accepted within such extended times, not exceeding one month and three months respectively after the said nine and twelve months respectively as the comptroller may on payment of the prescribed fee allow, and where such extension of time has been

(e) As to extension of time see below at foot of this section.

allowed, a further extension of four months after the said fifteen months shall be allowed for the sealing of the patent; and the principal Act shall have effect as if any time so allowed were added to the said periods specified in the principal Act (48 & 49 Vict. c. 63, s. 3).

13. Every patent shall be dated and sealed as of the day of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification: Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

Date of patent.

*Provisional Protection.*

14. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Provisional protection.

*Protection by Complete Specification.*

15. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him.

Effect of acceptance of complete specification.

*Patent.*

16. Every patent when sealed shall have effect throughout the United Kingdom and the Isle of Man.

Extent of patent.

17.—(1.) The term limited in every patent for the duration thereof shall be fourteen years from its date.

Term of patent.

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3.) 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 the time for making that payment.

(4.) Thereupon the comptroller shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding ten pounds, enlarge the time accordingly, subject to the following conditions:

(a.) The time for making any payment shall not in any case 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.

*Amendment of Specification.*

Amendment  
of specifi-  
cation.

18.—(1.) An applicant or a patentee may, from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

(2.) The request and the nature of such proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3.) Where such notice is given the comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case subject to an appeal to the law officer.

(4.) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6.) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer.

(7.) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all Courts and for all purposes be deemed to form part of the specification.

(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or proceeding for revocation of a patent is pending.

19.—(1.) In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

Power to disclaim part of invention during action, &c.

20. Where an amendment by way of disclaimer, correction, or explanation, has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Restriction on recovery of damages.

21. Every amendment of a specification shall be advertised in the prescribed manner.

Advertisement of amendment.

*Compulsory Licences.*

22. If on the petition of any person interested it is proved to the Board of Trade (a) that by reason of the default of a patentee to grant licences on reasonable terms—

Power for Board to order grant of licences.

(a.) The patent is not being worked in the United Kingdom; or

(b.) The reasonable requirements of the public with respect to the invention cannot be supplied; or

(c.) Any person is prevented from working or using to the best advantage an invention of which he is possessed;

the Board may order the patentee to grant licences on such terms as to the amount of royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

(a) See sect. 102A, below, p. 308.



*Register of Patents.*

Register of  
patents.

23.—(1.) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

(2.) The register of patents shall be *primâ facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(3.) Copies of deeds, licences, and any other documents affecting the proprietorship in any letters patent or in any licence thereunder, must be supplied to the comptroller in the prescribed manner for filing in the Patent Office.

*Fees.*

Fees in  
schedule.

24.—(1.) There shall be paid in respect of the several instruments described in the Second Schedule to this Act, the fees in that schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

(2.) The Board of Trade may from time to time, if they think fit, with the consent of the Treasury, reduce any of those fees.

*Extension of Term of Patent.*

Extension of  
term of patent  
on petition to  
Queen in  
Council.

25.—(1.) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to her Majesty in Council, praying that his patent may be extended for a further term; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat, addressed to the Registrar of the Council at the Council Office, against the extension.

(3.) If her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Judicial Committee shall, in considering their decision,

have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit.

(6.) It shall be lawful for her Majesty in Council to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee.

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the Committee respecting costs shall be enforceable as if they were orders of a division of the High Court of Justice.

#### *Revocation.*

26.—(1.) The proceeding by *scire facias* to repeal a patent is hereby abolished. Revocation  
of patent.

(2.) Revocation of a patent may be obtained on petition to the Court.

(3.) Every ground on which a patent might, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action of infringement and shall also be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by—

(a.) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(b.) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(c.) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims:

(d.) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee:

(e.) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or

manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the Court or a judge, be admitted in proof of any objection of which particulars are not so delivered.

(6.) Particulars delivered may be from time to time amended by leave of the Court or a judge.

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

(8.) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

#### *Crown.*

Patent to  
bind Crown.

27.—(1.) A patent shall have to all intents the like effect as against her Majesty the Queen, her heirs and successors, as it has against a subject.

(2.) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

#### *Legal Proceedings.*

Hearing with  
assessor.

28.—(1.) In an action or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court shall otherwise direct.

(2.) The Court of Appeal or the Judicial Committee of the Privy Council may, if they see fit, in any proceeding before them respectively, call in the aid of an assessor as aforesaid.

(3.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court or the Court of Appeal or Judicial Committee, as the case may be, and be paid in the same manner as the other expenses of the execution of this Act.

29.—(1.) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or the judge, at any subsequent time, particulars of the breaches complained of. Delivery of particulars.

(2.) The defendant must deliver with his statement of defence, or, by order of the Court or a judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended, by leave of the Court or a judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the Court or a judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

30. In an action for infringement of a patent, the Court or a judge may on the application of either party make such order for an injunction inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or a judge may see fit. Order for inspection, &c., in action.

31. In an action for infringement of a patent, the Court or a judge may certify that the validity of the patent came in question; and if the Court or a judge so certifies, then in any subsequent action for infringement, the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs charges and expenses as between solicitor and client, unless the Court or judge trying the action certifies that he ought not to have the same. Certificate of validity questioned and costs thereon.

32. Where any person claiming to be the patentee of an invention, by circulars advertisements or otherwise threatens any other person with any legal proceedings or liability in respect of any Remedy in case of groundless threats of

legal proceedings.

alleged manufacture use sale or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

*Miscellaneous.*

Patent for one invention only.

33. Every patent may be in the form in the First Schedule to this Act, and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Patent on application of representative of deceased inventor.

34.—(1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

Patent to first inventor not invalidated by application in fraud of him.

35. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Assignment for particular places.

36. A patentee may assign his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.

Loss or destruction of patent.

37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time cause a duplicate thereof to be sealed.

Proceedings and costs before law officer.

38. The law officers may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officers and the practice and procedure before them under this part of this Act; and in any proceeding before either of the law officers under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the Court.

39. The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely,—

Exhibition at industrial or international exhibition not to prejudice patent rights.

- (a.) The exhibitor must, before exhibiting the invention, give the comptroller the prescribed notice of his intention to do so; and
- (b.) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

Whereas by section thirty-nine of the Patents, Designs, and Trade Marks Act, 1883, as respects patents, and by section fifty-seven of the same Act as respects designs, provision is made that the exhibition of an invention or design at an industrial or international exhibition, certified as such by the Board of Trade, shall not prejudice the rights of the inventor or proprietor thereof, subject to the conditions therein mentioned, one of which is that the exhibitor must, before exhibiting the invention, design, or article, or publishing a description of the design, give the Comptroller the prescribed notice of his intention to do so :

Protection of patents and designs exhibited at international exhibitions.

And whereas it is expedient to provide for the extension of the said sections to industrial and international exhibitions held out of the United Kingdom, be it therefore enacted as follows :

It shall be lawful for her Majesty, by Order in Council, from time to time to declare that sections thirty-nine and fifty-seven of the Patents, Designs, and Trade Marks Act, 1883, or either of those sections, shall apply to any exhibition mentioned in the order in like manner as if it were an industrial or international exhibition certified by the Board of Trade, and to provide that the exhibitor shall be relieved from the conditions, specified in the said sections, of giving notice to the Comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as to her Majesty in Council may seem fit (49 & 50 Vict. c. 37, s. 3).

Publication  
of illustrated  
journal,  
indexes, &c.

40.—(1.) The Comptroller shall cause to be issued periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that the Comptroller may deem generally useful or important.

(2.) Provision shall be made by the Comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents for the time being in force, with their accompanying drawings, if any.

(3.) The Comptroller shall continue, in such form as he may deem expedient, the indexes and abridgments of specifications hitherto published, and shall from time to time prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit.

Specifications,  
&c. not to be  
published  
unless appli-  
cation ac-  
cepted.

Where an application for a patent has been abandoned, or become void, the specification or specifications and drawings (if any) accompanying or left in connexion with such application, shall not at any time be open to public inspection or be published by the comptroller (48 & 49 Vict. c. 63, s. 4).

Patent  
Museum.

41. The control and management of the existing Patent Museum, and its contents shall from and after the commencement of this Act, be transferred to and vested in the Department of Science and Art, subject to such directions as her Majesty in Council may see fit to give.

Power to  
require  
models on  
payment.

42. 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*).

Foreign  
vessels in  
British  
waters.

43.—(1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any of her Majesty's Courts in the United Kingdom, or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connexion with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man.

(2.) But this section shall not extend to vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the

(*b*) See sect. 102A, below, p. 308.

use of such inventions in British vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its Courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign state.

44.—(1.) The inventor of any improvement in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression the inventor) may (either for or without valuable consideration) assign to her Majesty's Principal Secretary of State for the War Department (hereinafter referred to as the Secretary of State), on behalf of her Majesty, all the benefit of the invention and of any patent obtained or to be obtained for the same; and the Secretary of State may be a party to the assignment.

Assignment to Secretary for War of certain inventions.

(2.) The assignment shall effectually vest the benefit of the invention and patent in the Secretary of State for the time being on behalf of her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Secretary of State for the time being.

(3.) Where any such assignment has been made to the Secretary of State, he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the Comptroller his opinion that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4.) If the Secretary of State so certifies, the application and specification or specifications with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Comptroller in a packet sealed by authority of the Secretary of State.

(5.) Such packet shall until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the Comptroller, and shall not be opened save under the authority of an order of the Secretary of State, or of the law officers.

(6.) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorized by writing under the hand of the Secretary of State to receive the same, and shall if returned to the Comptroller be again kept sealed by him.



(7.) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Secretary of State to receive it.

(8.) Where the Secretary of State certifies as aforesaid, after an application for a patent has been left at the Patent Office, but before the publication of the specification or specifications, the application specification or specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Comptroller, and such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State.

(9.) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Secretary of State has certified as aforesaid.

(10.) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

(11.) The Secretary of State may, at any time by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12.) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

#### *Existing Patents.*

Provisions  
respecting  
existing  
patents.

45.—(1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act.

(2.) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to patents binding the Crown, and to compulsory licences.

(3.) In all other respects (including the amount and time of payment of fees) this Act shall extend to all patents granted before the commencement of this Act, or on applications then pending, in

substitution for such enactments as would have applied thereto if this Act had not been passed.

(4.) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the Patent Office.

*Definitions (c).*

46. In and for the purposes of this Act—

“ Patent ” means letters patent for an invention :

Definitions  
of patent,  
patentee, and  
invention.

“ Patentee ” means the person for the time being entitled to the benefit of a patent :

“ Invention ” means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled “ An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof ”), and includes an alleged invention.

In Scotland “ injunction ” means “ interdict.”

PART V. —GENERAL.

*Patent Office and Proceedings thereat.*

82.—(1.) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office. Patent Office.

(2.) Until a new Patent Office is provided, the offices of the Commissioners of Patents for inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the Patent Office within the meaning of this Act.

(3.) The Patent Office shall be under the immediate control of an officer called the Comptroller-general of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade (d).

(4.) Any act or thing directed to be done by or to the comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorised by the Board of Trade (d).

83.—(1.) The Board of Trade (d) may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the Comptroller-general of patents, designs, and Officers and clerks.

(c) See also sect. 117 below, p. 313.

(d) See sect. 102A below, p. 308.

trade marks, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade (e) think fit, and may from time to time remove any of those officers and clerks.

(2.) The salaries of those officers and clerks shall be appointed by the Board of Trade (e), with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

Seal of Patent Office.

84. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

85. There shall not be entered in any register kept under this Act, or be receivable by the Comptroller, any notice of any trust expressed implied or constructive.

Refusal to grant patent, &c. in certain cases.

86. The Comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in registers.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the Comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs or trade marks, as proprietor of a patent, copyright in a design or trade mark as the case may be, shall, subject to the provisions of this Act and to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, licence, or dealing. Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property.

Inspection of and extracts from registers.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act and to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Sealed copies to be received in evidence.

89. Printed or written copies or extracts, purporting to be certified by the Comptroller and sealed with the seal of the Patent Office, of or from patents specifications disclaimers and other documents in the Patent Office, and of or from registers and other books kept

(e) See sect. 102A below, p. 308.

there, shall be admitted in evidence in all Courts in her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

90.—(1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person or of any other particulars from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making expunging or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

Rectification of registers by Court.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Comptroller.

91. The Comptroller may, on request in writing accompanied by the prescribed fee,—

Power for comptroller to correct clerical errors.

(a.) Correct any clerical error in or in connexion with an application for a patent, or for registration of a design or trade mark; or

(b.) Correct any clerical error in the name style or address of the registered proprietor of a patent, design, or trade mark.

(c.) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

(d.) Permit an applicant for registration of a design or trade mark to amend his application by omitting any particular goods or classes of goods in connexion with which he has desired the design or trade mark to be registered (*f*).

92.—(1.) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

Alteration of registered mark.

(2.) Notice of any intended application to the Court under this

(*f*) Sub-sect. (d) was added by 51 & 52 Vict. c. 50, s. 24.

section shall be given to the Comptroller by the applicant; and the Comptroller shall be entitled to be heard on the application.

(3.) If the Court grants leave, the Comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Falsification of entries in registers.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Exercise of discretionary power by comptroller.

94. Where any discretionary power is by this Act given to the Comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Power of comptroller to take directions of law officers. Certificate of comptroller to be evidence.

95. The Comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

96. A certificate purporting to be under the hand of the Comptroller as to any entry, matter, or thing which he is authorized by this Act, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Applications and notices by post.

97.—(1.) Any application, notice, or other document authorised or required to be left made or given at the Patent Office or to the Comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Provision as to days for leaving documents at office.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the Patent Office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next

following such excluded day, or days if two or more of them occur consecutively.

99. If any person is, by reason of infancy lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Declaration by infant, lunatic, &c.

100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the Patent Office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all Courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

Transmission of certified printed copies of specifications, &c.

101.—(1.) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act — (g)

(a.) For regulating the practice of registration under this Act:

(b.) For classifying goods for the purposes of designs and trade marks:

(c.) For making or requiring duplicates of specifications, amendment, drawings, and other documents:

(d.) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications drawings amendments and other documents:

Power for Board of Trade to make general rules for classifying goods and regulating business of Patent Office.

(g) The Patent Rules made under this section and at present in force (Rules of 1890 and 1892) so far as material to the present work will be found in the Appendix of Rules, below, pp. 344 *et seq.* As to the meaning of the expression "Board of Trade" see sect. 102A, below, p. 308.

(e.) For securing and regulating the making printing publishing and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents:

(f.) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad:

(g.) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the Comptroller, or of the Board of Trade (*g*).

(2.) Any of the forms in the First Schedule to this Act may be altered or amended by rules made by the Board (*g*) as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the Comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

Annual reports of comptroller.

102. The Comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

Proceedings of Board of Trade.

102A. (*h*)—(1.) All things required or authorised under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

(*g*) See sect. 102A.

(*h*) Added by 51 & 52 Vict. c. 50, s. 25.

(2.) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(3.) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

*International and Colonial Arrangements.*

103.—(1.) If her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the application in such foreign state.

International arrangements for protection of inventions, designs, and trade marks.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom, or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark.

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade



mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

Provision for colonies and India.

104.—(1.) Where it is made to appear to her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to her Majesty in Council may seem fit, to such British possession.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for her Majesty in Council to revoke any Order in Council made under this Act.

#### *Offences.*

Penalty on falsely representing articles to be patented.

105.—(1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

Penalty on unauthorised assumption of Royal arms.

106. Any person who, without the authority of her Majesty, or any of the Royal Family, or of any government department, assumes or uses in connexion with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

*Scotland; Ireland; &c.*

**107.** In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the Court shall otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the Courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts.

Saving for Courts in Scotland.

For the purposes of this section "Court of Appeal" shall mean any court to which such action is appealed.

**108.** In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the sheriff court.

Summary proceedings in Scotland.

**109.—(1.)** Proceedings in Scotland for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only.

Proceedings for revocation of patent in Scotland.

(2.) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

**110.** All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only.

Reservation of remedies in Ireland.

**111.—(1.)** The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and her Majesty's Court of Appeal in Ireland.

General saving for jurisdiction of Courts.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a Court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the Comptroller, and he shall rectify the register accordingly.

**112.** This Act shall extend to the Isle of Man, and—

Isle of Man.

(1.) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man, in proceedings for infringement or in

any action or proceeding respecting a patent, design, or trade mark competent to those courts ;

- (2.) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the Court ;
- (3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Jurisdiction  
of Lancashire  
Palatine  
Court.

112A. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks the registration whereof is applied for in the Manchester Office, have the like jurisdiction under this Act as her Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly.

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.

*Repeal ; Transitional Provisions ; Savings.*

Repeal and  
saving for past  
operation of  
repealed en-  
actments, &c.

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

- (a.) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act ; or
- (b.) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed ; or
- (c.) Take away or abridge any protection or benefit in relation to any such action or proceeding.

Former  
registers to

114.—(1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed

parts of the same book as the register of patents kept under this Act. be deemed continued.

(2.) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed altered or amended by the Board of Trade (*i*), as if they had been made by the Board under this Act, but so that no such repeal alteration or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade (*i*) under this Act. Saving for existing rules.

116. Nothing in this Act shall take away abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof. Saving for prerogative.

*General Definitions (j).*

117.—(1.) In and for the purposes of this Act, unless the context otherwise requires,— General definitions.

“Person” includes a body corporate:

“The Court” means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty’s High Court of Justice in England:

“Law officer” means Her Majesty’s Attorney-General or Solicitor-General for England:

“The Treasury” means the Commissioners of Her Majesty’s Treasury:

“Comptroller” means the Comptroller-General of Patents, Designs, and Trade Marks:

“Prescribed” means prescribed by any of the schedules to this Act, or by general rules under or within the meaning of this Act:

“British possession” means any territory or place situate within her Majesty’s dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act:

(*i*) See sect. 102A above, p. 308.

(*j*) See also sect. 46 above, p. 303.

“Legislature” includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, “summary conviction” means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

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## SCHEDULES.

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### THE FIRST SCHEDULE.

FORMS OF APPLICATION, &c. (See below, Appendix of Forms, p. 388.)

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Section 24.

### THE SECOND SCHEDULE.

#### FEES ON INSTRUMENTS FOR OBTAINING PATENTS, AND RENEWAL.

This schedule of fees was in effect repealed by the Patents Rules 1890 which substituted another scale. The scale of 1890 was in its turn repealed by the Patents Rules of 1892 which substituted the scale now in force. An extract from this last mentioned scale, setting out so much as is material to the purpose of this book, is given below at p. 348.

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THE THIRD SCHEDULE.

Section 113.

ENACTMENTS REPEALED.

21 James I. c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. 4, c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
5 & 6 Will. 4, c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled “An Act to amend the law touching “ letters patent for inventions.”
5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.
7 & 8 Vict. c. 69 (a). [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of his late Majesty, intituled “ An Act for the better administration of justice “ in his Majesty’s Privy Council, and to extend “ its jurisdiction and powers.” In part; namely,— Sections two to five, both included.
13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.

