

that the question for them to determine was, whether on the evidence the thing itself was complete so as to be used, or whether only a series of experiments was going on (s).

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*Under an Issue upon a Plea alleging that the Invention was of no Utility (t).*

Plaintiff must prove the utility of the invention.

Degree of utility not material.

Utility at date of patent.

Plaintiff must prove utility of what is claimed by specification.

Specification must be in evidence.

This issue different from an issue respecting an improvement.

It is sufficient if any utility proved.

Each part must be proved to be useful.

1. Under this issue the plaintiff must give *prima facie* evidence to prove that the invention which has been made the subject of the patent grant, was useful to the public at the date of the patent (u). But the degree of utility is quite immaterial under this issue, it is sufficient if the plaintiff can show that the invention was of *any* utility to the public (x). And it is to be observed that the question of utility must be determined with reference to the date of the patent, for subsequent discoveries may have rendered the invention useless. Upon this issue neither the novelty of the invention nor the sufficiency of the specification is in issue, and therefore the question to be decided is, whether that which is claimed by the specification as the patentee's invention was of public utility at the date of the patent. It is consequently necessary that the plaintiff should give his specification in evidence in support of this issue in order to show what the invention really is.

2. This issue, must not be confounded with an issue, respecting the invention being an improvement, in the particular kind of manufacture to which the invention relates. For upon such an issue, the plaintiff must prove that the invention was some improvement upon what was known before the date of the patent. But under an issue upon a plea alleging the want of utility in the invention, the plaintiff will make out a *prima facie* case, if he proves the invention to be of *any* utility to the public, wholly irrespective of any thing that was known at the date of the patent (x).

3. If there are several separate and independent parts of an invention, each part must be shown to be useful (y), or at all

(s) See also *Gibson v. Brand*, 1 Webs. R. 628.

(t) See Chap. V. s. 3, p. 132, respecting the utility of an invention which is made the subject of a patent privilege.

(u) *Manton v. Manton*, Dav. P. C.

349; *Bovill v. Moore*, Dav. P. C. 398; cited *ante*, p. 135.

(x) *Morgan v. Seaward*, 1 Webs. R. 172, cited *ante*, p. 137.

(y) *Ibid.* 172, 186.

events to have been of some utility at the date of the patent. And if the plaintiff fails to prove that any material part of his invention is useful, his patent is entirely void (x).

4. In order to succeed upon this issue the defendant must show a total want of public utility in the invention, or in the words of the plea, that it was of no use or benefit to the public. Defendant must show a total want of utility.

This issue is in fact taken upon a traverse of the consideration which ought to be received by the public for the patent grant, which is, the benefit or utility of the invention to the public; and unless the defendant can show a total want of utility, there will be a sufficient consideration to support the patent upon this issue. The issue is respecting the consideration.

Thus, in the case of *Lewis v. Marling* (a), it appeared that the object of the invention was the production of a machine which was useful as a whole, but it was proved that a part of it as described in the specification was useless, and yet it was held that this was not such a want of utility as would vitiate the patent (b). Lewis v. Marling.

5. If the patentee has represented that his invention is useful in some particular manner, the defendant may defeat the patent by proving that the representation was untrue (c). The defendant cannot do this, however, under a plea merely, alleging that the invention is of no use to the public, but must offer such evidence either under a plea of *non concessit*, or a special plea alleging that the patent was void in consequence of the false representation (d). Want of the particular utility alleged by the patentee.

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*Under an Issue upon a Plea alleging that there is no sufficient Specification (e).*

1. Upon this issue the plaintiff must show (f), that he or the patentee has in pursuance of the proviso in the patent by Plaintiff must prove compliance with the

(x) *Hill v. Thompson*, 8 Taunt. 375; vide ante, p. 139.

(a) 10 B. & C. 22; see also *Haworth v. Hardcastle*, 1 Bing. N. C. 182-4; 4 M. & Sc. 720, S. C.

(b) And see further the cases, cited ante, Chap. V. s. 3.

(c) Vide ante, p. 139.

(d) Vide ante, p. 451, as to an issue respecting a false representation.

(e) See the various Forms of Pleas in the Appendix, Chap. II. s. 4.

(f) As to the Burthen of Proof, vide ante p. 433.



proviso for specification.

an instrument under his hand and seal, particularly ascertained and described the nature of the invention, and the manner in which it is to be performed (g).