(a) Note.—Sections six and seven of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years of her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.
33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part; namely,— Section sixty-five, and in the Schedule the words and figures— “Certificate of the registration of a design . £5 0 0 And see section 65.”
38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part; namely,— Section five.
45 & 46 Vict. c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part; namely,— Section sixteen.

## APPENDIX III.

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In the selection of the following rules the procedure to obtain an order from the Board of Trade and the procedure to obtain a mandamus to enforce the order have both been kept in mind but it has not been thought necessary to print the rules relating to enforcement of the mandamus excepting only r. 30 of O. 42 of the R. S. C. since the form which execution will take in such a case will probably be invariably that of an order that the licence shall be executed by some person authorised by the Court to that end and consequently the rules as to attachment are here of small significance.



SELECTED RULES OF THE SUPREME COURT AND  
CROWN OFFICE RULES—CONSOLIDATED.

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**Mandamus.**

Application  
for writ.

C.O.R. 60.—Application for a prerogative writ of mandamus shall, during the sittings, be made to a Divisional Court of the Queen's Bench Division by motion for an order nisi; and in the vacation to a judge in chambers for a summons to show cause, upon its being shown to the satisfaction of such judge that the matter is urgent. . . .

Notice.

C.O.R. 61.—Notice shall be given by the order nisi for a mandamus to every person who by the affidavits on which the order is moved shall appear to be interested in or likely to be affected by the proceedings, and to any person who in the opinion of the Court or judge ought to have such notice.

Service of  
order nisi.

C.O.R. 62.—The order nisi shall be served upon each person to whom notice is given by the order, as well as the party whom the order requires to show cause.

Showing  
cause.

C.O.R. 63.—Any person, whether he has had notice or not, who can make it appear to the Court or judge that he is affected by the proceeding for a writ of mandamus may show cause against the

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*\*\* Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within*

order nisi or summons, and shall be liable to costs in the discretion of the Court or a judge if the order should be made absolute, or the prosecutor obtain judgment.

C.O.R. 64.—The order absolute for a mandamus need not be served, but the cost of service of the order absolute may be allowed in the discretion of the taxing officer, where the writ is not issued.

Order absolute.

C.O.R. 65.—If the writ of mandamus is directed to one person only the original must be personally served upon such person, but if the writ be directed to more than one, the original shall be shown to each one at the time of service, and a copy served on all but one, and the original delivered to such one.

Service of writ.

C.O.R. 66.—When a writ of mandamus is directed to companies, corporations, justices, or public bodies, service shall be made upon such and so many persons as are competent to do the act required to be done, the original being delivered to one of such persons, except where by statute service on the clerk or some other officer is made sufficient service.

C.O.R. 67.—The Court or a judge may, if they or he shall think fit, order that any writ of mandamus shall be peremptory in the first instance.

Peremptory in first instance.

C.O.R. 68.—Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in the name of the Lord Chief Justice of England. The writ may be returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit. A writ of mandamus shall be in the form in the Appendix No. 37, with such variations as circumstances may require.

Form of writ.

See below, p. 384.

C.O.R. 69.—Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.

Return.

C.O.R. 70.—Where a point of law is raised in answer to a return or any other pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party, without any motion for judgment being made or required.

Judgment.

C.O.R. 71.—Where under Rules 70 and 136 the applicant obtains judgment he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

Peremptory writ.

For r. 136 see below, p. 324.

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*square brackets [ ],—the Crown Office Rules text in “Italic” type and within curved brackets ( ).*

Protection to person obeying writ.

C.O.R. 72.—No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any judge thereof.

Disinterested parties.

C.O.R. 73.—When it appears to the Court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed, and, if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

C.O.R. 74.—Where, under the last preceding rule, the return to a writ of mandamus is expressed to be made on behalf of some person other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

Interpleader.

C.O.R. 75.—In any case of mandamus, in which a proceeding by way of interpleader may be proper, the provisions of Order 57 of the Rules of the Supreme Court, 1883 (Interpleader), shall be applicable, so far as the nature of the case will admit.

Prosecutor.

C.O.R. 76.—No order for the issuing of any writ of mandamus shall be granted, unless at the time of moving an affidavit be produced by which some person shall depose upon oath that such motion is made at his instance as prosecutor, and if the writ be granted the name of such person shall be endorsed on the writ as the person at whose instance it is granted.

Costs.

C.O.R. 77.—Every application for the costs of a mandamus shall, unless the Court or a judge shall otherwise order, be made

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\* \* \* *Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within*

before the fifth day of the sittings next after that in which the right to make such application accrued, and shall be upon notice of motion to be served eight days before the day named therein for moving.

C.O.R. 78.—The party moving for costs shall leave at the Crown Office Department a notice for the production in Court of all the affidavits filed in support of, and in opposition to, the original order.

O. 53, r. 1.—The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons. Mandamus to be claimed in writ.

O. 53, r. 2.—The indorsement shall be in the form given in Section IV. of Appendix A., Part III. Form of indorsement.

O. 53, r. 3.—If judgment be given for the plaintiff the Court or judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a judge to be just, to perform the duty in question. The Court or a judge may also extend the time for the performance of the duty. See below, p. 385.  
Judgment if mandamus claimed.

O. 53, r. 4.—No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had. Judgment or order substituted for writ.

O. 50, r. 6.—An application for an order under section 25, sub-section 8, of the Principal Act (a), . . . may be made to the Court or a judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either ex parte or with notice, . . . at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application. Interlocutory mandamus.

### Prohibition.

C.O.R. 81.—An application for a writ of prohibition on the Crown side shall be made by motion to a Divisional Court for an order nisi in all criminal causes or matters; and in civil proceedings on the Crown side by motion for an order nisi or by summons before a judge at chambers.

(a) See above, p. 285.

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*square brackets [ ],—the Crown Office Rules text in “Italic” type and within curved brackets ( ).*

C.O.R. 82.—The order may be made absolute ex parte in the first instance on special circumstances being shown, in the discretion of the Court or judge.

### Joinder of Parties.

See above,  
p. 162.  
General rule.

O. 16, r. 1.—All persons may be joined in one action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative where, if such persons brought separate actions any common question of law or fact would arise provided that if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the Court or a judge may order separate trials or make such other order as may be expedient. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a judge in disposing of the costs of the action shall otherwise direct.

Wrong plain-  
tiff by  
mistake.  
Amendment.

O. 16, r. 2.—Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a judge may, if satisfied that it has been so commenced through a bonâ fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.

Defendants.

O. 16, r. 4.—All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Defendants  
not all inte-  
rested in all  
the relief  
sought.

O. 16, r. 5.—It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a judge may make such order as may appear just to prevent any

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\* \* \* Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within

defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

O. 16, r. 9.—Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested.

Numerous persons in the same interest.

O. 16, r. 11.—No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice.

Non-joinder and mis-joinder.

Amendment.

Addition of plaintiff or next friend.

Addition of defendant.

O. 16, r. 13.—Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

Amendment of writ and service.

### Joinder of Causes of Action.

See above, p. 162.

O. 18, r. 1.—Subject to the following Rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a judge that any such causes of action

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*square brackets [ ],—the Crown Office Rules text in “ Italic ” type and within curved brackets ( ).*

cannot be conveniently tried or disposed of together, the Court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Joint and several claims.

O. 18, r. 6.—Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

Application to strike out.

O. 18, r. 8.—Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

O. 18, r. 9.—If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the Court or a judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

### Pleading, &c.

See above, p. 176.

O. 19, r. 4.—Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel or a special pleader they shall be signed by him, and if not so settled they shall be signed by the solicitor or by the party if he sues or defends in person.

Signature of pleadings.

Pleadings in common law mandamus.

C.O.R. 136.—When any return is made to the first writ of mandamus, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action; and subject to these Rules this pleading and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action (a).

(a) For rules of pleading in an action, see R. S. C., O. 19.

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\* \* \* Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within

O. 68, r. 3: C.O.R. 137.—Where pleadings in prohibition are ordered the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages (*b*). In prohibition.

C.O.R. 299.—O. 28 of the Rules of the Supreme Court, 1883 (Amendment), shall, as far as it is applicable, apply to all civil proceedings on the Crown side. Amendment.

O. 28, r. 1.—The Court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement, or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties (*c*). Amendment of indorsement and pleadings.

C.O.R. 140.—O. 34 of the Rules of the Supreme Court, 1883 (special case) shall, as far as it is applicable, apply to all civil proceedings on the Crown side. Special case.

O. 34, r. 1.—The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. Special case by consent.  
Form.  
Documents.  
Inference of fact.

O. 34, r. 3.—Every special case shall be printed by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Three printed copies for the use of the judges shall be left therewith. Printing case.

O. 34, r. 5.—Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 25 in Appendix G., and also if any married woman, infant, or person of unsound mind not so found by inquisition be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument. Entry for argument.

(*b*) For rules of pleading in an action, see R. S. C., O. 19. out with much nicety in the remaining rules of this Order.

(*c*) This general rule is worked

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*square brackets [ ],—the Crown Office Rules text in “ Italic ” type and within curved brackets ( ).*



- Notices.** C.O.R. 302.—O. 66 of the Rules of the Supreme Court, 1883 (Notices), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.
- Notices in writing.** O. 66, r. 1.—All notices required by these Rules shall be in writing, unless expressly authorised by the Court or a judge to be given orally.
- O. 66, r. 2.—All accounts, copies, and papers left at chambers, shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable.
- Printing.** O. 66, r. 3.—Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a half wide.
- Affidavits.** O. 66, r. 4.—Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.
- Depositions to be printed.** O. 66, r. 5.—Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered.
- Depositions and affidavits used before trial.** O. 66, r. 6.—The Rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.
- O. 66, r. 7 (*d*).

### Service.

- When office copy of order may be served.** O. 67, r. 1.—Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited.
- Service of documents where personal service not necessary.** O. 67, r. 2.—All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by Oo. 4 and 12 (*e*), with any person resident at or belonging to such place.

(*d*) The 7th Rule of this Order comprises a large body of minute directions concerning printing.

(*e*) *I.e.*, the address for service endorsed upon the writ or stated in the memorandum of appearance, as the case may be.

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\* \* \* *Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within*

O.O.R. 139.—Whenever under these Rules service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication, is not directed to be personal, service at the last known place of abode, or business, with a clerk, wife, or servant, or upon such other person, or in such other manner as the Court or a judge may direct, shall be deemed to be a sufficient service.

O. 67, r. 3.—Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service. Service by post of Supreme Court notices.

O. 67, r. 4.—Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by Oo. 4 and 12 (*f*), all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer. Service by filing in case of non-appearance.

O. 67, r. 5.—Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons. Personal service.

O. 9, r. 2.—When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or a judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or judge may make such order for substituted or other service, or for the substitution for service of notice, by advertisement or otherwise, as may seem just. Personal service of writ of summons.

O. 67, r. 6.—Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, and it is made to appear to the Court or a judge that prompt personal service cannot be effected, the Court or judge may make Substituted service.

(*f*) *I.e.*, the address for service endorsed upon the writ or stated in the memorandum of appearance, as the case may be.

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*square brackets [ ],—the Crown Office Rules text in “Italic” type and within curved brackets ( ).*

such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

Service on solicitors after appearance in person.

O. 67, r. 7.—Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

Service on solicitor of person not a party.

O. 67, r. 8.—Where a person who is not a party appears in any proceeding either before the Court or in Chambers, service upon the solicitor in London by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service.

Affidavits of service.

O. 67, r. 9.—Affidavits of service shall state when, where and how and by whom, such service was effected.

### Evidence.

Affidavits.

C.O.R. 5.—O. 38 (Affidavits) of the Rules of the Supreme Court 1883, shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

When to be used.

O. 38, r. 1 : C.O.R. 6.—Upon any motion [petition] or summons evidence may be given by affidavit; but the Court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

Entitling.

O. 68, r. 4 : C.O.R. 7.—Affidavits used [in applications] on the Crown side [of the Queen's Bench Division] shall be intituled "In the (*High Court of Justice*,) Queen's Bench Division."

O. 38, r. 2.—Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer.

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\* \* \* *Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within*

O. 38, r. 3: C.O.R. 8.—Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Contents of affidavits.

O. 38, r. 4: C.O.R. 9.—Affidavits sworn in England shall be sworn before a judge, district registrar, commissioner to administer oaths, (*first or second class clerk in the Crown Office Department*), or officer empowered under [these Rules] (*the Rules of the Supreme Court*) to administer oaths.

Before whom to be sworn.

O. 38, r. 5: C.O.R. 10.—Every commissioner to administer oaths shall express the time when, and the place where, he shall take any affidavit [or the acknowledgment of any deed] or recognizance; otherwise the same shall not be [held authentic nor] admitted to be filed [or enrolled] without the leave of the Court or a judge; and every such commissioner shall express the time when, and the place where, he shall do any other act incident to his office.

Time and place of swearing.

O. 38, r. 6: C.O.R. 11.—All [examinations] affidavits, declarations, affirmations, and attestations of honour in causes or matters depending [in the High Court] (*on the Crown side*) [and also acknowledgments required for the purpose of enrolling any deed in the Central Office] may be sworn and taken in Scotland or Ireland or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any judge, court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the judges and other officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such [examinations] affidavits, affirmations, attestations of honour, declarations, [acknowledgments] or to any other [deed or] document.

Taking affidavits out of the United Kingdom.

O. 38, r. 7: C.O.R. 12.—Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may

Form of affidavit.

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*square brackets [ ],—the Crown Office Rules text in "Italic" type and within curved brackets ( ).*

be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

**Deponent.**

O. 38, r. 8: C.O.R. 13.—Every affidavit shall state the description and true place of abode of the deponent.

**Joint affidavit.**

O. 38, r. 9: C.O.R. 14.—In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the “above-named” deponents.

**Filing affidavits.**

O. 38, r. 10: C.O.R. 15.—Every affidavit used on the Crown side shall be filed in the Crown Office Department of the Central Office. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a judge shall otherwise direct (*f*).

**Scandalous matter.**

O. 38, r. 11: C.O.R. 16.—The Court or a judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

**Alterations.**

O. 38, r. 12: C.O.R. 17.—No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall without leave of the Court or a judge be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or if taken at the [Central Office] (*Crown Office Department*), either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

**Illiterate or blind person.**

O. 38, r. 13: C.O.R. 18.—Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed

(*f*) O. 38, r. 10 comprises some additional provisions not material to be given here.

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\* \* \* *Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary “Roman” type and within*

perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

O. 38, r. 14: C.O.R. 19.—The Court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. Defective affidavit.

O. 38, r. 15: C.O.R. 20.—In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in court or in chambers, who shall send it to be filed. An office copy of an affidavit may in all cases (*in which a copy is admissible*) be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office. Stamping.  
Use of copies.

O. 38, r. 16: C.O.R. 21.—No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself. Who may take affidavit.

O. 38, r. 17: C.O.R. 22.—Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner.

O. 38, r. 18: C.O.R. 23.—Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a judge. Affidavit out of time.

O. 38, r. 19: C.O.R. 24.—Except by leave of the Court or a judge no order made *ex parte* in court founded on any affidavit shall be of any force, unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion. Affidavit must precede order.

C.O.R. 25.—Upon motions founded upon affidavits, either party may apply to the Court or a judge for leave to make additional affidavits upon any new matter arising out of the affidavits of the opposite party; but no additional affidavits shall be used except such leave shall have been first obtained. Additional affidavits.

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*square brackets [ ],—the Crown Office Rules text in “Italic” type and within curved brackets ( ).*

Qualifying to show cause.

C.O.R. 26.—No person shall be allowed to show cause against an order nisi, unless he shall have previously obtained office copies of such order and of the affidavits upon which it was granted.

Affidavit of service.

C.O.R. 27.—Affidavits of service shall state when, where, and how and by whom, such service was effected.

Cross-examination of deponent.  
See above, p. 191.

O. 38, r. 28.—When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

Compelling attendance.

O. 38, r. 29.—The party to whom such notice as is mentioned in the last preceding rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

Printing of evidence and notice of trial.

O. 38, r. 30.—When the evidence under this Order is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings: provided that other affidavits may be printed if all the parties interested consent thereto, or the Court or a judge so order. . . .

Subpœna for attendance of witness.  
See above, p. 191.

O. 37, r. 20.—Any party in any cause or matter may by subpœna ad testificandum or duces tecum require the attendance of any witness before an officer of the Court or other person appointed to take the examination for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such subpœna to attend before such officer or person for cross-examination.

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\* \* \* *Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within*

**Motions.**

C.O.R. 250.—O. 52 of the Rules of the Supreme Court, 1883 (Motions), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

O. 52, r. 1.—Where by these Rules any application is authorised to be made to the Court or a judge, such application, if made to a Divisional Court, or to a judge in Court, shall be made by motion. Motions.

O. 52, r. 3.—Except where according to the practice existing at the time of the passing of the principal Act any order or rule might be made absolute ex parte in the first instance, and except where notwithstanding Rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may move to set it aside. Motion on notice.  
Dispensing with notice.

O. 52, r. 4.—Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion. Contents of notice of motion in cases under Rule 2.  
Service of notice of motion generally.

O. 52, r. 5: C.O.R. 251.—Unless the Court or a judge give special leave to the contrary there [must] (*shall*) be at least two clear days between the service of a notice of motion and the day named in the notice for hearing [the motion] (*it*): [provided that in applications to answer the matters in an affidavit . . . the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion.] Time for hearing motion.

O. 52, r. 6: C.O.R. 259.—If on the hearing of a motion or other application the Court or a judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or judge may either dismiss the motion or Notice not served on all proper parties.

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*square brackets [ ],—the Crown Office Rules text in “Italic” type and within curved brackets ( ).*



application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or judge may think fit to impose.

Adjournment.

O. 52, r. 7: C.O.R. 260.—The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or (a) judge shall think fit.

Service on defendant who has not appeared.

O. 52, r. 8.—The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.

Service with writ or before time for appearance.

O. 52, r. 9.—The plaintiff may, by leave of the Court or a judge to be obtained ex parte, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

Dating of order.

O. 52, r. 13.—Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the Court or a judge shall otherwise direct, and shall take effect accordingly.

Dispensing with drawing up orders in certain cases.

O. 52, r. 14.—Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (a) for the issue of any writ other than a writ of attachment, (b) for the amendment of any writ or pleadings, (c) for the filing of any document, or (d) for any act to be done by any officer of the Court other than a solicitor, it shall not be necessary to draw up such order unless the Court or a judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a judge, registrar, master, chief clerk, or district registrar shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this Rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this Rule had not been made, have been required to be served with such order.

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\* \* \* *Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within*

C.O.R. 252.—The following orders of course may be drawn up at the Crown Office without any motion for the same (*g*) :—

- (i.) To return writs.
- (j.) To tax costs.

C.O.R. 253.—All other orders shall, during the sittings, be made by the Court on motion supported by affidavit, but no affidavit shall be necessary for an order demandable as of right by the Crown, or where it is not necessary to state matters of fact.

C.O.R. 254.—Except as may be otherwise provided by these Rules, all applications on the Crown side shall be made by way of motion to a Divisional Court for an order nisi.

C.O.R. 255.—The following applications shall be made upon two clear days' notice of motion, and be brought on as if they were ex parte motions and not put into the Crown paper.

- (a.) For time, enlargement, stay, or security.
- (b.) To strike a case out of the Crown paper.
- (c.) To file a special case by leave of the Court.
- (d.) To accelerate a case in the Crown paper on the ground of urgency. . . .

C.O.R. 256.—When any motion is made under Rule 255 and founded on evidence by affidavit, a copy of such affidavit intended to be used shall be served with the notice of motion.

C.O.R. 258.—No order on the Crown side, except orders of course, shall be drawn up without the leave or order of the Court or a judge, or of the Queen's coroner and attorney, or the master of the Crown Office.

### Proceedings at Trial.

O. 36, r. 31.—If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him. Non-appearance of defendant.

O. 36, r. 32.—If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him. Non-appearance of plaintiff.

(*g*) Nineteen such orders are enumerated in the rule. Only two of them seem to have any importance from the present point of view.

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*square brackets [ ],—the Crown Office Rules text in "Italic" type and within curved brackets ( ).*

Setting aside  
verdict or  
judgment by  
default.

O. 36, r. 33.—Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

Adjournment  
of trial.

O. 36, r. 34.—The judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit.

Speeches to  
jury.

O. 36, r. 36.—Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time, for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore.

Restrictions  
on cross-  
examination.

O. 36, r. 38.—The judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter.

Judgment  
at trial.  
Adjournment  
for further  
consideration.

O. 36, r. 39.—The judge shall, at or after a trial, direct judgment to be entered as he shall think right, and no motion for judgment shall be necessary in order to obtain such judgment.

### Appeals.

C.O.R. 216.—O. 58 of the Rules of the Supreme Court, 1883 (Appeals), shall apply to all civil proceedings on the Crown side, including mandamus prohibition and quo warranto.

Appeals,  
rehearing.

O. 58, r. 1.—All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

Motion.

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\* \* \* *Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within*

O. 58, r. 2.—The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit.

Notice of motion.  
Service.

O. 58, r. 3.—Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice.

Length of notice.

O. 58, r. 4.—The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

Powers of Court of Appeal.

Evidence.

Judgment.

Costs.

O. 58, r. 5.—If upon hearing of an appeal, it shall appear to the

Power to order new trial.

*square brackets [ ],—the Crown Office Rules text in "Italic" type and within curved brackets ( ).*

Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

Cross  
appeal.

O. 58, r. 6.—It shall not, under any circumstances, be necessary for respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Notice.

Length of  
notice.

O. 58, r. 7.—Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

Entry.

O. 58, r. 8.—The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

Ex parte  
application.

O. 58, r. 10.—Where an ex parte application has been refused by the Court below, an application for a similar purpose may be made of the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Court of Appeal may allow.

Evidence  
of facts.

O. 58, r. 11.—When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows :

(a.) As to any evidence taken by affidavit, by the production of

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*\* \* \* Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within*

printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed :

(b.) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the Court may deem expedient.

O. 58, r. 12.—Where evidence has not been printed in the Court below, the Court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order. Printing evidence.

O. 58, r. 13.—If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient. Direction of judge: evidence.

O. 58, r. 14.—No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just. Interlocutory order not appealed from.

O. 58, r. 15.—No appeal to the Court of Appeal from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of fourteen days, and no other appeal shall, except by such leave, be brought after the expiration of three months. The said respective periods shall be calculated, in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal. Time to appeal.  
Interlocutory order.  
Security for costs.

O. 58, r. 16.—An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof, or the Court of Stay of proceedings.

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square brackets [ ],—the Crown Office Rules text in " *Italic* " type and within curved brackets ( ).

Appeal, may order; and no intermediate act or proceeding shall be invalidated except so far as the Court appealed from may direct.

Application when made to either Court.

O. 58, r. 17.—Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal, or to a judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or judge below.

Application to Appeal judge.

O. 58, r. 18.—Every application to the judge of the Court of Appeal shall be by motion, and the provisions of O. 52 shall apply thereto (*h*).

### Time.

C.O.R. 293.—O. 64 of the Rules of the Supreme Court, 1883 (Time), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

Interpretation of "month."

O. 64, r. 1.—Where by these Rules, or by any judgment or order given or made after the commencement of the principal Act, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months, unless otherwise expressed.

When Sunday, &c. excluded.

O. 64, r. 2.—Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

Time expiring on Sunday, &c.

O. 64, r. 3.—Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

Effect of order for security for costs.

O. 64, r. 6.—The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter:

(*h*) See above, p. 333.

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\* \* \* Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within

O. 64, r. 7.—The Court or a judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. Enlargement or abridgment of time.

O. 64, r. 8.—The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a judge. Enlargement of time by consent.

O. 64, r. 11.—Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any weekday except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday. Hours of Service.

O. 64, r. 12.—In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day. Computation of time by days.

O. 64, r. 13.—In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall be deemed a proceeding within this Rule. Proceedings after lapse of a year.

### Costs.

C.O.R. 300.—O. 65 of the Rules of the Supreme Court, 1883 (Costs), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

O. 65, r. 1.—Subject to the provisions of the Acts and these Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be General rule as to costs.

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*square brackets [ ],—the Crown Office Rules text in "Italic" type and within curved brackets ( ).*



Trustees,  
mortgagees,  
&c.

Jury cases.

in the discretion of the Court or judge; Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the Chancery Division: Provided also that, where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, cause, matter, or issue is tried, or the Court, shall, for good cause, otherwise order.

### Non-Compliance.

C.O.R. 303.—O. 70 of the Rules of the Supreme Court, 1883 (Effect of Non-Compliance), shall, as far as it is applicable, apply to all proceedings on the Crown side, civil or criminal.

Non-compliance with rules.

O. 70, r. 1.—Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or judge shall think fit.

No application after fresh step taken.

O. 70, r. 2.—No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

Objections to be stated in summons or notice.

O. 70, r. 3.—Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

O. 70, r. 4.—When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

### Applications at Chambers.

C.O.R. 304.—In every proceeding, civil or criminal, on the Crown side at chambers, the summons shall be issued from, and the order drawn up at, the Crown Office.

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\* \* Where the texts of corresponding Rules differ, the Rules of the Supreme Court text is printed in ordinary "Roman" type and within

C.O.R. 305.—No summons to show cause before a judge at chambers shall be issued in the following matters without the leave of a judge upon an ex parte application:—

- (a.) For a writ of mandamus. . . . .
- (d.) For a writ of prohibition. . . . .

### Enforcement of Mandamus.

C.O.R. 217.—O. 42 of the Rules of the Supreme Court, 1883 (Execution), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

O. 42, r. 30.—If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract be not complied with, the Court or a judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person, appointed by the Court or judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a judge may direct, and execution may issue for the amount so ascertained, and costs. Enforcement of mandamus.

O. 42, r. 31.—Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. Corporation.

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*square brackets [ ],—the Crown Office Rules text in “ Italic ” type and within curved brackets ( ).*

SELECTED PATENTS RULES, 1890 AND 1892—  
CONSOLIDATED.

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BY virtue of the provisions of the Patents Designs and Trade Marks Acts, 1883 to 1888, the Board of Trade do hereby make the following Rules:—

Interpreta-  
tion.

3. In the construction of these Rules, any words herein used defined by the said Acts shall have the meanings thereby assigned to them respectively.

Fees.

4. The fees to be paid under the above-mentioned Acts shall be those specified in the list of fees in the First Schedule to these Rules.

Hours of  
business.

7. The Patent Office shall be open to the public every weekday between the hours of ten and four, except on the days and times following:—

Christmas Day.

Good Friday.

The day observed as her Majesty's birthday.

The days observed as days of public fast or thanksgiving,  
or as holidays at the Bank of England.

Size, &c. of  
documents.

10. All documents and copies of documents, except Statutory Declarations and Affidavits, sent to or left at the Patent Office or otherwise furnished to the Comptroller or to the Board of Trade shall be written or printed in large and legible characters and unless otherwise directed in the English language upon strong wide ruled paper (on one side only), of a size of 13 inches by 8 inches, leaving a margin of two inches on the left-hand part thereof, and the signature of the applicants or agents thereto must be written in a large and legible hand. Duplicate documents shall at any time be left, if required by the Comptroller.

Power of  
amendment,  
&c.

16. Any document for the amending of which no special provision is made by the said Acts may be amended, and any irregularity in procedure, which in the opinion of the Comptroller may be obviated without detriment to the interests of any person, may be corrected, if and on such terms as the Comptroller may think fit.

16A. Any application, notice, or other document authorised or required to be left, made, or given at the Patent Office, or to the Comptroller, or to any other person under these Rules, may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given at the time when the letter containing the same would be delivered in the ordinary course of post. In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Service by post.

17. The statutory declarations required by the said Acts and these Rules, or used in any proceedings thereunder, shall be made and subscribed as follows:—

Manner in which, and persons before whom, declaration is to be taken.

- (a.) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding;
- (b.) In any other part of her Majesty's dominions, before any court, judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding; and
- (c.) If made out of her Majesty's dominions, before a British Minister, or person exercising the functions of a British Minister, or a Consul, Vice-Consul, or other person exercising the functions of a British Consul, or a notary public, or before a judge or magistrate.

17A. Statutory declarations and affidavits shall be headed in the matter or matters to which they relate. They shall be divided into paragraphs consecutively numbered, and each paragraph shall so far as possible be confined to one subject.

Title of affidavit, &c.

51. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Comptroller if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct (u).

Enlargement of time.

60. A petition to the Board of Trade for an order upon a patentee to grant a licence shall show clearly the nature of the petitioner's interest, and the ground or grounds upon which he claims to be entitled to relief, and shall state in detail the circumstances of the case, the terms upon which he asks that an order may be made, and the purport of such order.

Petition for compulsory grant of licences.

(a) It is open to doubt, perhaps, whether this rule, although expressed in general terms is intended to cover the cases provided for in Rules 46 and 65, below—seeing that

in practice the referee appointed by the Board of Trade is seised of the proceedings when this stage is reached.

- To be left with evidence at Patent Office.** 61. The petition and an examined copy thereof shall be left at the Patent Office, accompanied by the affidavits, or statutory declarations (*a*), and other documentary evidence (if any) tendered by the petitioner in proof of the alleged default of the patentee.
- Directions as to further proceedings unless petition refused.** 62. Upon perusing the petition and evidence, unless the Board of Trade shall be of opinion that the order should be at once refused, they may require the petitioner to attend before the Comptroller, or other person or persons appointed by them, to receive his or their directions as to further proceedings upon the petition.
- Procedure.** 63. If and when a *prima facie* case for relief has been made out to the satisfaction of the Board of Trade, the petitioner shall upon their requisition, and on or before a day to be named by them, deliver to the patentee copies of the petition and of the affidavits or statutory declarations and other documentary evidence (if any) tendered in support thereof.
- Petitioner's evidence.** 64. Within 14 days after the day of such delivery the patentee shall leave at the Patent Office his affidavits or statutory declarations (*a*) in opposition to the petition, and deliver copies thereof to the petitioner.
- Patentee's evidence.** 65. The petitioner within 14 days from such delivery shall leave at the Patent Office his affidavits, or statutory declarations in reply (*a*), and deliver copies thereof to the patentee; such last-mentioned affidavits or declarations shall be confined to matters strictly in reply.
- Evidence in reply.** 66. Subject to any further directions which the Board of Trade may give the parties shall then be heard at such time, before such person or persons, in such manner, and in accordance with such procedure as the Board of Trade may, in the circumstances of the case, direct, but so that full opportunity shall be given to the patentee to show cause against the petition.
- Further proceedings.** 67. Upon the sealing of a patent the Comptroller shall cause to be entered in the Register of Patents the name, address, and description of the patentee as the grantee thereof, and the title of the invention.
- Entry of grant in register of patents.** 68. Where a person becomes entitled to a patent or to any share or interest therein, by assignment either throughout the United Kingdom and the Isle of Man, or for any place or places therein, or by transmission or other operation of law, a request for the
- Request for entry of subsequent proprietorship.**

(*a*) See scheme, par. 10, below, p. 349.

entry of his name in the register as such complete or partial proprietor of the patent, or of such share or interest therein, as the case may be, shall be addressed to the Comptroller, and left at the Patent Office.

72. There shall also be left with the request an attested copy of the assignment or other document above required to be produced. Copies for Patent Office.

As to a document which is a matter of record, an official or certified copy shall be left with the request in lieu of an attested copy.

73. A body corporate may be registered as proprietor by its corporate name. Body corporate.

75. Upon the issue of a certificate of payment under Rule 48, the Comptroller shall cause to be entered in the register of patents a record of the amount and date of payment of the fee on such certificate. Entry of payment of fees on issue of certificate.

76. If a patentee fails to make any prescribed payment within the prescribed time or any enlargement thereof duly granted, such failure shall be duly entered in the register. Entry of failure to pay fees.

77. An attested copy of every licence granted under a patent shall be left at the Patent Office by the licensee, with a request that a notification thereof may be entered in the register. The licensee shall cause the accuracy of such copy to be certified as the Comptroller may direct, and the original licence shall at the same time be produced and left at the Patent Office if required for further verification. Entry of licences.  
See Form 37, below, p. 364.

78. The register of patents shall be open to the inspection of the public on every week day between the hours of ten and four, except on the days and the times following:— Hours of inspection of register.

(a.) Christmas Day, Good Friday, the day observed as her Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England; or

(b.) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office;

(c.) Times when the register is required for any purpose of official use.

79. Certified copies of any entry in the register, or certified copies of, or extracts from, patents, specifications, disclaimers, affidavits, statutory declarations, and other public documents in the Patent Office, or of or from registers and other books kept there, may be furnished by the Comptroller on payment of the prescribed fee. Certified copies of documents.

80. Where, under these Rules, any person is required to do any act or thing, or to sign any document, or to make any declaration Power to dispense with evidence, &c.

## APPENDIX III.

on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller, or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

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 FIRST SCHEDULE.

 LIST OF FEES PAYABLE ON AND IN CONNEXION WITH LETTERS  
 PATENT.

	£	s.	d.
12. On application to the Board of Trade for a compulsory licence. By person applying . . . . .	5	0	0
13. On opposition to grant of compulsory licence. By patentee	5	0	0
<hr/>			
27. For every entry of an assignment, transmission, agreement, licence, or extension of patent . . . . .	0	10	0
30. Search or inspection fee . . . . . each	0	1	0
31. For office copies . . . . . every 100 words (but never less than one shilling)	0	0	4
32. For office copies of drawings, cost according to agreement.			
33. For certifying office copies, MSS. or printed . . . each	0	1	0
35. For certificate of comptroller under section 96 . . . . .	0	5	0
36. For altering address in register . . . . .	0	5	0

## COMPULSORY LICENCES.

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### SCHEME OF PROCEDURE UNDER SECTION 22, AND THE PATENTS RULES 60—66, 1890 (a).

1. The Board of Trade on receiving petition and evidence (if any) will refer them to a legal expert in patent law.

2. Counsel will thereupon report to the Board of Trade whether in his opinion the order should at once be refused.

3. If the order is not at once refused, the Board of Trade will, upon counsel's report, require the petitioners to appear before him to receive his directions as to further proceedings.

4. After the attendance of the petitioner before counsel he will further report to the Board of Trade whether in his opinion a *primâ facie* case has been made out.

5. If a *primâ facie* case for relief has been made out to the satisfaction of the Board of Trade the Board will call upon the petitioners to deliver to the patentee, on or before a day to be named by them, copy of the petition and evidence in support.

6. When the evidence is complete under Rules 63—65, a copy of the petition and evidence will be submitted to counsel to advise as to further directions or the hearing of the petition under the provisions of Rule 66.

7. Counsel will thereupon advise the Board of Trade whether any further directions are necessary or whether the petition may be at once heard, fixing a time convenient to him, and the Board of Trade will direct the parties accordingly.

8. The hearing to take place at the Board of Trade or elsewhere as may be arranged.

The parties should be required to inform the Board beforehand whether they intend to appear in person or, if not, what counsel or patent agent (b) will represent them.

9. A shorthand note of the proceedings at the hearing to be taken.

10. All evidence prior to the hearing to be by affidavit (c).

(a) This document has been borrowed from the 3rd edition of Mr. Lawson's book upon the Patents, &c. Acts, p. 633, as it is not obtainable from official sources. Mr. Lawson appends a note to the effect that this scheme of procedure is understood not to be final, but it

has been adopted by the Board of Trade in some recent cases.

(b) It is probably not intended by this rule to shut out solicitors from audience at the Board of Trade.

(c) This rule is not rigidly adhered to. See *Dunlop Patents—Wolverhampton Petition*, above, p. 264.



## APPENDIX IV.

### FORMS.

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[PATENT.] (Patent Office Form H.)

**Form of Application for Compulsory Grant of Licence.**

**1.**

*[To be accompanied by an unstamped copy.]*

\* ——— hereby request you to bring to the notice of the Board of Trade the accompanying petition for the grant of a licence to me by † ———.

(Signed) ———.

NOTE.—The petition must clearly set forth the facts of the case and be accompanied by an examined copy thereof. See form H 1.

To the Comptroller,  
Patent Office, 25, Southampton Buildings,  
Chancery Lane, London, W.C.

\* Here state name and full address of applicant.

† Here state name and address of patentee, and number and date of his patent.

(Patent Office Form H 1.)

**Form of Petition for Compulsory Grant of Licences.**

**2.**

To the LORDS of the COMMITTEE of PRIVY COUNCIL for TRADE.

THE PETITION of (a) ——— of ——— in the county of ———, being a person interested in the matter of this petition as hereinafter described:—

SHEWETH as follows:—

1. A patent dated ——— No. ——— was duly granted to ——— for an invention of (b) ———.

2. The nature of my interest in the matter of this petition is as follows:—(c)

(a) Here insert name, full address, and description.

(b) Here insert title of invention.

(c) Here state fully the nature of petitioner's interest.

## 3. (d)

Having regard to the circumstances above stated, the petitioner alleges that by reason of the aforesaid default of the patentee to grant licences on reasonable terms (e)

Your petitioner therefore prays that an order may be made by the Board of Trade (f)

or that the petitioner may have such other relief in the premises as the Board of Trade may deem just.

(d) Here state in detail the circumstances of the case under section 22 of the said Act, and show that it arises by reason of the default of the patentee to grant licences on reasonable terms. The statement of the case should also show as far as possible that the terms of the proposed order are just and reasonable. The paragraphs should be numbered consecutively.

(e) Here state the ground or grounds on which relief is claimed in the language of section 22, sub-sections (a), (b), or (c), as the case may be.

(f) Here state the purport and effect of the proposed order and the terms as to the amount of royalties, security for payment, or otherwise, upon which the petitioner claims to be entitled to the relief in question.

## 3.

## Petition (Levinstein's Case).

See above,  
p. 160 *et seq.*

*Petition for Compulsory Grant of Licences (Amended).*

To the Lords of the Committee of Privy Council for Trade.

The petition of Levinstein Limited of Minshull Street Manchester in the County of Lancaster chemical manufacturers and of Ivan Levinstein managing director of the said company, being persons interested in the matter of this petition.

Sheweth as follows:—

Patentees'  
title.