Specification must be produced.

The plaintiff must therefore produce the specification itself, or account for its non production, and show that it was made under his hand and seal. And if there is an attesting witness to it, it is apprehended that he must be called as a witness at the trial, or his absence accounted for.

Must prove that it was made and enrolled in time.

2. So, also, he must show that the instrument was made and also enrolled within the time limited by the proviso in the patent. These formal proofs are, however, rarely required, the contest between the parties generally turning upon the sufficiency of the instrument itself.

If specification set out, the sufficiency of it is the only question.

The defendant sometimes in his plea sets out the specification itself, and then concludes with a special traverse of the allegation in the declaration that the patentee had sufficiently specified his invention (h), and in such a case the formal proofs already mentioned are unnecessary, the only question then being whether the specification is sufficient.

Sufficiency partly for Judge partly for jury.

3. The question respecting the sufficiency of the specification is a mixed question of law and fact, partly for the determination of the jury and partly for the decision of the Judge.

Hill v. Thompson.

In the case of *Hill v. Thompson* (i), Lord Eldon, L. C., said, that the intelligibility of the description of an invention is a matter of fact for the jury, but whether or not the patent is defective in attempting to cover too much is a question of law.

Intelligibility for jury, extent of claim for the Judge.

Neilson v. Harford.

And in the case of *Neilson v. Harford* (k), it was contended that the jury were to judge of the construction to be put upon the specification, but the Court of Exchequer thought otherwise; and in delivering the judgment of the Court in that case, Mr. Baron Parke said, "The construction of all written evidence belongs to the Court alone; whose duty it is to construe all written instruments, as soon as the true meaning of the words in which they are couched, and the surrounding circumstances, if any, have been ascertained by the jury; and it is the duty of the jury to take the construc-

Construction is for the Judge.

(g) See Chap. VII. (*ante*, p. 151), respecting the form, Requisites, and Construction of Specifications.

(h) Vide *ante*, Chap. X. s. 2, p. 276.

(i) 3 Mer. 626.

(k) 8 M. & W. 806; 1 Webs. R. 370.

tion from the Court, either absolutely, if there be no words to be construed as words of art, or phrases used in commerce, or surrounding circumstances to be ascertained, or conditionally, where those words or circumstances are necessarily referred to them. Unless this were so, there would be no certainty in the law, for a misconstruction by the Court is the proper subject, by means of a bill of exceptions, of redress in a Court of Error; but a misconstruction by the jury cannot be set right at all effectually.”

Meaning of words of art, &c., to be ascertained by jury.

The law thus laid down (l) by the Court of Exchequer defines most clearly the respective duties of the Court and the jury, in determining an issue respecting the sufficiency of a specification.

4. The form, requisites, and construction of a specification have already been considered in a former part of this work (m), to which the reader is referred; and the only remaining branch of the subject to be considered is, what evidence may or ought to be given by the parties upon the trial of this issue.

5. Upon this issue the plaintiff is bound to prove that the description contained in the specification is sufficient to ascertain the nature of the invention, and the manner in which it is to be performed. That the burthen of proof is upon the plaintiff, was held by Mr. Justice *Buller*, in the case of *Turner v. Winter* (n), in which his Lordship said, “I do not agree with the counsel who have argued against this rule, in saying that it was not necessary for the plaintiff to give any evidence to show what the invention was, and that the proof that the specification was improper lay on the defendant; for I hold that a plaintiff must give some evidence to show what his invention was, unless the other side admit that it has been tried and succeeds. But whenever the patentee brings an action on his patent, if the novelty or effect of the invention be disputed, he must show in what his invention consists, and that he produced the effect proposed by the patent in the manner specified. Slight evidence of this on his part is sufficient; and it is then incumbent on the defendant to falsify the specification.”

Plaintiff must prove the sufficiency of specification.

Turner v. Winter.

(l) See also the case of *R. v. Wheeler*, 2 B. & Ald. 349.

(m) *Ante*, Chap. VII. p. 151.

(n) *Dav. P. C.* 153; *1 T. R.* 602.



*De Rosne v. Fairie.*

And this was cited and approved of by Mr. Baron *Bolland*, in the case of *De Rosne v. Fairie (o)*, in which the Court of Exchequer made a rule absolute for a new trial on the ground that the plaintiff had not given sufficient evidence to explain the specification.