A patent dated the 11th day of June 1889 and numbered 9,642 was granted to Oliver Imray of 28 Southampton Buildings London, patent agent for an invention communicated to him by the Farbwerke vormals Meister Lucius and Brüning of Höchst-am-Maine, in the German Empire relating to the production of oxysulphonic acids of naphthalin. The said patent was by deed dated the 24th day of May 1892 duly assigned by the said Oliver Imray to the

Farbwerke vormals Meister Lucius & Brüning hereinafter called the patentees. The assignment so made was duly registered at the Patent Office on the 27th day of May A.D. 1892 and the patentees have been from the date of the said registration and still are the duly registered patentees under the said grant. Another patent dated the 26th day of September A.D. 1889 and numbered 15,176 was also granted to the said Oliver Imray for an invention in like manner communicated to him by the patentees relating to improvements in the production of amidonaphtholmono-sulphonic acids and the manufacture of their diazo compounds and azo colouring matters therefrom which said patent was by deed dated the 24th day of May A.D. 1892 duly assigned by the said Oliver Imray to the patentees. The assignment so made was duly registered at the Patent Office on the 27th day of May A.D. 1892 and the patentees have been from the date of the said registration and still are the duly registered patentees under the said grant. Both the said patents are now in force having been maintained by due payment of all renewal fees accrued due in respect of the same.

2. The privileges granted to the said patentees by the said patents include *inter alia* the exclusive right to use within this realm the following processes of manufacture, that is to say:—

- (a) The production of oxynaphthalinsulphonic acids by heating the naphthol di- and tri-sulphonic acids with caustic alkalies.
- (b) The production of amido naphthol sulphonates by heating betanaphthylamine disulphonic acids with caustic alkalies under or without pressure to 200—280 deg. C.

3. The patentees are manufacturing chemists who carry on their manufacture at Hoechst-am-Maine in the German Empire aforesaid and they there manufacture dye-stuffs by the processes above mentioned; but the patentees and the said Oliver Imray have wholly failed to introduce the use of the said processes or of any of them within the realm and have not at any time attempted so to do. It is on the contrary the settled commercial policy of the patentees to prevent the introduction and use of their patented processes within this realm. They import and sell the products of these manufactures at prices greatly in excess of the prices at which they sell the same products to their customers in other countries and they make use of their privileges under the said patent grants for no other purpose than to exclude other manufacturers and to raise the prices of the said commodities in the British market. Dye-stuffs manufactured in accordance with the

said processes are in large demand within this realm for the treatment of Manchester and other goods some of which are intended for export to markets in which foreign manufacturers compete with British manufacturers and the preference granted by the patentees to their foreign customers is a great hindrance to British trade in such foreign markets. Thus by reason of the default of the patentees the grants of privilege so as aforesaid made to them are mischievous and cause hurt of trade and are prejudicial and inconvenient to her Majesty's subjects in general.

Petitioners' invention and interest in relief sought.

4. Your petitioners are manufacturing chemists carrying on their manufacture upon a large scale at Crumpsall Vale Works, Blackley, Manchester in the County of Lancaster, and they have great facilities for the carrying on of the said patented processes and for the production of dye-stuffs thereby. They have by themselves and by the predecessors of the petitioning company in business been for a long time engaged in the production of colouring matters and have conducted numerous and costly experiments as the result of which they have introduced from time to time many improvements in the manufacture of such dye-stuffs in connection with which they carry on an extensive manufacture and trade. They have recently discovered a process by which valuable new dye-stuffs can be manufactured which dye-stuffs are improvements upon the dye-stuffs so as aforesaid manufactured by the patentees in Germany and by them imported and sold within this realm. Other similar improved dye-stuffs have similarly been discovered by your petitioners and they are still conducting experiments from which they hope that further discoveries of the same kind will result. But the valuable new dye-stuffs referred to can only be manufactured by employing the patented processes above mentioned and your petitioners Levinstein Limited did therefore apply to the patentees for a licence to manufacture under their said patents. The patentees have refused to entertain the said application for a licence and still refuse to grant such licence as is necessary to enable your petitioners to introduce the patented manufactures into use within this realm and to work and use to the best advantage the said inventions of which your petitioners are possessed.

Refusal of licence.

Petitioners' ability to work licence.

5. Your petitioners are well able to introduce and carry on the said manufacture if duly licensed so to do and they will undertake to introduce and carry on the same according to their ability provided that a proper licence is accorded to them. The terms upon which it is submitted that the patentees may justly be ordered to grant such licence as is desired to your petitioners Levinstein

Limited and their successors and assigns are set out in the schedule appended hereto.

Your petitioners therefore pray that an order may be made by the Board of Trade under section 22 of the Patents Designs and Trade Marks Act of 1883 that the patentees shall grant to your petitioners Levinstein Limited a licence under the two patents hereinbefore mentioned upon the terms set out in the schedule or upon such other terms as may be just and

That the petitioners may have such other relief in the premisses as the Board of Trade may deem just.

IVAN LEVINSTEIN.

The Common Seal of Levinstein Limited was hereunto affixed in presence of  
 JOHN B. LONSDALE,  
 JOSEPH LEIGH,  
 JOHN WILSON, Secretary.

} Directors. (L.S.)

**Heads of Proposed Agreement, being the Schedule above mentioned to the foregoing Petition.**

4.

**SCHEDULE.**

**HEADS OF AGREEMENT** between Farbenwerke vormals Meister Lucius & Brüning as licensors and Levinstein Limited their successors and assigns as licensees to use the processes patented under patents Nos. 9,642 of 1889 and 15,176 of 1889.

- |  |                    |
|--|--------------------|
| 1. Licence to run for unexpired term of patents.   | Term.              |
| 2. Full power to be granted to the licensees to use the patented processes in the manufacture of raw materials and dye-stuffs during the continuance of the licence.   | Nature of licence. |
| 3. Licensees to pay royalty at the rate of ten per centum upon the net profits arising from the sale of the dye-stuffs so manufactured.  | Royalty rate.      |
| 4. Accounts to be made up and rendered half-yearly by the licensees to licensors together with a payment of the amount of royalty shown to be due. Usual covenants to be entered into as to keeping, rendering and auditing of accounts. First account to be made up to the 30th day of June 1898 and rendered within three months thereafter. | Accounts.          |

Pushing  
trade.

5. Licensees to push the sale of the goods manufactured by the patented processes.

Security for  
payment of  
royalty.

6. Payment of royalties to be secured by deed of covenant entered into by licensees.

Protection of  
licensees.

7. Licensors to put licensees on an equal footing with the most favoured manufacturers in the event of their granting other licences under these patents and not to undersell the licensees in case they, the licensors, hereafter set up the manufacture of dye-stuffs by the patented processes within the realm.

Maintenance  
of patents.

8. Licensors to defend the patents and the privileges thereby granted against revocation and infringement.

Revocation  
of licence.

9. Licence to determine after a reasonable notice by either party (but in any case not less than one month and in the event of a breach capable of amendment, after notice to amend) in the event of a breach by the other party of any of the covenants in the licence contained and to determine upon notice as aforesaid by the licensors in case the royalties in any one year fall below 50%. and upon like notice by the licensees in case the patents or either of them be declared invalid in any proceedings by the judgment of any competent tribunal or be infringed with impunity for a period of twelve months continuously after notice by the licensees to the licensors of the infringement complained of: Provided that notice shall not be given under this clause upon the footing of a judgment declaring the patents or either of them to be invalid until the time for appealing from any such judgment by law allowed shall have expired nor then if an appeal have been entered until such appeal be determined nor unless in the event such judgment so appealed from shall stand. But a judgment given on appeal may itself form the ground of a notice to determine under this clause but it shall be lawful for the licensees upon the delivery of any such adverse judgment to suspend payment of royalties and if in the result the patents or patent be not upheld without amendment then when the right under this clause shall have become absolute to give notice *nunc pro tunc*: Provided that in any case arising under this clause it shall be at the option of the licensees to give notice to determine in respect of either or of both the patents and the licence shall thereupon determine in whole or in part accordingly.

Arbitration.

10. All differences in respect of matters arising out of the licence and the covenants in the deed of licence contained to be referred to the arbitration of an indifferent person to be from time to time nominated by the Board of Trade.

11. Deed embodying the foregoing terms to be drawn up forthwith by the licensees and submitted for approval and execution to the licensors by whom it is to be approved and returned with amendments within four weeks. In the event of difference between the parties as to the terms or provisions of the deed the matters in difference may from time to time be referred by either party to Mr. ——— or failing him to some other conveyancing counsel who shall have authority to determine the point or points in difference and to settle the deed or any part thereof so referred to him. The draft so settled to be binding on both parties.

Preparation  
of deed:

---

### Affidavit.

AT THE BOARD OF TRADE.

In the matter of the Patents, Designs, and Trade Marks Acts, 1883 to 1888; and

In the matter of Patent No. ——— of ——— granted to ———; and

In the matter of the Petition of ———.

AFFIDAVIT OF ——— IN SUPPORT OF THE SAID PETITION.

I ——— of ——— make oath and say as follows:—

- 1.
2. &c.

As these affidavits may have eventually to be used in proceedings for mandamus it is proper to observe the R. S. C. and C. O. R. so far as these are applicable. See above, p. 328 *et seq.*

---

[PATENT.] (Patent Office Form I.)

### Form of Opposition to Compulsory Grant of Licence.

\* ——— hereby give notice of objection to the application of ——— for the compulsory grant of a licence under patent No. ——— of 18 .

(Signed) ———.

To the Comptroller,  
Patent Office, 25, Southampton Buildings,  
Chancery Lane, London, W.C.

\* Here state name and full address.

**5.**

See P. R. 17A,  
above, p. 345.

**6.**



7.

## Patentees' Answer.

## AT THE BOARD OF TRADE.

In the matter of the Patents, Designs, and Trade Marks Acts, 1883 to 1888; and

In the matter of the Patents Nos. 9,642 of 1889 and 15,176 of 1889 granted to Oliver Imray and assigned to Farbwerke vormals Meister Lucius and Brüning; and

In the matter of the Petition of Levinstein Limited and Ivan Levinstein for an order for a compulsory licence under the above-mentioned patents.

## ANSWER OF THE RESPONDENTS.

Admission  
as to title,

—as to  
privilege.

(1.) The patentees admit that they are the proprietors of the patents No. 9,642 of 1889 and No. 15,176 of 1889.

(2.) They admit also that the privileges granted to them by the said patents include *inter alia* the exclusive right to use within this realm the following processes of manufacture that is to say:—

- (a) The production of oxynaphthalinsulphonic acids by heating the naphthol di- and tri-sulphonic acids with caustic alkalies.
- (b) The production of amido naphthol sulphonates by heating betanaphthylamine disulphonic acids with caustic alkalies under or without pressure to 200°—250° C.

Denial of  
patentees'  
default.

(3.) It is not true that the patentees have wholly failed to introduce the use of the said processes or any of them within the realm and that they have not at any time attempted to do so.

The products of these patented processes, viz.:—the oxynaphthalin sulphonic acids and the amidonaphtholsulphonates have not hitherto been used in Great Britain. Although the patentees are and have always been quite willing to supply any person with these products at a low price, as the petitioners well know, yet hitherto there has been no demand for these products in Great Britain. It is therefore not by default of the patentees that these patents have not been worked in England.

The patentees will work them in England as soon as they find that these products are required in England.

Denial of  
petitioners'  
possession of  
invention.

(4.) As chemical manufacturers, the patentees have naturally a strong interest in becoming informed as to all new dye-stuffs invented, but, notwithstanding the most careful investigations, they have not succeeded in finding that the petitioners have invented a dye-stuff of value for manufacturing purposes, for the production of which they require the patented processes.

The petitioners buy from the patentees many products which are not protected by patents but which serve for the manufacture of dye-stuffs, but, although they know that they can procure these patented products also from the patentees, they never have negotiated with the patentees concerning a supply of these.

The patentees have therefore reason to believe that the petitioners have no invention of any industrial importance for the manufacture of which they need the patented processes.

(5.) The petitioners have supplied products made by the patented process (b) to manufacturers in Switzerland and have offered to supply manufacturers in France with the said products.

Charge of infringement against petitioners.

As the petitioners have no works except in England, and as it is not likely that they purchased these products from other manufacturers, they have undoubtedly manufactured in England the products sold by them in Switzerland thus infringing the patent No. 15,176 of 1889.

(6.) If the petitioners will satisfy the patentees that they have an invention for carrying out which they require the licences referred to in their petition, the patentees will be ready to grant such licences, but they would strongly object to some of the conditions set forth in the schedule annexed to the petition.

Offer of licensee.

Referring to Clause 3 of the schedule, a royalty reckoned at the rate of 10 per cent. on the nett profit is utterly unreasonable, for it means that while the patentees, who have made a successful invention and have been put to great labour and expense in completing and protecting it, are to have only one-tenth of the profit, the licensees, who have had none of the merit or of the labour and expense attending the invention, are to have nine times as much.

Royalty rate.

Moreover, there are so many difficulties in ascertaining what nett profits are that a percentage of these would be a very indefinite amount. In almost all cases royalty is put at a definite charge per unit of weight or measure, or, when it is reckoned as a percentage, it is not on the nett profit or even gross profit, but upon the selling price.

The patentees are willing to accept a royalty reckoned at fourpence per lb. of the product manufactured according to patented processes.

Referring to Clause 7 of the schedule, the patentees refuse to be bound as to terms of licences to other parties or to the selling price of the licensees. If the petitioners, as they allege, require the licences only in order that they may carry out inventions of their own, and not that they may sell the products, it cannot matter to them what terms the patentees may make with other manufacturers.

Protection of licensees.

If again the petitioners desire the licence in order that they may manufacture and sell the products, they have no ground to demand such licences, unless they prove that “by reason of the default of the patentees the patent is not being worked in the United Kingdom, or that the reasonable requirements of the public with respect to the invention cannot be supplied.” The patentees, as already stated, are prepared to prove that there is and has been no demand in the United Kingdom for the products in question and that it is through no default of theirs that the patents are not worked and the public not supplied.

Referring to Clause 8 of the schedule, no patentee, even when he grants a licence voluntarily, undertakes, except under special circumstances, to defend his patent or to attack infringers; much less in the case of a compulsory licence should any such condition be imposed.

Respondents' case summarised.

On the grounds hereinbefore set forth, and considering that there is no demand, in the United Kingdom, for the products of the patented processes, that the patentees are quite willing and ready to supply these products at moderate prices when they are required, and to manufacture them in England when there is sufficient demand—and finally that the petitioners are not possessed of any invention which they are prevented by the patent in question from working or using to the best advantage, the patentees respectfully submit that the prayer of the petitioner should be refused, or that if the Lords of the Committee of Privy Council for Trade should decide that a licence is to be granted to the petitioners, that licence should be such as to provide for a fair royalty to the patentees, without subjecting them to unreasonable conditions.

Dated this 30th day of November, 1897.

ABEL & IMRAY,  
Agents for the Patentees.

## Order for a Compulsory Licence.

8.

In the matter of the Patents, Designs, and Trade Marks Acts, 1883 to 1888; and See above,  
p. 105 *et seq.*

In the matter of Letters Patent No. 9,642 of 1889 and of Letters Patent No. 15,176 of 1889; and

In the matter of a Petition of Levinstein Limited of Minshull Street Manchester in the county of Lancaster, chemical manufacturers and of Ivan Levinstein managing director of the said company (hereinafter called the petitioners) to the Board of Trade for an order for a compulsory licence under the said patents.

WHEREAS by section 22 of the Patents, Designs and Trade Marks Act, 1883, it is enacted "If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licences on reasonable terms—

- (a.) The patent is not being worked in the United Kingdom; or
- (b.) The reasonable requirements of the public with respect to the invention cannot be supplied; or
- (c.) Any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Board may order the patentee to grant licences on such terms as to the amount of royalties, security for payment, or otherwise as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

And whereas, on the 11th of June 1889, a patent numbered 9,642 was granted to Oliver Imray, of 28, Southampton Buildings, London, patent agent, for an invention communicated to him by The Farbwerke vormals Meister Lucius and Brüning, of Hoechst-am-Maine, in the German Empire (hereinafter called the patentees), relating to the production of oxysulphonic acids of naphthalin: And whereas, on the 24th of May 1892, the said patent was duly assigned by the said Oliver Imray to the patentees, which said assignment was, on the 27th of May 1892, duly registered at the Patent Office:

And whereas, on the 26th of September 1889, another patent numbered 15,176 was also granted to the said Oliver Imray for an invention, in like manner communicated to him by the patentees, relating to improvements in the production of amidonaphthol-monosulphonic acids, and the manufacture of their diazo compounds and azo colouring matters therefrom: And whereas, on the 24th of May 1892, the said patent was duly assigned by the said Oliver Imray to the patentees, which said assignment was, on the 27th of

Recitals.  
The enact-  
ment.

Grant of  
patent.

Assignment.

Grant of  
second patent.

Assignment.

**Petition.** May 1892, duly registered at the Patent Office: And whereas the petitioners presented a petition to the Board of Trade under the said section for an order that the patentees, under the said Letters Patent No. 9,642 of the 11th of June 1889, and No. 15,176 of the 26th of September 1889, should grant to the petitioners a licence under or in respect of the inventions described and claimed in and by the specifications of the said respective letters patent: And whereas, on consideration of the said petition and of the matters therein mentioned, it has been proved to the Board of Trade that the said petitioners are persons interested in the matter of the said petition, and that by reason of the default of the patentees to grant licences on reasonable terms the said patents are not being worked in the United Kingdom, and that by reason of the default aforesaid the said petitioners are prevented from working and using to the best advantage certain inventions of which they are possessed:

**See above, p. 248.**

**Default of patentees.**

**Order.** Now, therefore, the Board of Trade, in exercise of the power conferred upon them by sect. 22 of the Patents, Designs, and Trade Marks Act, 1883, and of all other powers enabling them in this behalf, do hereby order as follows:—(1) That a licence, to take effect from the date of this order and in the form set forth in the schedule hereto (a), be forthwith granted by the patentees to the petitioners to make, use, exercise, and vend within the United Kingdom the inventions described and claimed in and by the specifications of the said letters patent Nos. 9,642 and 15,176 of 1889 for the unexpired residues of the respective terms of the said letters patent at a royalty of one halfpenny for each pound weight avoirdupois of products made by the licensees under the said letters patent or either of them, but so that in each year a minimum royalty of 250*l.* per annum, shall be paid by the licensees, and the patentees shall forthwith deposit such licence duly executed by them with the Board of Trade. (2) The said petitioners, before the 6th day of August 1898, shall execute and deposit with the Board of Trade a counterpart licence in the form aforesaid, and in default of their doing so this order shall be of no effect.

**Form of licence.**

**Royalty.**

**Execution and delivery of licence.**

Dated this 6th day of July 1898.

(Signed) COURTENAY BOYLE,  
Secretary, Board of Trade.

(a) The schedule here referred to is comprised in the next formula—  
Form 9—of this collection.

**Compulsory Licence. (15 R. P. C. 743.)****9.**

(Levinstein form—being the schedule attached to the foregoing order for a compulsory licence and therein referred to as “the schedule hereto.”) See above,  
p. 116 *et seq.*

THIS INDENTURE, made the ——— day of ———, between The Parties.  
 Farbwerke vormals Meister Lucius and Brüning, of Hoechst-am-Maine, in the Empire of Germany (hereinafter called the patentees), of the one part, and Levinstein, Ld., and Ivan Levinstein, managing director of Levinstein, Ld., of Minshull Street, Manchester, in the county of Lancaster (hereinafter called the licensees), of the other part: Whereas, by an order of the Board of Trade dated the 6th day of July 1898, and made under section 22 of the Patents, Designs, and Trade Marks Act, 1883, it was ordered that a licence, to take effect from the date of the said order, should be granted by the patentees to the licensees to make, use, exercise, and vend the inventions described in the letters patent hereinafter mentioned (to the benefit of which the patentees are entitled) in the form set out in the schedule to the said order, being the form of these presents: Recital of the  
order

Now, this indenture witnesseth that in pursuance of the said order the patentees do hereby grant to the licensees licence within the United Kingdom to make, use, exercise, and vend the inventions described and claimed in and by the specifications of the letters patent Nos. 9,642 and 15,176 of 1889 mentioned in the said order; to hold, exercise, and enjoy the said licence for and during all the residues now to come and unexpired of the respective terms of the said letters patent, and during any further term for which the said letters patent or either of them may be extended; and the licensees hereby covenant with the patentees that the licensees will, during the continuance of this licence, pay to the patentees half-yearly, on every 6th day of January and 6th day of July, royalties at the rate of a halfpenny for each pound weight avoirdupois of product made by the licensees under the said letters patent or either of them in the half-years then ending respectively: Provided always that if the royalties payable in any year ending on the 6th day of July shall not have amounted to the sum of 250*l.*, the licensees shall on such 6th day of July, pay to the patentees such further sum as with the said royalties shall amount to the said sum of 250*l.*, hereinafter called the yearly rent. The licensees do hereby also covenant with the patentees that the licensees will, during the continuance of the licence, keep proper accounts in separate books containing full particulars of all products made by them under this and of  
patentees'  
title.

Testatum.

Habendum.

Covenant for  
royalty.

Proviso for  
minimum  
royalty.

Covenant to  
keep accounts,

—to produce  
accounts for  
inspection,

—to render  
accounts.

Agreement as  
to inspection  
of factory.

Agreement as  
to revocation  
of licence by  
the patentees,

—by the  
licensees.

licence, and of all other things which may be material for the purpose of showing the amounts payable to the patentees by way of royalty, and will at any time produce the same for the inspection of the patentees or any person appointed by them, who shall be at liberty to make copies from or extracts from any of the accounts or matters therein contained, and that the licensees will within ten days after each of the half-yearly days aforesaid deliver to the patentees an account in writing, showing all the particulars and matters aforesaid with respect to the products made during the preceding half-year: And it is hereby agreed and declared that the patentees shall be at liberty at any time during the continuance of this licence to enter upon any factory or place of business of the licensees in which the manufacture of the said products shall be carried on at any reasonable hour with a view of obtaining all such information as may be material for the purpose of ascertaining the amount of royalty payable to them under this licence: And it is hereby also agreed and declared that if any payment of royalties or yearly rent under this licence shall be in arrear for one month after the same shall have become due (whether payment thereof shall have been demanded by the patentees or not), or if the licensees shall make default in the performance of any obligation on their part herein contained, and shall not have made good the same within fourteen days after the patentees shall have by notice in writing required them to do so, then the patentees may, with the consent of the Board of Trade, by notice in writing to the licensees, revoke this licence as from the date of such notice without prejudice to the right of the patentees to recover any monies then due hereunder: And it is hereby also agreed and declared that if the said letters patent or either of them shall become void or shall be declared by a Court of law to be void the licensees may, with the consent of the Board of Trade, by notice in writing to the patentees revoke this licence.

AS WITNESS, &c.

9a.

### Compulsory Licence.

(Another form—Hulton and Bleakley Licence.)

Parties.  
Recital.

The statement of parties and the recital are the same *mutatis mutandis* as in the last preceding form (9).

The deed continues as follows:—

Testatum.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said order the patentees do hereby grant to the licensees licence

within the United Kingdom to make (a) and use the inventions described and claimed in and by the specifications of the letters patent No. 5,470 of 1886 and No. 5,989 of 1888, mentioned in the said order.

The habendum is in the same terms as in the preceding form (9). The licensee's covenant for royalties is as follows:— Habendum.

The licensees covenant with the patentees that the licensees will during the continuance of the licence pay to the patentees yearly on every 27th day of July (the first payment to be made on the 27th July, 1899) the sum of twenty pounds as royalty in respect of each machine in connexion with which the licensees shall at any time during the year ending on such 27th day of July have used the inventions contained in the said letters patent or either of them. Covenant for royalties.

The remaining covenants, agreements and declarations are *mutatis mutandis* the same in both deeds. See preceding form (9). Covenants for accounts, &c.

10 to 36 (inclusive).—Clauses.

The following skeleton of a deed of licence will facilitate reference to the subjoined clauses:—

	CLAUSE		CLAUSE
Parties .....	10	Covenants on the part of Licensor—	
Recitals—		for title .....	24
patent and licensor's title		for quiet enjoyment..	25 to 25c
thereto .....	11	for most favourable terms	26
order (or agreement) for		to restrain infringements .	27
licence .....	12 & 12a	to keep the patent on foot	28
Testatum .....	13 to 13e	to communicate and license	
Habendum .....	14 to 14d	improvements .....	29
Reddendum .....	15	for further assurance ....	30
Covenants on the part of Licensee—		Mutual covenant to arbitrate .	31
to pay royalty .....	16 to 16d	Provisoes—	
to keep accounts ....	17 & 17a	for power to revoke..	32 to 32e
to submit accounts .....	18	for power to average	
to render accounts .....	19	yearly payments .....	33
to verify accounts .....	20	for mutuality of covenants	34
to push the invention..	21 & 21a	for delivery of notices ..	35
to permit licensor to in-		(Note as to other Provisoes.)	
spect factory .....	22	Declaration as to Interpreta-	
to mark licensed goods ..	23 to 23b	tion of Deed.....	36
(Note on other Covenants by		(Note as to Exclusive Licences.)	
the Licensee.)			

(a) This is at variance with the order which directed a licence to use only. See above, p. 248.



**10.****Parties.**

THIS INDENTURE made the \_\_\_\_\_ day of \_\_\_\_\_. Between \_\_\_\_\_ (who together with their executors administrators and assigns are hereinafter called the patentees) of the one part and \_\_\_\_\_ ([who together with their executors administrators and assigns are] hereinafter called the licensees) of the other part.

O, above, p. 363.

For another form adapted to a licence assignable in certain events, see 4 B. 801.

**11.**

**Recital of the  
Patent and  
Patentee's  
Title.**

See above,  
pp. 117, 121.

WHEREAS the patentee is in possession of certain letters patent granted to him the said patentee being No. \_\_\_\_\_ of the year \_\_\_\_\_ for improvements in \_\_\_\_\_ and claims to be entitled to the full benefit thereof.

**12.**

**Recital of the  
Order.**

See above,  
p. 117.

WHEREAS by an order of the Board of Trade dated the \_\_\_\_\_ and made under section 22 of the Patents Designs and Trade Marks Act, 1883, it was ordered that a licence to take effect from the date of [the said order] [the execution of these presents by the licensee] should be granted by the patentees to the licensees to make use exercise and vend the inventions in respect of which the said letters patent are granted in the form set out in the schedule to the said order being the form of these presents.

O, above, p. 363 ; *Levinstein's Petition*, 15 R. P. C. 743.

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\* \* *It will be understood that the forms above given have been freely moulded for the purpose of adapting them to use in this connexion. The substance will be found, but not always the precise language, in the authorities referred to. In the above references :—*

**O** = the official form already adopted at the Board of Trade.

**M** = *Morris's Patents Conveyancing*.

12a.

WHEREAS the patentee has agreed with the licensees to grant to them an exclusive licence to manufacture, use and vend the said inventions which are worked in the market by the name of Thomson's Patent Combined Circulator and Feed Water Heater for Steam Boilers.

Another form  
(Recital of the  
Agreement).

This recital held one among other indications that the agreement was not revocable by the licensors: *Guyot v. Thomson*, 11 R. P. C. 553.

13.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said order and in consideration of the royalties hereinafter expressed to be payable by the licensee and of the covenants on the part of the licensee hereinafter contained the licensor doth hereby grant unto the licensee [and his assigns] full liberty and licence [within the district being ——— miles in radius from ———] to [make] use exercise [and vend] the said invention [so far as the same shall be applicable to the manufacture of].

Testatum.

See above,  
pp. 119, 121.

F. 776 ; M. 245 ; 4 B. 800 ; E. 826.

13a.

IN PURSUANCE of the said agreement the said (licensor) hereby agrees with the (licensee) to and doth hereby concede and give to him the right to manufacture broughams or landaulettes and other carriages as mentioned in the said specification upon which the said letters patent are granted, subject to the said licensee's paying to the licensor the sum and entering into the agreement next herein contained.

Another form  
(from a  
Memorandum  
of Agree-  
ment).

Held on the authority of *Crossley v. Dixon*, 10 H. L. Ca. 293, that the licensee could revoke this licence by simple repudiation: *Redges v. Mulliner*, 10 R. P. C. 27.

13b.

THE SAID *F. Cutlan*, in consideration of the sum of fifty pounds now paid or to be forthwith paid to him by the licensee, and of such further sums to be paid as hereinafter provided, agrees to let on

Another form  
(from a  
Memorandum  
of Agree-  
ment).

**T** = *Terrell's Law of Letters Patent* (3rd ed.).

**E** = *Edmunds on Patents* (2nd ed.).

**F** = *Frost's Patent Law and Practice* (2nd ed.).

**B** = *Bythewood and Jarman's System of Conveyancing* (4th ed.).

**K** = *Key and Elphinstone's Precedents of Conveyancing* (4th ed.).

hire to the licensee, who agrees to take one of his patent shoe-lasting machines, numbered ——— with the attachments and apparatus thereto as set forth in the first schedule to this licence, to be used and employed in England, but not elsewhere, in the manufacture of boots and shoes under and subject to the terms and conditions of this licence which the licensee agrees to observe and perform and such machinery may, subject to the provisions hereinafter contained, be employed by and for the use of the licensee during the licence term as hereinafter defined in the manufacture of boots and shoes and the licensee may sell or otherwise dispose of or use boots and shoes in the manufacture whereof the said machinery shall have been employed in accordance with the conditions of this licence and may authorise any other person to sell or otherwise dispose of or use such boots and shoes. Any additional apparatus or attachments required by the licensee will not be included in the licence, and shall be purchased of *the said F. Cutlan* and paid for by the licensee as extras, except any additional tacker or tackers supplied or which may at any time hereafter be supplied and which, though paid for as extras, shall be deemed to be included in the licence and *shall* remain the property of *the said F. Cutlan*.

*Cutlan v. Dawson*, 13 R. P. C. 711 ; 14 R. P. C. 250.

### 13c.

Another form  
(combining  
Testatum and  
Habendum in  
one clause).

The said patentee in consideration of 150*l.* paid as beneficial owner grants unto the licensees their executors administrators and assigns the full, sole and exclusive licence to use and exercise the inventions and each of them during the unexpired residues of the terms of the said letters patent respectively or any renewal or extension thereof and to manufactur<sup>e</sup> sell and dispose of all circulators and feed water heaters manufactured according to the said inventions or either of them when and as the licensees shall think fit for their absolute benefit.

Held that these words amount to more than a mere licence and imply a covenant on the part of the patentee not to revoke: *Guyot v. Thomson*, 11 R. P. C. 554.

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\* \* \* *It will be understood that the forms above given have been freely moulded for the purpose of adapting them to use in this connexion. The substance will be found, but not always the precise language, in the authorities referred to. In the above references:—*

**O** = the official form already adopted at the Board of Trade.

**M** = *Morris's Patents Conveyancing*.

**13d.**

Another form  
(from a  
Memorandum  
of Agree-  
ment).

(*The licensee*) to have during the continuance of the patents, if he shall so long live, the sole right (subject to the licence dated 14th April 1894 and subject as hereinafter mentioned) of constructing in the United Kingdom and France wheels and towers and other works in accordance with the inventions in respect of which the said patents were granted or any improvement thereof.

Held, no implied right of user: *Basset v. Graydon*, 14 R. P. C. 716.

**13e.**

For a testatum limiting the licence to "the feed mentioned in the first claim of the specification" see the report of *Grover v. Millard*, 8 Jur. N. S. 714, for one limiting it to the use of the invention with particular cables see *Muirhead v. Commercial Cable Co.*, 12 R. P. C. 44.

**14.**

**Habendum.**

to have, hold, exercise and enjoy the said licence unto and by the licensee [and his assigns] for and during all the residue now to come and unexpired of the respective terms of the said letters patent [and during any further term for which the said letters patent or either of them may be prolonged]. See above, p. 122.

M. 245. This is substantially the same as the habendum in the official form above p. 363 except that in the official form the characteristic word "have" is omitted.

**14a.**

Another form  
(Term  
certain).

during all the residues now unexpired of the terms of years granted by the said letters patent respectively and during all the prolongations or extensions if any, of the same terms or any of them respectively.

Held that there was no apportionment of royalty to any particular patent and that the licensee had agreed to pay royalty for using any of the processes covered by the patents—even lapsed patents—so long as any of the patents continued in existence: *Siemens v. Taylor*, 9 R. P. C. pp. 397, 400.

For another form to the like effect, see *Muirhead v. Commercial Cable Co.*, 12 R. P. C. 44.

**T** = *Terrell's Law of Letters Patent* (3rd ed.).

**E** = *Edmunds on Patents* (2nd ed.).

**F** = *Frost's Patent Law and Practice* (2nd ed.).

**B** = *Bythewood and Jarman's System of Conveyancing* (4th ed.).

**K** = *Key and Elphinstone's Precedents of Conveyancing* (4th ed.).

**14b.**

Another form  
(Term  
certain).

During the continuance of the licence.

Held to be in the special circumstances of the case equivalent to "during the term of this licence" and to import a term certain: *Guyot v. Thomson*, 11 R. P. C. 554.

**14c.**

For another form limiting the licence to the term of the patent and any extension thereof, see Clause 13c above: *Guyot v. Thomson*, 11 R. P. C. 554.

As to the non-revocable character of a licence granted for a term certain, see the observations of Chitty, L.J., in *Cutlan v. Dawson*, 14 R. P. C. 254.

**14d.**

For another form limiting the licence to the term of the licensee's natural life, see Clause 13d above: *Basset v. Graydon*, 14 R. P. C. 716.

**15.**

Reddendum.

YIELDING AND PAYING unto the licensor 100%. by equal half-yearly payments of 50%. each in advance on the 1st day of January and the 1st day of July in every year the first half-yearly payment to be made on the 1st day of January next for the half-year ending the 30th day of June, 1888, and the last to be made on the 1st day of July, 1901.

*Mills v. Carson*, 9 R. P. C. 344. For another form adapted to the case of a rateable royalty, see M. 245. This is, no doubt, a superfluous and probably an inappropriate clause in a deed of licence pure and simple. See above, p. 124.

**16.**

Covenant to  
pay Royalty.  
See above,  
p. 124.

and the licensees hereby covenant with the patentees that the licensees [or their assigns] will during the continuance of this licence pay to the patentees or to their assigns half-yearly on every \_\_\_\_\_ day of \_\_\_\_\_ and \_\_\_\_\_ day of \_\_\_\_\_ royalties at the rate of \_\_\_\_\_ for every pound weight avoirdupois of product made by the licensees [or by their assigns] under the said letters patent or either of them in the half-years then ending severally [and further

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\* \* \* It will be understood that the forms above given have been freely moulded for the purpose of adapting them to use in this connexion. The substance will be found, but not always the precise language, in the authorities referred to. In the above references:—

**O** = the official form already adopted at the Board of Trade.

**M** = Morris's Patents Conveyancing.

that if the royalties payable in any year ending on the ——— day of ——— shall not have amounted to the sum of ———*l.* the licensees will on such ——— day of ——— pay to the patentees such further sum as with the said royalties shall amount to the said sum of 250*l.* hereinafter called the yearly rent] [provided always &c. (see proviso for averaging royalties below Clause 33)].

O, above, p. 363; see also Form 9a, p. 365.

And the licensee in consideration of the concession or licence hereinbefore contained doth hereby promise, declare and agree with the licensor that he, the licensee, will allow and pay or cause to be allowed and paid unto the licensor his executors administrators and assigns the royalty of 5*l.* for each brougham or landaulette or other carriage manufactured by the licensee at his own cost and expense under the design or principle as mentioned or set forth in the said specification.

*Redges v. Mulliner*, 10 R. P. C. 21.

The said (*licensees*) agree to pay to the said (*licensors*) the sum of 1*s.* as a royalty in respect of each and every folding mail cart which they manufacture under this agreement during the first year, and the sum of 1*s.* 6*d.* during the second, third, and subsequent years of this agreement.

*Lines v. Usher*, 14 R. P. C. 207.

The licensee shall pay to *the said licensor*, by way of licence rent for the use of the machinery, the sum of 1*l.* per calendar month, payable on the first day of every such month after the date hereof during the continuance of this licence; and in the event of the said rent's not being punctually paid, the licensee shall be chargeable with interest at the rate of 10*l.* per cent. per annum on the amount for the time being in arrear, but without prejudice to the determination clause hereinafter contained. Any fraction of a month, from

### 16a.

Another form  
(referring  
expressly to  
the  
Specification).

### 16b.

Another form  
(from a  
Memorandum  
of Agree-  
ment).

### 16c.

Another form  
(securing  
Rent and  
Royalty—  
from Memo-  
randum of  
Agreement).

**T** = *Terrell's Law of Letters Patent* (3rd ed.).

**E** = *Edmunds on Patents* (2nd ed.).

**F** = *Frost's Patent Law and Practice* (2nd ed.).

**B** = *Bythewood and Jarman's System of Conveyancing* (4th ed.).

**K** = *Key and Elphinstone's Precedents of Conveyancing* (4th ed.).

the date hereof to the first day of the next calendar month, shall be considered as an entire month, and the whole monthly rent shall be paid in respect thereof without any deduction or apportionment.

In this case the licence was in the form of an agreement by which a patented machine was let to hire: *Cutlan v. Dawson*, 13 R. P. C. 711; 14 R. P. C. 250.

### 16d.

Another form  
(Minimum  
Royalty—  
from a Memo-  
randum of  
Agreement).

In consideration of the granting by the said *licensors* to the said *licensees* of the licence hereby conferred [for the term of three years from the 1st April 1892] the said *licensees* agree to pay royalty upon a minimum number of one gross every month during the continuance of this agreement.

*Lines v. Usher*, 13 R. P. C. 686.

### 17.

Covenant to  
keep  
Accounts.

See above,  
p. 125.

and the licensees do also hereby covenant with the patentees that the licensees will during the continuance of this licence keep at their ordinary place of business proper accounts in separate books containing full particulars of all [products made]<sup>(a)</sup> by them under this licence and of all other things which may be material for the purpose of showing the amounts from time to time payable to the patentees by way of royalty.

O, above, p. 363.

For other forms see T. 539; 2 K. 378; 4 B. 800; E. 826; F. 777.