*Manton v. Manton.*

So, also, in the case of *Manton v. Manton (p)*, the Lord Chief Justice *Gibbs* held that it is necessary that a patentee should show that he has accurately explained the nature of his invention in his specification (*q*).

What plaintiff must prove under this issue.

6. Under this issue the plaintiff must prove—that the specification describes the same invention as that mentioned in the patent;—that it sufficiently describes every part of the invention;—that the description it contains is sufficiently intelligible to persons of competent knowledge;—and that the invention is capable of producing all the effects specified.

That specification describes the same invention as the patent.

*R. v. Wheeler.*

7. And firstly, plaintiff must show that he has in his specification described the same invention as that which is comprized in the patent. In the case of *The King v. Wheeler (r)*, it was held that a patent was void because the specification described a process for converting malt into colouring matter by exposing it to a high temperature, whereas the title in the specification was “a new or improved method of drying and preparing malt,” and it was held that the variance rendered the patent void. But if it had been shown that an article, such as that produced by means of the patent process, was known by the name of malt, then it is conceived that the objection on the ground of variance would have been removed.

*R. v. Metcalf.*

Thus in the case of *The King v. Metcalf (s)*, in which it was held that a patent obtained for a tapering brush was void by reason of a misdescription of the invention, Lord *Ellenborough*, C. J., seemed to be of opinion that if the term tapering brush had by the usage of trade acquired a perverted sense, evidence of the fact might have been given for the purpose of removing the objection, but in the absence of such evidence the patent was held void.

That every part of the invention is

8. The plaintiff must also show that the specification sufficiently describes every part of the invention comprized in the

(o) 5 Tyr. 393.

(p) Dav. P. C. 333.

(q) See further as to the Burthen of

Proof, ante, p. 433.

(r) 2 B. & Ald. 349.

(s) 2 Stark. R. 249.

patent, and every thing which is necessary to put it into successful use and practice (t). For the consideration to be given to the public is the knowledge of the whole invention; and if any part of the invention is insufficiently specified, the public has not had all the consideration which was bargained for; and if the consideration fail in part, it fails altogether, and renders the patent entirely void (u). sufficiently described.

Thus in the case of *Morgan v. Seaward* (x), Mr. Baron Alderson told the jury, that the specification described two inventions, and if either of those inventions was insufficiently specified, the patent failed. And in the case of *De Rosne v. Fairie* (y), the Court of Exchequer made a rule absolute for a new trial on the ground that the plaintiff had not shown that the object or purpose of the invention could be effected by the means which were stated in the declaration. The patent in that case had been obtained for an invention intitled "improvements in extracting sugar or syrup from cane juice, and other substances containing sugar, and in refining sugar and syrup." The patentees' invention, as described in the specification, consisted in the use of the charcoal of bituminous schistus and animal charcoal combined, or either of them separately, to form a filter, through which syrup was to be passed for the purpose of separating the colouring matter from it. The patentee stated that the carbonization of bituminous schistus had nothing peculiar;—that it was produced in closed vessels as was done for producing animal charcoal, only that it was convenient before the carbonization to separate from the bituminous schistus the sulphurets of iron which are mixed with it. It was proved by Mr. Faraday, and other chemists, that there were many kinds of bituminous schistus known in England; that they varied very much in the quantity of the sulphuret of iron which they contained, and that they did not know any process by which the sulphuret of iron could be completely expelled. It was admitted that the presence of the sulphuret of iron was injurious, but the plaintiff did not state, in his specification, any mode by which it could be separated from the bituminous schistus. The Morgan v. Seaward.  
De Rosne v. Fairie.

(t) See the cases on this subject collected *ante*, Chap. VII. p. 162.

(u) Vide *ante*, pp. 48, 165-170.

(x) 1 Webs. R. 173.

(y) 5 Tyr. 393.



jury having upon this state of facts found a verdict for the patentee, the Court of Exchequer set aside the verdict, and ordered a new trial, on the ground that it was the duty of the plaintiff either to have shown that bituminous schistus with the admixture of sulphate of iron, as it was known to exist in England, would answer the purpose beneficially, or that the sulphuret of iron could be removed by any process known to ordinary chemists of skill.

Plaintiff must prove that it is intelligible.

Sufficient if intelligible to persons of ordinary skill.

Gibson v. Brand.