### 17a.

Another form  
(to Account by  
purchasing  
Plates).

and it is hereby agreed that the said royalty shall be paid by the purchase of licence plates as hereinafter provided.

\* \* \* \* \*

and the said (licensee) covenants that he will from time to time

(a) This covenant occurs in a licence to manufacture and would obviously require moulding to suit the case of a licence to sell; in which case the words within the bracket would become [sales

effected]; or of a royalty calculated upon profits in which case they would become [profits made] or other cases according to circumstances.

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during the continuance of the licence purchase from the said (licensor) at least ten licence plates every month and at the time of each such purchase pay the sum of 1*l.* sterling for each of such plates; and also that he will not use or sell or otherwise dispose of or expose to public view any machine made by virtue of the said licence without first affixing to such machine on some conspicuous part thereof one of such licence plates.

*Grover v. Millard*, 8 Jur. N. S. 714.

### 18.

**Covenant to  
submit  
Accounts.**

and will produce the said books to the licensor or to his assigns or to his or their agent or agents at all reasonable times for inspection and the taking of copies or extracts therefrom and will at his own expense obtain and give to the licensor or his assigns or to his or their agent or agents as the case may be all such information as to any item or matter contained or which ought to be contained therein as shall be reasonably required.

M. 246 (see also the official form above, p. 364) and  
4 B. 801; E. 826.

### 19.

**Covenant to  
render  
Accounts.**

and that the licensees will within ten days after each and every of the half-yearly days aforesaid [and also within ten days after the day of the determination of this licence by effluxion of time or otherwise] make up their said accounts to such half-yearly or other day and send to the patentees a written statement of all products (*a*) by such accounts shown to have been made by them as aforesaid and of all royalties by such accounts shown to have accrued due to the patentees within the period covered by such statement of account and of all royalties under this licence payable to the patentees at the date to which the said statement of account is made up.

• For another form see the official form of licence (9), above, p. 364.

(*a*) See note appended to Clause 17 above, p. 372.

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**E** = *Edmunds on Patents* (2nd ed.).

**F** = *Frost's Patent Law and Practice* (2nd ed.).

**B** = *Bythewood and Jarman's System of Conveyancing* (4th ed.).

**K** = *Key and Elphinstone's Precedents of Conveyancing* (4th ed.).



**20.**

**Covenant to  
verify  
Accounts.**

and will if and when required by the licensor or by his assigns but at the expense of the licensee verify or procure some fitting person [in his employ] to verify the said statement of account or any part or parts thereof by statutory declaration.

M. 247; 4 B. 800.

**21.**

**Covenant to  
push the  
Invention.**

that the licensees will at all times during the continuance of this licence advertise and push the sale of the said inventions and use their best endeavours to further their success.

*Guyot v. Thomson*, 11 R. P. C. 553.

**21a.**

**Covenant to  
Work accord-  
ing to  
Specification.**  
See above,  
p. 128.

and also that the licensee will not during the continuance of this licence manufacture any article to which the said invention can be applied otherwise than [so as that the said invention shall be applied to the same] (or) [as in the said specification described].

For other forms of this covenant, see M. 248; 2 K. 379; E. 826.

**22.**

**Covenant to  
permit  
Licensor to  
inspect  
Factory.**  
See above,  
p. 126.

and also that the licensees will permit the licensor or his assigns at all reasonable times in business hours during the continuance of this licence to enter any place of the licensees where the [manufacture] [or sale] of the said articles shall be carried on for the purpose of ascertaining the state and extent of such [manufacture] [or sale] and whether all the covenants on the part of the licensees herein contained have been or are being duly performed.

M. 248; F. 777. See also the official form (9), above,  
p. 364.

**23.**

**Covenant to  
Mark licensed  
Goods.**  
See above,  
p. 128.

and will mark every article manufactured by him under this licence with the words "———'s patent."

It must be borne in mind in connexion with this covenant that the marking of goods with the word "patent" may prove

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an obstacle to their exportation to foreign countries where they may be unpatented.

A very elaborate form of this covenant is given in M. 247. For another form see 2 K. 378.

### 23a.

and each such brougham shall have printed or stamped thereon a number to be given by the said (licensor).

*Redges v. Mulliner*, 10 R. P. C. 22.

Another form  
(intended to  
facilitate  
Accounting).

### 23b.

the licensee will at all times during the licence term keep affixed to the machinery in a permanent and substantial manner the metal plate or plates now affixed thereto, upon which are the number of the machine and the name of *F. Cutlan*.

Another form  
(from a  
Memorandum  
of Agree-  
ment).

This term was introduced for the security of the licensor in a case in which the licence was to use a patented sewing machine, the machine itself being let to hire to the licensee. *Cutlan v. Dawson*, 13 R. P. C. 711.

### *Other Covenants by the Licensee.*

In addition to the foregoing covenants the following are very commonly found in licences :

- (a) A covenant not to assign the licence or to grant sub-licences—which seems to be superfluous. *Bower v. Hodges*, 22 L. J. C. P. 198; *Lawson v. Macpherson*, 14 R. P. C. 696.
- (b) A covenant not to dispute the validity of the patent—which seems to be either superfluous or improper. See above, p. 128.
- (c) A covenant to notify the licensor of infringements coming to the knowledge of the licensee—a very special provision not suitable for any ordinary case of a concurrent licence. Forms, if required, can be found in M. 248 and T. 541. See above, p. 128.

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B = *Bythewood and Jarman's System of Conveyancing* (4th ed.).

K = *Key and Elphinstone's Precedents of Conveyancing* (4th ed.).

- (d) A covenant to communicate to the licensor any improvements upon the patented invention which may come to the licensee's knowledge. This again is a provision of a very special and not generally applicable character. For form see M. 249. See also the reciprocal covenant by the licensor, below, Clause 29, p. 379.

## 24.

### Covenant for Licensor's Title.

and the licensor doth hereby covenant with the licensee that notwithstanding anything by him the licensor done omitted or knowingly suffered the said letters patent are now valid and subsisting and not void or voidable and that notwithstanding as aforesaid he the licensor now hath power to grant the premisses in manner aforesaid.

M. 247. This is not commonly used in licences unless granted upon payment of a lump sum or annuity and demands careful consideration in view of the circumstances of the individual case. See above pp. 119, 120.

For a form of *testatum* implying covenants for title by the use of the technical words "as beneficial owner," see Clause 13c above p. 368. This form was held not suitable to the creation of a mere licence. See the judgment of Lindley, L.J., in *Guyot v. Thomson*, 11 R. P. C. 554.

## 25.

### Covenant for quiet Enjoyment.

and the licensor covenants with the licensees that the licensees paying the said sum during the residue of the said term they shall peaceably and quietly hold, exercise and enjoy the licence hereby granted [with power to sublet and authorise others to use the said invention] without any legal interruption or disturbance by the licensor or any other person whomsoever.

*Semble* the covenantor must indemnify the covenantee against the consequences of allowing the patent to lapse: *Mills v. Carson*, 10 R. P. C. 16.

This covenant is quite unusual in licences and might prove very onerous in case the licensee were attacked by the owner of an earlier patent. But it is one that has a special import-

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ance in circumstances such as those which will usually give rise to applications for compulsory licences and should be carefully considered on both sides. Probably the result intended to be secured by it would be better attained by a power of revocation similar to that found in the official form but arising in case the working of the invention is prevented by right paramount to that of the patentee. See below Clause 32c, p. 381.

**25a.**

and further that the right to use the said invention to the extent and in the manner and subject to the covenants herein contained shall be quietly and peaceably exercised used and enjoyed by the licensees without any interruption or disturbance whatsoever by or from the patentee or any person claiming under or in trust for him.

Another form  
(limited to the  
Acts of the  
Licensor).

4 B. 804.

**25b.**

and the *licensor* will not at any time during the term exercise or use or authorise others to exercise or use the said invention within the United Kingdom or elsewhere without the consent in writing of the *licensees* first had and obtained.

Another form  
(limited to  
particular  
Acts of the  
Licensor).

*Mills v. Carson*, 9 R. P. C. 345.

It is not usual for the licensor to enter into this covenant except in the case of an exclusive licence but there is special and cogent reason why in the case of a compulsory licence a covenant in the general sense of this one, but moulded so as to protect the licensee only against unfair—not against all—competition should be introduced. See above p. 130. The exigency is largely met by a covenant to grant most favourable terms; Clause 26 below p. 378; but circumstances may well arise calling for a still larger measure of protection for the licensee.

**25c.**

The patentee undertakes not to deal with his patents in the United Kingdom or with any patent right granted or to be granted in France in respect of his inventions, or to grant any licences in

Another form.

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**B** = *Bythewood and Jarman's System of Conveyancing* (4th ed.).

**K** = *Key and Elphinstone's Precedents of Conveyancing* (4th ed.).

the United Kingdom or France in respect of these inventions without making proper provision for protecting and preserving (the licensee's) rights to construct under the agreement.

*Basset v. Graydon*, 14 R. P. C. 713.

## 26.

**Covenant to grant the most favourable terms to the Licensee.**  
See above, p. 130.

If whilst this licence is in force the patentee shall at any time grant any licence or permission to any other person or persons for the use of the said invention in the United Kingdom, and shall reserve any annual payment or charge any price for the said licence or permission lower than the annual payments and price reserved under and by virtue of this indenture, then the annual payments and price thenceforward payable to the patentee shall be reduced to an amount equal to the lowest price reserved and payable for the use of the said invention by such other person.

T. 542. For other forms of this covenant see M. 231, and 4 B. 803.

## 27.

**Undertaking to restrain Infringement (from a Memorandum of Agreement).**  
See above, p. 130.

The *patentees* shall during the continuance of this agreement at their own costs and charges by all means in their power protect and defend the said letters patent from all infringements by any person.

Held that the patentee was obliged (1) to keep the patent in force by payment of renewal fees. (2) To take action against infringers: *Lines v. Usher*, 14 R. P. C. 209.

For other forms of this covenant see 2 K. 380; F. 778.

## 28.

**Covenant to keep the Patent on foot.**  
See above, p. 131.

The licensor will during the continuance of this licence pay all fees necessary for the renewal of the said letters patent ——— days at least before the latest times appointed for the payment thereof respectively [and will if and when required by the licensee produce the certificate to him of any payment thereof or permit the licensee to pay any one or more of such fees and to deduct the amount of the same if and when so paid by him from the amount of royalties

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or other sums for the time being due hereunder] and also will generally perform and observe the conditions of the said letters patent and the licensor will at all times during the continuance of this licence at his own cost defend every proceeding for revocation of the said letters patent.

M. 238.

It may be proper in some cases to supplement this covenant with a covenant not to amend the specification without the licensee's consent.

For a covenant ancillary to the above restricting the patentee from hazarding the patent in litigation without the consent of the licensor see *Guyot v. Thomson*, 11 R. P. C. 553.

This grant is made for the whole period during which the patents shall last. The inventors bind themselves moreover, at the request of the company, to give them during the continuance of the agreement, the benefit of all improvements and modifications which they may discover in the said duplex apparatus, whether they be or be not by letters patent or otherwise legally protected, but in that case the present contract shall be prolonged for a period equal to the term of any new patents that may be taken out.

*Muirhead v. Commercial Cable Co.*, 12 R. P. C. 44.  
For other forms, see M. 249; 2 K. 379.

and also that the licensor will at all times hereafter at the request and expense of the licensee make do execute and perfect every such act deed matter and thing as shall be necessary for more perfectly and effectually vesting in the licensees the full and absolute licence and authority to use the said invention in manner and subject to the reservations and covenants aforesaid.

4 B. 804.

and it is hereby mutually covenanted agreed and declared that in case any dispute or question shall arise between the parties hereto [or their respective executors administrators or assigns] in

### 29.

Covenant to  
communicate  
and licence  
Improvements.

See above,  
p. 133.

### 30.

Covenant for  
further  
Assurance.

### 31.

Covenant for  
Arbitration.

See above,  
p. 133.

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**K** = *Key and Elphinstone's Precedents of Conveyancing* (4th ed.).

respect of the premisses or of the construction of this deed or of any rights duties or liabilities of any party hereunder the same shall be referred to the determination of a single arbitration under the provisions of the Arbitration Act 1889 or of any statutory modification of the same.

For other forms see 4 B. 804 and M. 55 (which however were drafted before the passing of the Arbitration Act 1889).

### 32.

**Proviso for  
Revocation by  
the Licensor.**  
See above,  
pp. 126, 127.

PROVIDED ALWAYS that if any payment of royalties [or yearly rent] under this licence shall be in arrear for one month after the same shall have become due (whether payment shall have been demanded by the patentees or not) or if the licensees shall make default of the performance of any duty on their part to be performed arising out of the premisses and shall not have made good the same within fourteen days after notice in writing by the patentees given to them so to do then the patentees may with the consent of the Board of Trade by notice in writing to the licensees revoke this licence as from the date of such last-mentioned notice without prejudice to the right of the patentees to recover any moneys then due hereunder.

O, above, p. 364.

### 32a.

**Another form.**

PROVIDED ALWAYS, that if any breach or default shall be made in the observance or performance of any one or more of the terms and conditions herein contained and expressed to be obligatory on the licensee, or if default shall be made in the payment, as and at the times hereinbefore provided, of any royalty rent or other moneys hereby made payable, then, and in any and every such case, it shall be lawful for the said licensor forthwith to determine this licence, notwithstanding that previous breaches or defaults may have been unnoticed or condoned by or on behalf of the said licensor, and the license may be determined accordingly. Provided, further, that if at any time whilst this agreement shall be in force, the person or persons who for the time being shall be

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*\* \* \* It will be understood that the forms above given have been freely moulded for the purpose of adapting them to use in this connexion. The substance will be found, but not always the precise language, in the authorities referred to. In the above references:—*

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entitled to the benefit thereof, or any or either of them, shall be adjudicated bankrupt under any law now or hereafter in force, the said agreement shall forthwith cease, determine, and become void as to any future operation thereof. See above, p. 128.

In this case the patented machine was let to hire. *Cutlan v. Dawson*, 13 R. P. C. 712; 14 R. P. C. 250.

For other forms of this proviso see E. 827.

### 32b.

PROVIDED ALSO that if the said letters patent or either of them shall become void or shall be declared by a Court of law to be void the licensees may with the consent of the Board of Trade by notice in writing to the patentees revoke this licence [as from the date of such notice].

Proviso for Revocation by the Licensee. See above, p. 128.

O, above, p. 364.

### 32c.

PROVIDED ALSO that if the said letters patent or either of them shall become void or ineffectual to secure to the licensee the privileges by this licence conferred on him or purported so to be conferred by reason of prior patent right or of unrestrained use of the said invention by persons not licensed thereunder or for any other cause then and in any such case the licensees may with the consent of the Board of Trade by notice in writing to the patentees revoke this licence, the said consent of the Board of Trade to be signified by a certificate to that effect under the hand of the president or a secretary or under-secretary of the said Board.

Another form. See above, p. 128; also p. 376 (note to Clause 25).

### 32d.

IN case the licensees shall at any time hereafter be desirous of determining the licence hereby granted and of such desire shall give six calendar months' notice in writing to the patentee at his last known place of abode in England, then and in such case the licence hereby granted shall at the expiration of such period of six calendar months' notice absolutely determine. Another form.

*Guyot v. Thomson*, 11 R. P. C. 553.

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**32e.**

**Proviso for  
Revocation by  
either Party.**

THIS agreement may be terminated at the end of three years from the date hereof by either party upon six calendar months' notice to that effect and after the expiration of three years it may be terminated in like manner upon six calendar months' notice to expire on the 1st day of April.

*Lines v. Usher*, 13 R. P. C. 686.

For other forms of this proviso see 2 K. 381; F. 778.

**33.**

**Proviso for  
averaging  
Yearly  
Payments.**

See above,  
p. 125.

PROVIDED ALWAYS that if the rent for any half-year shall exceed the total amount of the royalty calculated *pro rata* in the same half-year the licensee shall be entitled in the succeeding half-year and for any one or more half-years thereafter (so far as necessary for the purpose) for which respectively the total amount of royalty due shall exceed the rent to a remission of so much of the excess of such royalty over such rent as will make up to him the excess of payment in the half-year for which the rent shall have exceeded the royalty calculated *pro rata* as aforesaid.

M. 230.

**34.**

**Proviso for  
Mutuality of  
Covenants.**

PROVIDED ALWAYS, that the covenants herein contained are to be deemed mutual covenants and that the performance by either party of all his covenants aforesaid under which any duty shall as at any time have become due for performance shall be a condition precedent to the enforcement by such party at such time of any covenant on the part of the other party to be performed.

There is, so far as the author is aware, no precedent for a proviso in this form but it is worthy of consideration in view of *Mills v. Carson*, 10 R. P. C. 16.

**35.**

**Proviso for  
Delivery of  
Notices.**

PROVIDED ALSO, that any notice statement of account or other writing intended to be given hereunder may be given to the licensor or licensee as the case may be personally or by leaving the same addressed to him at his usual or last known place of abode or by sending the same through the post in a registered letter addressed

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as aforesaid and if sent by post it shall be deemed to have been received at the time when it would be delivered in the ordinary course of post.

For another form see M. 242.

*Note as to other Provisoes.*

Other powers than those already provided for above which are sometimes reserved by proviso—or as a matter of form by agreement—are

- |  |           |        |
|--|-----------|--------|
| (a.) To suspend payment of royalties while the licensor omits to take proceedings to restrain infringement | - - - - - | M. 231 |
| (b.) To licensor to use his own discretion as to taking action against infringers                          | - - -     | T. 542 |
| (c.) To licensor to amend the specification  | - - -     | T. 543 |
| (d.) To licensor to grant concurrent licences  | - - -     | M. 242 |
| (e.) To licensee to commute royalties  | - - -     | M. 234 |

**36.**

In the construction of this licence, unless repugnant to the context, the singular shall include the plural, and the masculine the feminine, and *vice versâ*; and the words and expressions interpreted by this clause shall have the meanings assigned to them by this clause—that is to say

**Declaration  
(Interpretation Clause).**

Here followed definitions of the expressions “The Machinery” and “Licence Term.”

*Cutlan v. Dawson*, 13 R. P. C. 712; 14 R. P. C. 251.

As to the abuse of interpretation clauses see the observations of Esher, M.R., in the above case.

*Note as to Exclusive Licences.*

It is conceived for reasons stated above at p. 104 that the Board of Trade will probably not make an order for an exclusive licence. If a precedent in that form be required several such may be found in Morris's Patents Conveyancing,

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**F** = *Frost's Patent Law and Practice* (2nd ed.).

**B** = *Bythewood and Jarman's System of Conveyancing* (4th ed.).

**K** = *Key and Elphinstone's Precedents of Conveyancing* (4th ed.).

pp. 250 to 287. Precedents are also given in Terrell's Law of Letters Patent (3rd ed.), p. 544, in Edmunds on Patents (2nd ed.), p. 827, in Bythewood & Jarman's Conveyancing (4th ed.), Vol. 4, p. 812. A very elaborate exclusive licence, covering four different patents to various grantees and limited to the County of Lancaster with the exception of the town of Liverpool, is recited in *Chanter v. Leese*, 4 M. & W. 295; a very simple and extremely inaccurate one, in the form of an agreement, is set out in *Lines v. Usher*, 13 R. P. C. 686, and again at 14 R. P. C. 207; and another, equally imperfect, is set out in *La Société v. Midland Lighting Co.*, 14 R. P. C. 419.

[PATENT.]

(Patent Office Form M.)

**37.**

**Form of Request to enter Notification of Licence in the Register of Patents.**

See P. R. 77,  
above, p. 347.

SIR,

I hereby transmit an attested copy of a licence granted to me by \_\_\_\_\_ under Patent No. \_\_\_\_\_ of 188—, as well as the original licence for verification, and I have to request that a notification thereof may be entered in the register.

I am, Sir,

Your obedient Servant,

\_\_\_\_\_.

(a) \_\_\_\_\_.

To the Comptroller,

Patent Office, 25, Southampton Buildings,  
Chancery Lane, London, W.C.

(a) Here insert full address.

(Crown Office Form No. 37.)

**38.**

**Writ of Mandamus.**

VICTORIA, by the Grace of God, &c. to \_\_\_\_\_ of \_\_\_\_\_ greeting.

Whereas by [*here recite Act of Parliament, or Charter, if the act required to be done is founded on either one or the other*]. And whereas we have been given to understand and are informed in the Queen's Bench Division of our High Court of Justice before us that [*insert necessary inducement and averments*]. And you the

said ——— were then and there required by [*insert demand*] but that you the said ——— well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since ——— in contempt of Us and to the great damage and grievance of ——— as we have been informed from their complaint made to Us. Whereupon we, being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said ——— and every of you firmly enjoining you that you [*insert command*] or that you show Us cause to the contrary thereof, lest by your default the same complaint should be repeated to Us and how you shall have executed this our writ make known to Us in our said Court at the Royal Courts of Justice, London, forthwith then returning to Us this our said writ, and this you are not to omit.

Witness, &c.

*To be indorsed.*

By Order of Court [*or of Mr. Justice* ———].

At the instance of ———.

This writ was issued by, &c.

No precedent exactly in point for the filling up of this form has yet appeared but several precedents that may usefully be consulted will be found in Short & Mellor's Crown Office Practice, pp. 688 to 703. See in particular Form CCXII. p. 694.

### Endorsement of Writ of Summons for a Mandamus under O. 53 of R. S. C.

**39.**

The plaintiff's claim is for a mandamus commanding the defendant forthwith to execute in favour of the plaintiff a deed of licence under a certain patent No. ——— of 18— granted to the defendant and to deliver the said deed by depositing it at the office of the Board of Trade in accordance with the exigency of an order made against the defendant by the Board of Trade on the ——— day of ——— under the provisions in that behalf of the Patents Designs and Trade Marks Acts 1883 to 1888.

See above,  
p. 143 and  
p. 321.

### Notice of Motion for Interlocutory Mandamus.

**40.**

(*Title of Action.*)

Take notice that the Court will be moved on *Monday* next the ——— day of ——— at ——— o'clock in the forenoon or so soon

See above,  
pp. 153, 321.

thereafter as counsel can be heard by Mr. ——— of counsel for the *plaintiff* that a mandamus may be granted to command you forthwith to execute in favour of the plaintiff a deed of licence under a certain patent No. ——— of 18— of which you are now the grantee and to deliver the said deed by depositing the same at the office of the Board of Trade in accordance with the exigency of an order made against you by the Board of Trade on the ——— day of ——— under and by virtue of the provisions in that behalf of the Patents Designs and Trade Marks Acts 1883 to 1888.

Dated the ——— day of ———.

———— Solicitor for the *plaintiff*.

To the defendant and to  
Mr. ——— his solicitor.

N.B.—It may be that O. 52 r. 4 as to motions to enforce awards will be held to apply to this case. See above, p. 333.

(Crown Office Form No. 199.)

## 41.

### Affidavit of Service of Notice.

In the High Court of Justice,  
Queen's Bench Division.

[*When in a cause on the Crown side of the Court, insert the title of the cause, but not otherwise.*]

I, A. B., of, &c., make oath and say :—

[*When not personal.*]

1. That I did on the ——— day of ———, serve C. D., one of the persons to whom the notice hereunto annexed is directed, with the said notice, by delivering a copy of the said notice to ———, and leaving the same with [*the wife, clerk, or servant of*] the said ——— at the residence of the said ———, situate at ——— in the county of ———.

[*When personal.*]

2. That I did on the ——— day of ———, also serve E. F., another of the persons to whom the said notice is directed, with the said notice, by delivering a copy of the said notice personally to the said ——— at ———, in the county of ———.

Sworn, &c.

(Crown Office Form No. 200.)

**Affidavit of Personal Service of Order.****42.***[Heading as in No. 199, i.e. Form No. 41.]*

I, A. B., of, &amp;c., make oath and say:—

That I did on the ——— day of ——— 188—, personally serve C. D., mentioned in the order hereunto annexed, with the said order, by delivering a true copy of the said order to the said C. D. personally at ——— in the county of ———. And at the same time showing to the said C. D. the said original order.

Sworn, &amp;c.

(Crown Office Form No. 201.)

**Affidavit of Service of Order not Personal.****43.***[Heading as in No. 199, i.e. Form No. 41.]*

I, A. B., of, &amp;c., make oath and say:—

That I did on ——— the ——— day of ——— 188—, serve C. D., mentioned in the order hereunto annexed, with the said order, by delivering a true copy of the said order to ———, and leaving the same with [*the wife, clerk, or servant*] of the said C. D. at the dwelling-house [*or office*] of the said C. D., situate at ———, in the county of ———. And at the same time showing to the said ——— the said original order.

Sworn, &amp;c.

(Crown Office Form No. 202.)

**Affidavit of Personal Service of Writ.****44.***[Heading as in No. 199, i.e. Form No. 41.]*

I, A. B., of, &amp;c., make oath and say:—

That I did on the ——— day of ———, personally serve C. D. named in the writ of ——— hereunto annexed with the said writ, and which said writ appeared to this deponent to be duly and regularly issued out of, and under the seal of this honourable Court, by delivering a true copy of such writ to the said ——— personally, at ——— in the county of ———. And at the same time showing to the said C. D., the said original writ.

Sworn, &amp;c.

(Crown Office Form No. 39.)

45.**Writ of Prohibition.**

VICTORIA by the grace of God &c. to the Lords of the Committee of the Privy Council appointed for the consideration of matters relating to trade and plantations commonly called the Board of Trade greeting :

Whereas we have been given to understand that you the said Board of Trade have received a petition in the matter of ——'s Patent No. —— from one —— of —— for an order for a compulsory licence under the said patent in favour of the said —— . And that you the said Board of Trade have no jurisdiction to hear and determine the said petition by reason that (*here state the facts showing want of jurisdiction*).

We therefore prohibit you from further proceeding in the matter of the said petition.

Witness, &c.

This writ was issued by, &c.

---

(Patents, &c. Act, 1883, 1st Schedule, Form D.)

46.**Form of Patent.**

See Patents Act, s. 33, above, p. 298.

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 :

Patentee.

Whereas *John Smith*, of 29, *Percy Street, Birmingham*, in the county of *Warwick*, *Engineer*, hath by his solemn declaration represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief :

Recital of patentee's petition.

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (hereinafter together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal letters patent for the sole use and advantage of his said invention :

Complete specification

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention :

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request :

Inducement.

Know ye, therefore, that we, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial licence, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents :

Grant.

And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for us our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent licence or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned :

Inhibition.

Provided that these our letters patent are on this condition, that if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything hereinbefore contained :

Defeasance—  
if contrary to  
law, &c.



Another  
defeasance—  
for failure to  
pay fees ;

—to supply  
public service.

Saving for  
licences.

Grant of  
favourable  
construction.

Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided ; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our letters patent, and all privileges and advantages whatever hereby granted shall determine and become void notwithstanding anything hereinbefore contained :

Provided also that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted :

And lastly, we do by these presents for us, our heirs and successors, grant unto the said patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent this ——— one thousand eight hundred and ——— and to be sealed as of the ——— one thousand eight hundred and ———.



[PATENT.]

(Patent Office Form Q.)

47.

### Certificate of Comptroller-General.

Patent Office, London,  
———, 18—.

I, ———, Comptroller-General of Patents, Designs, and Trade Marks, hereby certify

To (a) ———.

(a) Here insert name and full address of person requiring the information.

[PATENT.]

(Patent Office Form R.)

**Form of Notice for Alteration of an Address in Register.****48.**

SIR,

(a) ----- hereby request that ----- address now upon the register may be altered as follows:—

(b) -----.

----- Sir,  
Your obedient Servant,

-----.

To the Comptroller,

Patent Office, 25, Southampton Buildings,  
Chancery Lane, London, W.C.

(a) Here state name or names and full address of applicant or applicants.

(b) Here insert new address.

## APPENDIX V.

See above,  
p. 43.

### CONSTITUTION OF THE BOARD OF TRADE.

*(Extract from the London Gazette from Tuesday September 5 to  
Saturday September 9, 1786, p. 419.)*

At the Court at St. James's the 6th day of September 1786.

PRESENT

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

\* \* \* \* \*

HIS MAJESTY having thought fit to revoke his Order in Council bearing date the fifth day of March 1784 appointing a Committee of Privy Council for the consideration of all matters relating to trade and foreign plantations and to declare the said Committee dissolved has been pleased to appoint a new Committee of Privy Council for the business above mentioned to consist of the following members, viz. :—

The Lord Archbishop of Canterbury,  
The First Lord Commissioner of the Treasury,  
The First Lord Commissioner of the Admiralty,  
His Majesty's Principal Secretaries of State,  
The Chancellor and Under-Treasurer of the Exchequer, and  
The Speaker of the House of Commons.

And also such of the Lords of his Majesty's Most Honourable Privy Council as shall hold any of the following offices, viz. :—

The Chancellor of the Duchy of Lancaster,  
The Paymaster or Paymasters-General of his Majesty's  
Forces,  
The Treasurer of his Majesty's Navy,  
The Master of his Majesty's Mint.

And his Majesty was at the same time pleased to order, That--

The Speaker of the House of Commons of Ireland and such persons as shall hold offices in his Majesty's Kingdom of Ireland and shall be members of his Majesty's Most Honourable Privy Council in this kingdom should be members of the said Committee.

And also that

Lord Frederick Campbell,  
 Robert Lord Bishop of London,  
 Lord Grantley,  
 Sir Lloyd Kenyon, Master of the Rolls,  
 The Honourable Thomas Harley,  
 The Honourable Sir Joseph Yorke, K.B.,  
 Sir John Goodricke, Bart.,  
 William Eden, Esq.,  
 James Grenville, Esq.,  
 Thomas Orde, Esq.,

should be members of the said Committee.

And that the Right Honourable Lord Hawkesbury Chancellor of the Duchy of Lancaster and in his absence the Right Honourable William Wyndham Grenville be President of the said Committee (*a*).

The composition of the Board has altered since its formation rather through the course of nature and events than as the result of any intentional remodelling. By an Act of Parliament passed in 1867 (*b*) the office of Vice-President of the Committee was abolished and a parliamentary secretaryship to the Board of Trade was created instead and in 1835 the office of Treasurer of the Navy was abolished by Royal Warrant issued under 5 & 6 Will. 4, c. 35. The members of the Committee originally nominated have of course all been removed by death and not more than forty persons in all have been appointed to supply the vacancies which have arisen except in so far as these have been automatically supplied by the accession of *ex officio* members. The latest of the personal appointments was made in 1848 and at the present time the Board consists, except for the President, of *ex officio* members only.

(*a*) The terms of this Order, but with the commonly received date—23rd Aug. 1786—assigned to it, are extracted in Haydn's Book of

Dignities (Ockerby's Edit. 1890), p. 267.

(*b*) 30 & 31 Vict. c. 72.

Its composition at the present moment (May 1899) would seem to be as follows:—

President ..... Mr. Ritchie.

Members of the  
Board.

{ The Archbishop of Canterbury.  
Mr. Arthur Balfour—First Lord of the Treasury.  
Mr. Goschen—First Lord of the Admiralty.  
Lord Salisbury—Foreign Secretary.  
Lord Lansdowne—Secretary at War.  
Mr. Chamberlain—Colonial Secretary.  
Lord Geo. Hamilton—Secretary for India.  
Sir Matthew White Ridley—Home Secretary.  
Sir Michael Hicks-Beach—Chancellor of the  
Exchequer Under-Treasurer and Master of  
the Mint.  
Mr. Gully—Speaker of the House of Commons.  
Lord James of Hereford—Chancellor of the  
Duchy.  
Lord Hopetoun—Paymaster-General.  
Lord Cadogan—Lord Lieutenant of Ireland.  
Lord Ashbourne—Lord Chancellor of Ireland.

If membership of the Irish Privy Council be an office in Ireland within the meaning of the Order there would be several other names including those of the Prince of Wales and two royal dukes to be added to the list.

## APPENDIX VI.

## A PATENT COMPARED WITH A TRADE CHARTER.

(Reprinted from "Monopolies by Patents," p. 249.)

See above,  
p. 8 and  
p. 33.

FOR the purpose of this illustration the patent to John Gilbert for a water plough, granted by King James I. in 1618, is set out as a model, and the various extracts which it is proposed to bring to bear upon it by way of illustration are interpolated at appropriate places.

The patent to Jno. Gilbert is taken from Rymer's *Fœdera*, vol. 17, fo. 102. Rymer's reference to the original enrolment is A.D. 1618, Pat. 16, J. 1, p. 5.

*De concessione libertatis Johanni Gilbert super machina ad  
promendum aquas inventa.*

James by the grace of God &c. to all to whom these presents shall come, Greeting,

Whereas our wellbeloved subject John Gilbert through his great Industry Travaile and Charge in forraigne kingdoms and countries hath attayned invented and found out a certain new engine or instrument called or termed a water plough for the taking up of Sand Gravell Shelves or Banckes out of the River of Thames and other Havens Harbors Rivers or Waters wherewith they are choaked for the freer passage and safety of shippes and other vessells and whereas our said subject hath at his like Industrie Travaile and charges invented another Engine or Instrument for the raising of Waters in a greater quantitie and to a greater height than heretofore hath bin knowne or practised in these our Realmes which said Engin for raising of Waters is to be moved and driven either by some Current or Streame of Water, or, for want thereof, by strength of Horses and is very necessarye for the drawing and draining of Coal Pits and other Mines. And whereas it is supposed

Recital of  
the invention.  
Dredger.  
Pump.

Utility. that the said several Engines are the proper invention of the said John Gilbert and are likely to prove of good and necessary use for the Service and Benefit of this our Realme.

Know ye therefore that Wee

Consideration.

Public good.

Bounty.

Petition.

Tending the common Good and Benifit that may redound hereby to our said Realme and Subjects and intending to reward and recompence the Industrie Travaile and Charges of the said John Gilbert bestowed and expended in and about the investigation and fynding out of the said Inventions Ensigns or Instruments above mentioned and the better to incourage other of our Subjects in such lawfull and commendable Labours and Indcavors as may tend to good Use and Service in this our Realme, without just cause of Greivance to anie our Subjects, at the humble Petition of the said John Gilbert, and in consideration of the yerelic Rent in and by these Presents reserved and payable to Us our Heires and Successors,

This recital of the Royal regard for the public good in the grant of the patent may be compared with the considerations recited as leading up to the grant of an ordinary trade charter, and the following extract from the charter of Edward III. to the Drapers' Company of London may serve as an illustration:—

(a) And whereas it has been shown to us and to our Council that people of divers mysteries of the City of London intermix themselves with the *Mystery of Drapery* and cause divers deceits and fraudes in the use of the same mystery to the great damage of us and of our people. . . .

Especial grace, &c.

Grant of power to make.

Of our especial Grace, certain knowledge and meere Motion, have given and graunted, and, by these Presents, for Us our Heires and Successors, doe give and graunte full and sole Licence, Power, Priviledge and Authoritie unto the said John Gilbert his Executors Administrators and Assignes, that he the said John Gilbert, his Executors Administrators and Assigns, onely and none other by him or themselves or by his or their deputies servants workemen or agents, at all tymes and from tyme to tyme for and during the term of yeres hereafter in and by those presents graunted shall and may within this our Realme of England and dominion of Wales freelie and lawfully (b) make forme erect and frame the said Engine or Instrument called a Water-Plough or by what other name the same shall be called or soe many of the same as he shall think meete for taking upp sandes gravell shelves or bankes out of the said River of Thames and other havens harbors or rivers wherewith

(a) 1 Herbert, *History of Livery Companies*, 480.

they are hindered or choked; and alsoe the said other Engine or Instrument to be moved or driven by some Current of Water, or in default thereof by the Strength and Labor of Horses, for the raising of Waters and drawing and drayning of Colepits and other Mynes herein before mentioned;

**(b) Freely and lawfully.**

This licence to carry on the industry *freely* signifies, I apprehend, unfettered by any trade regulations such as the Fellowships imposed upon their members and sometimes upon other craftsmen. The idea is expressed in many different ways in patent grants. In Rainsay's patent, for example, the King grants "full and free licence, privilege, power and authority" (b). In Mansell's Glass Patent (21 Ja. 1) it was "full and free liberty licence, &c., at his will and pleasure . . . to use, exercise, practise, set up and put in use the art, feat and mystery of melting and making all manner of drinking glasses, &c. and throughout this our Realme . . . and within every and any part of them . . . to make, erect and set up . . . furnaces &c. (c).

"Freely and lawfully make," &c.

The Smalt patent is even more explicit. There the patentees have "full, free and lawful power, licence, &c., in all and every county, city, town corporate and other towns, villages, hamlets, and other places exempt as not exempt to make work and compound the said stuff called Smalt, and the same . . . to utter, sell and put to sale . . . to any painters, limners or other persons whatsoever within this our Realm or any part thereof . . . any law, statute, Act of Parliament, proclamation, restraint or any other matter, cause, or thing whatsoever to the contrary notwithstanding" (d).

A counter-  
vailing  
privilege.

That such powers operated in derogation of trading privileges is quite clear upon the history of trade in the Middle Ages. The petition from the Citizens of London and others mentioned in the following passage, extracted from Viner, may serve the purpose of illustration (e):—

Bearing of  
the grant on  
trading  
privileges.

Similarly Rot. Parl. 43 E. 3, ij. The City of London and other Cities and Boroughs petition that in accordance with their ancient franchises none should sell merchandises nor victual at retail if they were not enfranchised within the City, and "it was assented that those of London and no other sell at retail victual only, and this of the especial grace of the King till the next Parliament that it be well ruled and governed in the meantime to the common profit, and it is the intention of the King that no prejudice be done to the aliens who have franchises by charters of Kings."

The Complaint of the Stationers' Company concerning

(b) Ry. 17 Fœd. 122, misnumbered 722 in the original edition.

(c) 1 W. P. C. 21.

(d) 1 W. P. C. 9.

(e) Vin. Ab., tit. Prerogative of the King (U. c.) 5.



Roger Woodde's patent mentioned above (*f*) is another case in point.

Nature of trading privileges.