9. The plaintiff must also prove that the specification is intelligible to persons having a competent degree of knowledge of the subject to which the invention relates. It has already been stated (*z*), that the intelligibility of the specification is a question for the determination of the jury, but the plaintiff is only bound to satisfy the jury that the specification is intelligible to a person of ordinary and competent skill (*a*); for, as observed by Lord *Ellenborough*, C. J., in *Harmar v. Playne* (*b*), "no sort of specification would probably enable a ploughman utterly ignorant of the whole art, to make a watch."

In the case of *Gibson v. Brand* (*c*), the Lord Chief Justice *Tindal* said, in his address to the jury respecting the issue upon the sufficiency of the specification, "All that I mean to leave to you is the question of fact that is raised for your determination, namely, whether it is so worded, and such explanations are given in it, that a person of a sufficient degree of understanding on the particular subject, could carry the provisions of the specification into effect, and obtain the proposed result."

Galloway v. Bleaden.

And in the case of *Galloway v. Bleaden* (*d*), the same learned Judge, after making some observations upon the specification, said to the jury, "But the main question on this point is for you, and that is, whether it is such a fair and clear statement, that a person with a competent degree of knowledge upon the subject-matter to which the patent relates, would be able to make that which the plaintiff now enjoys the exclusive privilege of."

Sufficiency of specification

To prove the sufficiency of the specification in this respect,

(*z*) *Ante*, p. 476.

(*a*) See the cases on this subject, stated *ante*, Chap. VII. p. 173 to p. 176.

(*b*) *Dav. P. C.* 319.

(*c*) 1 *Webs. R.* 629.

(*d*) 1 *Webs. R.* 524.

the plaintiff must call as witnesses at the trial, persons of competent skill or knowledge in the particular branch of manufacture to which the invention belongs, and who can testify that the specification conveys to their minds sufficient information to enable them to understand what the invention really is, and also how to put it in practice, or carry the object of it into complete effect (e). must be proved by persons of competent skill.

In the case of *Walton v. Potter* (f), the Lord Chief Justice *Tindal* said, in his address to the jury, "Generally speaking, the rule which is laid down upon occasions when the sufficiency of the specification is called in question, is this,—that as these specifications are drawn by men who are more conversant with the particular article than juries, who are selected indiscriminately from the public, and certainly much more than Judges, whose knowledge is confined to one particular department; credit is given to witnesses, if they are conversant with the subject-matter of the invention, and are able to tell you, and you believe it, that they see enough on the face of the specification to enable them to make the article without difficulty." Walton v. Potter.

10. The plaintiff may also call witnesses to prove that they have been enabled to put the invention in practice merely by means of the instructions contained in the specification. Witnesses who have put the invention in practice.

Thus, in the case of *Cornish v. Keene* (g), the plaintiffs called workmen as witnesses, who proved that by means of the information contained in the specification, and without further instruction, they had been enabled to make the patent article. Evidence of this description seems to be by far the most conclusive, with respect to the intelligibility of the specification; for the evidence of persons who have not tested the specification by actual experiment in this way, is only matter of opinion, the value of which depends very much upon the skill of the witness, and the knowledge which he possesses of the language and terms of the particular art to which the invention relates. And there is this difficulty with respect to such evidence of opinion, that the jury has no certain means of Cornish v. Keene.  
Evidence of persons who have tested the specification most conclusive.

(e) See *Morgan v. Seaward*, 1 Webs. R. 170; *Elliott v. Aston*, 1 Webs. R. 224.

(f) 1 Webs. R. 595.

(g) *Ibid.* 502.



knowing the degree of skill which a witness possesses, and upon that circumstance in a great measure depends the value of his testimony on this subject. The specification must be sufficiently intelligible to persons of ordinary and competent skill, and it is not sufficient if it can only be understood by persons of great knowledge and science. The persons who are called to prove the sufficiency of a specification, are generally persons of the latter class; and they may be perfectly able to understand a specification, which would be wholly insufficient to instruct any ordinary workman of competent skill. The evidence of such witnesses, in fact, merely amounts to an opinion respecting the sufficiency of the specification as instructions to an entirely different class of persons.

Meaning of terms of art must be proved.

11. So if there are any technical terms, or terms of art necessary to be explained, in order to enable the jury to understand the description contained in the specification, the plaintiff must give evidence to show what is the meaning of such terms (*h*).

Plaintiff cannot give evidence to correct a mistake.