On the other hand the importance to the patentee of being freed from interference on the part of the Fellowships and Guilds in the development of a new industry is manifest at a glance. It has only to be borne in mind that a trading company's charter quite commonly conferred power upon the Court of Assistants to "frame, constitute, ordain and make from time to time reasonable laws, statutes, ordinances, decrees and constitutions which to them [twelve] shall seem to be good, wholesome, useful, honest and necessary according to their sound discretions for the good rule, direction, government and correction of . . . all other persons . . . exercising and using the said mystery" (*g*).

An inventor whose invention had any merit from the point of view of the great public would be pretty sure to be corrected out of existence by the petty public whose trade he proposed to improve under a discipline of this domestic order.

Grant of power to use.

And the same Engines and Instruments, so to be made formed and framed, shall and may lawfullie and solye exercise, use and ymploye to and for the intents and purposes aforesaid within our said Realme of England and Dominion of Wales, and in everie part thereof, to and for his and there most Benifit Profit and Advantage, and the said Sands, Gravell, Banks or Shelves, by the use and helpe of the said Water Plough so to be taken upp as aforesaid, to land and lay on Shore, or otherwise to dispose of at his or their Will and pleasure, and for his and there best Benifit and Advantage.

Grant of power to sell or otherwise dispose of.

And that he the said John Gilbert his Executors Administrators and Assignes, by him or themselves, or his or their Deputyes, Servants, Workmen or Agents, after the same severall Engines and Instruments or either of them shall be by him or them made formed and framed as aforesaid, shall and may lawfullie for his or there Benifit, and at his and their Wills and Pleasures, within this our Realme of England and Dominion of Wales, graunte or dispose of the same to anie Person or Persons that shall bee desirous or willing to have or use the same for anie the intents and purposes aforesaid.

And,

Inducement.

To the ende that the said John Gilbert his Executors Administrators and Assignes may have and enjoye the full and sole Benifit and Commoditie of the making, forming, framing, using and

(*f*) See above, p. 34.

(*g*) Drapers' Charter of 4 Ja. 1;

1 Herbert, History of Livery Companies, 489.

disposing of the said severall Engins or Instruments, by him devised and invented as aforesaid, within our said Realme of England and Dominion of Wales for the terme of Yeres by theis Presents graunted, as a Recompence which We intend the said John Gilbert for his Labor Industry and Charge expended and employed in and about the attaynement of the premisses.

**To the end that.** The importance of this clause as settling the logical connection between the different parts of the patent is worthy of consideration. As here expressed, it indicates quite clearly that the grant made by the patent is to take effect by virtue of the prohibition following, thus assigning to what has gone before the rank of a declaration of intention as against the effectual act which is embodied in what follows. This significance was more fully developed in the later form of the patent grant, and is quite unmistakable in the form prescribed by the Patent Law Amendment Act of 1852 (*h*), which at this place ran as follows:—"And to the end that he, the said [*inventor*], his executors, administrators and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention according to our gracious intention hereinbefore declared," &c.

Our Will and Pleasure is, and We doe, by these presents, and Inhibition. in favor of the said John Gilbert his Executors Administrators and Assignes, for Us our Heires and Successors, straitely charge require and comaunde all and everie Person and Persons, of whatsoever Estate, Degree or Condition he or they bee, other then the said John Gilbert his Executors Administrators or Assignes, that they or anie of them shall not or doe not, within this our Realme of England and Dominion of Wales, or in any parte thereof, for and during the terme of Yeres hereafter in and by these Presents granted, make, erecte, forme or frame the said severall Engins or Instruments herein before mentioned, or either of them, nor shall counterfeite imitate or resemble the same, or either of them, in all or any the Parts or Members of the same, nor shall use exercise or employe, for any the Uses Intents and Purposes aforesaid, any such Engins Instruments or Devises whatsoever made or to be made in resemblance or imitation of the said Engins and Instruments of the said John Gilbert herein before mentioned, without Saving of the Licence and Consent of the said John Gilbert his executors Administrators and Assignes in that behalfe first had and obteyned in Writing under his or there Hands and Seales, uppon payne of the Losse and Forfeiture of all and everie such Engins Instruments licensees.

(*h*) 15 & 16 Viet. c. 83, Sch.

Forfeiture of  
contraband.  
See below,  
p. 402.

and Devises as shall be so made, erected, framed, used, or imployed contrarie to the true intent and meaning of these Presents; and also uppon such further Paynes, Penalties, Fynes and Imprisonments, as by the Lawes and Statutes of this our Realme, or otherwise by our Prerogative Royall, can or may be inflicted uppon everie such Offendor or Offendors for his or there Contempt Disobedience or Neglect of our Royall Pleasure and Commandement in that behalfe.

Drapers'  
privileges.

The exclusive rights here granted and the penalties by which they are safeguarded, are in all respects parallel to those conferred by a trade charter, as the following extract from the Drapers' charter already mentioned will show:—

(i) We . . . have, by the assent of the great and others of our Council, ordained and granted that none shall use the Mystery of Drapery in the City of London, nor in the suburbs of the same unless he has been apprenticed in the same mystery, or in other due manner been admitted by the common assent of the same mystery. And that each of the mysteries of tenterers, tisters and fullers keep himself to his own mystery and in no way meddle with the making, buying or selling of any manner with (? of) cloth or drapery on pain of imprisonment and loss of all the cloth so by them made, bought, or sold, or the value thereof, to us.

Skinner's.

Queen Elizabeth, by her charter to the Skinners' Company (k), granted similar forfeiture of "all manner of fur found manufactured contrary to these ordinances," but the forfeits accrued to the mayor and commonalty of the City.

Fishmongers'.

Edward III., by his charter to the Fishmongers' Company of London, "ordained, declared, and granted that no man, foreign or denizen, under pain of our great displeasure, meddle in any part of the kingdom with the trade of the Fishmongers, except those only who are of the Mystery of Fishmongers and of the Fish Inquest, and that it shall be in the hands of the Fishmongers in London, and sold in the said three places (l), and that all fish which comes or shall be sold in the said City of London be discharged nowhere but between Billingsgate and London Bridge, on the bridge, and above the said London Bridge, and between Dibble's Wharf and the Fresh Fish Wharf, and be warehoused, &c. . . . and no stranger bring fish to the same city, nor take any stand for selling fish if he is not of the folk enfranchised in the said Mystery of Fishmongers." . . . (m).

At the date of this patent the grant of licence and authority might be of more or less to suit the occasion varying in different patents within considerable limits. This may be illustrated here. The present patent, to Gilbert, grants authority to "form, erect and frame, to exercise, use and

(i) 1 Herbert, History of Livery Companies, 480; Char. of E. III.

(k) 2 Herbert, History, &c. 375.

(l) I.e., at Bridge Street, Old Fish Street and the Stocks.

(m) 2 Herbert, History, &c. 119.

employ and to grant or dispose of" the two machines which the patentee had invented. The iron smelting patent to Lord Dudley of nearly contemporary date conveyed authority to "use, exercise, practice, and put in use the mystery, art, way, and means of melting iron ore . . . and to make, erect and set up any furnace . . . or engine . . . concerning the said mystery, &c., and the iron so made to utter and sell in gross or by retail, or otherwise to do away at his . . . free will and pleasure to his . . . best commodity and profit" (*n*).

The authority conferred by the Smalt patent has been set out above in illustration of the point that these grants were intended to countervail grants of privilege to the Trade Guilds. It may suffice here to add a single extract from a printer's patent. It will of course be borne in mind that the copyright patents, although relating to a matter so very different from inventions, were nevertheless patents affecting trade and tending to monopolies, and were, as such, within the purview of the Statute of Monopolies, so that they needed to be saved by the exception created by the tenth section of the Act. The following is from the patent granted to Helen Mason for printing the Book of Martyrs. It grants "full, free and sole liberty, liconse, power, privilege and authority, to print or cause to be imprinted, the said book and to publish, utter, sell, and put to sale, or cause to be published, &c. to her most and best benefit" (*o*). Copyright.

This form was apparently more accurately settled than the form applicable to inventions, and reappears in substantially identical terms in other similar grants (*p*). But in the grant to Jno. Speede of the copyright in a certain "Genealogy of the Holy Scriptures and map or chart of the Land of Canaan," the patentee is limited to the personal selling of his copies and at scheduled prices (*q*). The grant, therefore, unlike our modern statutable form was framed to suit the individual case when it stood simply on the Common Law.

To have, hold, use, exercise and enjoy all and everie the said Habendum. Licences, Powers, Priviledges and Authorities, Benifits, Profits and other the Premisses, unto the said John Gilbert his Executors Administrators and Assignes from the Date of these Presents, for and during the terme, and unto the full ende and terme of One and Twentie Yeres from thence next ensuing fullie to bee compleate and ended ;

Yielding and paying therefore unto Us our Heires and Successors, Reddendum. the yerely Rent or Somme of Six Poundes thirteen Shillings and eight Pence of lawfull Money of England at the Receipt of the Exchequer of Us our Heires and Successors at Westminster at the

(*n*) 1 W. P. C. 14 and 15.

(*o*) Ry. 17 Fœd. 295.

(*p*) See, e.g., Ry. 17 Fœd. 111.

(*q*) Ry. 17 Fœd. 484.

Fests of the Birth of our Lord and the Nativitie of Saint John the Baptist, by even and equal Portions.

The very modest rent reserved in this case goes to show that this was in fact, as it appears from its terms to have been, an unexceptionable patent. The oppressive patents yielded much larger revenues to the King. For example, under the glass patent of 1613, an annual rent of £1,000 was reserved (*r*). The gold wire monopoly was estimated capable of yielding £10,000 a year to the Crown (*s*). But whether the rent were large or small it made the patentee an Accountant of the Crown, and as such gave him a privileged position before the law.

And, for the better execution and accomplishment of this our Graunte and gracious intento and meaning to the said John Gilbert, his executors, administrators, and assignes, Wee do by these presents for Us, our heires, and successors, give and graunt unto the said John Gilbert, his executors, administrators, and assignes, and to everie of them, full power and authoritie that he and they and his and there deputies, servants, and agents, shall and may lawfullie from tyme to tyme during the tearme hereby graunted with the assistanco of a Constable, Tithing Man, Headborough or other lawfull officer of anie place or places whatsoever respectively within our said Realme of England and Dominion of Wales as well within liberties as without at his and their wills and pleasures at fit and convenient tyme or tymes, go and enter into anie House, Shopp, Workhouse, or Yard or other place or places whatsoever, which shall be probably suspected, and there to search and see if any Engins, Instruments or Devises shall be made formed, framed, used or imployed in resemblance or imitation of the said Engins or Instruments herein before mentioned and invented by the said John Gilbert as aforesaid, contrarie to the true meaning of these presents, and the same soe founde in the name of Us, our Heires, and Successors to seise take and carrie awaye the one moyetic of which said premisses so forfeyed as aforesaid Wee doe by these Presents give and graunte to the said John Gilbert his Executors Administrators and Assignes to his and there owne proper Use and Benifit, without any Accompt or other thing to bee yielded rendred or paid to Us our Hoires or Successors for the same, other then the Rent hercin before reserved ; and the other Moyetic thereof to be from tyme to tyme to the Use and Benifit of Us our Heires and Successors.

Power of search.

Forfeiture of contraband.  
See above,  
p. 400.

The like power of

The power of search was commonly conferred by charter upon the incorporated trade fellowships. Thus the Drapers

(*r*) 1 W. P. C. 19.

(*s*) 41 Archæologia, 256.

have power to "enter into all houses, shops, cellars, booths, and other places now or hereafter used or appointed for the keeping or exposing of cloths, of every person or persons, as well free of the same fraternity as free of any other society, or also foreigners using the art or mystery of Drapers within the City of London or the liberties of the same, to search, view and measure, by a sealed standard . . . all yards, ells, godes and other measures whatsoever by which any cloth . . . exposed to sale is or shall be measured," &c., with powers of fine and forfeiture (*t*). Similarly, the Goldsmiths "have the search, inspection, trial, and regulation of all sorts of gold or silver wrought or to be wrought" (*u*), and when counterfeits are found, "to arrest, seize, and to break and spoil them" (*x*). The Skinners have a right of search "as well over the men of the mystery of Skinners and over all others whomsoever, the merchandise and merceries of the same mystery, selling, manufacturing or working, as well in our City of London and the suburbs of the same, and elsewhere without as in whatsoever places, sheds, fairs, and markets throughout our Kingdom of England" (*y*).

search and forfeiture in the trade charter.

Drapers.

Goldsmiths.

Skinners.

These instances may suffice for the present purpose. The reader who may be interested to pursue the subject further will find abundant material in Mr. Herbert's book.

And, of our further especiall Grace, certaine Knowledge, and meere Motion, Weo doe, for Us our Heires and Successors, straitely charge and commaund as well all and everie our Justices of Peace, Mayors, Sheriffs, Constables, Bayliffs, Headboroughes, and others our Officers and Ministers within our said Realme of England and Dominion of Wales, that they and everie of them shall, from time to time during the terme of Yeares hereby graunted, be ayding favoring and assisting unto the said John Gilbert his Executors Administrators and Assignes and everie of them, and to his and there Deputies, Servants, Workemen and Agents in and about the due execution of all and singuler the Premisses according to the true intent and meaning of these Presents; And these our Letters Patents, or the Inrollment thereof, shall be to them and everie of them a sufficient Warrant and Discharge in that behalfe, without any further or other Warrant from Us our Heires and Successors to be had or obteyned in that behalf.

Authority to magistrates, &c. to assist the patentee.

This clause also is commonly found in the trade charters. For example, the Goldsmiths' charter contains the following clause: "We also . . . command that all bailiffs, reeves and other officers whatsoever in fairs, markets, cities, boroughs,

The like authority in trade charters.

(*t*) 1 Herbert, History of Livery Companies, 495.

(*u*) 2 Herbert, History, &c., 292.

(*x*) *Ibid.* 297.

(*y*) *Ibid.* 380; and see the Merchant Taylors' charter, 2 Herbert,

524.

towns and other places where such search shall happen to be made be ready to aid and assist the said wardens and every of them making such search as aforesaid in the execution of the premises" (z). Similarly the Grocers' charter firmly enjoins orders and commands "all and singular, mayors, justices, bailiffs and constables, officers of the mystery and all other our subjects whatsoever that they be aiding, assisting and comforting to the said Wardens and Assistants . . . in the making having keeping and executing of all and singular by us to the said Wardens and Commonalty of the Mystery aforesaid . . . granted by these our letters patent and every part and parcel thereof" (a).

Grant not to fail for uncertainty.

And further, of our like especial Grace, certaine Knowledge and meere Motion, Wee doe, for Us our Heires and Successors, grant unto the said John Gilbert his Executors Administrators and Assignes, that these Presents, or the Inrollment of the same shall be in and by all things good firme effectuall, and of validitie in the Lawe, to all the intents and purposes aforesaid, and shall bee adjudged most strong against Us our Heires and Successors, and most available for the Benifit of the said John Gilbert his Executors, Administrators and Assignes, in all our Courts of Justice in our said Realme of England and Dominion of Wales or elsewhere, for and during the terme hereby granted, and without any other or further Confirmations Licenses or Tollerations to be from Us our Heires or Successors procured, sued for or obteyned in that behalfe; notwithstanding the not describing, or not perfect or particular describing of the said severall Engins or Instruments herein before mentioned, or the manners, formes, or fashion of there use or working; and notwithstanding anie other defect or uncerteintie whatsoever in these our Letters Pattents or anie Act, Statute, Ordinance, Provision or Restriction to the contrarie in anywise notwithstanding.

In this form the clause expresses only what was well ascertained to be the legal effect of the words *ex certâ scientiâ* in the King's grant, namely, that they cured uncertainties (b), *i.e.*, that if in any part it was ambiguous, the ambiguity should not be pressed to the disadvantage of the patentee.

In some cases an endeavour was made to control the administration of the law by the phraseology of patents in the most undisguised fashion. For example, in the contemporaneous grant to Ramsey and Wildgosse, to which allusion has been already made, there is a clause conferring exclusive jurisdiction upon the Privy Council in the following terms:—

“And further our express Pleasure and Command-

(z) 2 Herbert, History of Livery Companies, 293.

(a) 1 Herbert, History, 376.  
(b) Sav. 5, pl. 14.

ment is, that for the avoyd- (c) of all subtile malicious perverse and cautelous Practizes and Constructions that may be pretended or attempted to defraud and abuse the good and true meaning of these our Letters Patents, the Interpretation Correction and Punishment of all manner of Offences which shall be committed in this behalf, to the Disadvantage and Hindrance of the said David Ramsey and Thomas Wildgosso their Executors Administrators or Assignes, shall be referred to the Pryvy Councell of Us our Heirs and Successors for the time being, by their honorable Dyrection to be punished according to Justice" (d).

David Ramsey enjoyed the advantage of being a page of the bedchamber.

Provided alwayes that these Presents, or anie thing therein conteyned, shall not extende to barr, restraine, impeach or prejudice a late Graunte by Us made to Robert Crompe, for touching and concerning the sole making and practise of an Engin by him invented for raising of Waters for Service of Townes, Castles or House, and for the drawing and drayning of Coal pitts and other Mynes, nor shall extende to restrayne anie Person or Persons of or from the making or using of any Engine Instrument or Invention touching the Premisses formerlie found out, or in knowne use or practise within this our Realme or Dominion of Wales; any thing herein conteyned to the contrarie in any wise notwithstanding.

Saving of a prior grant,

and common right.

Provided alsoe that if the said Yearly Rent or Somme of Six Poundes thirteene Shillings and eight Pence, herein before reserved, shall happen to be behinde and unpaied, in parte or in all, by the space of fortie Dayes next after either of the said Feasts in the which the same ought to be paied as aforesaid, that then this our present Graunt shall bee utterlie voyde and of none effect to all intents and purposes; any thing herein conteyned to the contrarye in any wise notwithstanding.

Defeasance.

And moreover We, of our like espe (e) Grace, certaine Knowledge and meer Motion doe, for Us our Heires and Successors, give and graunte unto the said John Gilbert his Executors and Assignes one Moyetie of all such Treasure Trove, Plate, Jewells, and other Matters and Things of Vallue, as he or they shall take upp by the use and meanes of the said Water Plough out of any Rivers, Havens or Harbors as aforesaid, after he or they shall have made appeare in the Court of Exchequer of Us our Heires or Successors

Grant of treasure trove.

(c) So in Ry. The word is broken by the end of the line. page is misnumbered 722 in the original edition.)

(d) Ry. 17 Fœd. 122. (This (e) So in Ry. The word is broken by the end of the line.



uppon his or their Oath, the full quantitye and vallye of the same, and shall have brought unto Us our Heires or Successors the other moyetie thereof.

**Habendum.** To have and to hold the said Moyetye to him and them thereby intended, during the said Terme, to his and their owne Use Benifit and Behoofe, without anie Accompte or other thing to bee therefore re dered or made to Us our Heires or Successors :

. And theis our Letters shall be your sufficient Warrant and Discharge in this behalfe.

Although express mention &c.

In witnes whereof &c.

**Teste.** Wytnes our self at Westminster the sixteenth day of July.

*Per Breve de Privato Sigillo.*

JOHN GILBERT.

JUL. CÆSAR.

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