12. It seems, however, that the plaintiff cannot be allowed to give evidence to explain or correct any mistake or mis-statement in the specification, or to show that the error could not mislead (*i*).

Plaintiff must show that invention is capable of producing the effects stated.

*Felton v. Greaves.*

13. The plaintiff must show that the invention is capable of producing all the effects stated in the title or specification, for if it does not, the public will be misled (*k*), and will not receive a portion of the intended consideration. Thus in the case of *Felton v. Greaves* (*l*), it appeared that the patent had been obtained for a machine to sharpen knives and scissors, but the machine as described in the specification, although useful for sharpening knives, was inapplicable to the sharpening of scissors, and it was held that the specification was not sufficient.

If invention an improvement upon a prior

14. And if the invention is described as an improvement upon an invention comprised in some prior patent, the specification

(*h*) *Derosne v. Fairie*, 1 Webs. R. 157, and see the case of *Neilson v. Harford*, 1 Webs. R. 331.

(*i*) See *Neilson v. Harford*, 1 Webs.

R. 328; 8 M. & W. 806, S. C.

(*k*) *Bickford v. Skewes*, 1 Q. B. 938.

(*l*) 3 C. & P. 611.

of the prior patent must be put in evidence, in order to enable the jury to see what the improvements are which are comprised in the subsequent patent (*m*).

patent invention, former specification must be proved.

15. In answer to a *prima facie* case made by a plaintiff, the defendant may give evidence to prove that the specification is insufficient, and that the plaintiff has therefore failed to comply with the condition upon which he obtained his patent.

Evidence for the defendant.

16. Thus the defendant may show that the invention described in the specification is not the same as that comprised in the patent, for if so, the specification cannot be a performance of the condition contained in the patent (*n*).

Specification does not describe the same invention.

17. So also the defendant may show that the patentee has failed sufficiently to describe an essential part of his invention, for he was bound to describe every part of it according to the condition contained in the patent (*o*).

Essential part of invention not described.

18. The defendant may also give evidence to prove that the specification, or some essential part of it, is not sufficiently intelligible to enable a workman of ordinary and competent skill to use the invention and put it into successful practice. Evidence of the insufficiency of the specification in this respect, may either consist of the testimony of persons of competent skill, that they have read the instrument and do not understand it, or think it insufficient, or of persons of competent skill who have subjected the specification to the test of actual experiment, and following the instructions it contains, have been unable to succeed in producing the result described in the specification (*p*).

That specification not intelligible.

19. The defendant may also prove that the invention will not produce all or some of the effects mentioned in the specification (*q*), or that the specification is in some respect deficient, false, or fraudulent. Thus if he can prove that any thing necessary to enable a person to put the invention into successful practice has been omitted, or that the invention *as described* is of no use, the specification will be bad, and the defendant will be entitled to a verdict on this issue (*r*).

Specification deficient, &c.

(*m*) *Lewis v. Davis*, 3 C. & P. 502.

(*p*) *Vide ante*, p. 481, 482.

(*n*) See the cases, *ante*, Chap. VII. p. 159, 160.

(*q*) *Turner v. Winter*, Dav. P. C. 152.

(*o*) *Vide ante*, Chap. VII. pp. 162. 167.

(*r*) *Per Parke, B., Neilson v. Harford*, 1 Webs. R. 317.



So if he can show that the invention cannot be practised without some further invention or addition to the machinery or process described by the specification, or necessarily implied by the description (c).

Specification  
false.

20. If the defendant can prove that there is any thing material stated in the specification, which is false, the mis-statement will avoid the patent (d). So if he can show that any statement in the specification is calculated to mislead or puzzle a person who might attempt to follow its directions (e).

21. And if the defendant can show that the patentee has omitted or concealed any thing relating to the invention which would have been beneficial to the public, or has not described the invention according to the best of his knowledge at the time he enrolled his specification, the patent will void, and the defendant will be entitled to a verdict on this issue (f).

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*Under an issue on a Plea alleging that the Patentee did not cause any sufficient Specification to be enrolled within due time.*

Questions  
raised.

1. This issue raises all the same questions as the last, and also this additional question, viz.—whether the specification was enrolled within due time after the date of the patent.

What plaintiff  
must prove.

2. The plaintiff must, therefore, under this issue, not only prove the sufficiency of his specification (g), but also that it was enrolled in Chancery within the time limited by the patent (h). There are three offices in Chancery in which such enrolments may be made, viz. the Enrolment Office, the Petty Bag Office, and the Rolls Chapel, and a due enrolment in any one of them will be a sufficient performance of the condition contained in the patent.

(c) See the cases of *R. v. Arkwright*, Dav. P. C. 106; *Morgan v. Seaward*, 1 Webs. R. 170; and *Neilson v. Harford*, 1 Webs. R. 295, cited *ante*, Chap. VII. p. 176.

(d) *Bickford v. Skewes*, 1 Q. B. R. 938; *Lewis v. Marling*, 10 B. & C. 22, and *vide ante*, Chap. VII. p. 178.

(e) *Savory v. Price*, 1 Ry. & Mo. 1; *Crompton v. Ibbotson*, Dan. & Lloyd, 33; *Turner v. Winter*, Dav. P. C. 145.

and *ante*, Chap. VII. p. 179.

(f) *Liardet v. Johnson*, Bull. N. P. 76; *Bovill v. Moore*, Dav. P. C. 400; *Wood v. Zimmer*, Holt, N. P. C. 58; and see *Crossley v. Beverley*, 9 B. & C. 62, and the cases cited, *ante*, Chap. VII. p. 167—172.

(g) For proofs of the sufficiency of the Specification *vide ante*, p. 475.

(h) *Vide ante*, p. 433, respecting the Burthen of Proof.

3. The enrolment of the specification is a record of the Court of Chancery (i), and if it is in the Enrolment Office, or the Petty Bag Office, it must be proved in the usual way; that is, by means of an examined copy of it. But if the enrolment be in the Rolls Chapel, which is now a branch of the public Record Office, established by the statute 1 & 2 Vict. c. 94, a copy of it, certified by the deputy keeper of the records, or one of the assistant record keepers (k), and purporting to be sealed or stamped with the seal of the Record Office, is by section *thirteen* of that Act made evidence without further or other proof.

Enrolment is a record.  
Proof of record.

4. The record will itself show when the specification was enrolled (l). According to the proviso in the patent, it ought to be enrolled within a certain number of months "next and immediately after the date" of the patent. In the case of *Watson v. Pears* (m), Lord *Ellenborough*, C. J., held, that according to the proper construction of this proviso, the time within which the specification is to be enrolled must be computed exclusive of the day of the date of the patent. The patent in that case bore date the 10th day of May, 1808, and contained a *proviso* requiring a specification to be enrolled "within one calendar month next and immediately after the date" thereof. The specification was not enrolled until the tenth of June following. It was contended for the defendant that the patent was void, the specification not having been enrolled on or before the 9th day of June, when one calendar month from the date of the patent expired. It was also contended that the month must begin to run from the 10th of May, and included the whole of that day, and that it therefore could not extend to the tenth of June, there being a clear impossibility of two days of the same number being comprehended in one calendar month. For the plaintiff the case of *Thomas v. Popham* (n), was relied on. The question arose there upon the statute of enrolments, 27 H. VIII. c. 16, which enacts "that the enrolment shall be made *within six months from the date of the deed.*" The indenture in issue bore date the 9th October, 1557, and it was enrolled

Record shows when enrolment made.

*Watson v. Pears.*  
Time for enrolment to be reckoned exclusive of date of patent.

(i) Vide *ante*, Chap. VIII. s. 3, p. 212.

(k) *Quære*, whether it is necessary to prove the signature to the certificate.

(l) See the Form of Enrolment in the

Appendix, Chap. II. s. 1.

(m) 2 Camp. 294.

(n) *Dyer*, 218, b., and *F. Moor*, 40, S. C.



in Chancery on the 21st of March, 1558, which was the last day of the six months reckoning twenty-eight days to each month, and exclusive of the day of the date of the instrument, and the Court there held that the Indenture was well enrolled, and that the words "next after the day of the date of the deed," excluded the day of the date. In reply, it was urged for the defence that the King's grants were liable to a different rule of construction, and that it had often been decided that where a period was to be reckoned from the date, the day of the date was inclusive. Lord *Ellenborough*, C. J., however, over-ruled the objection, and said, "It used to be held 'that from the date' includes the day, and 'from the day of the date' excludes it. But since the case of *Pugh v. The Duke of Leeds* (o), these formal distinctions have been done away; and the rule of good sense has been established, that such words shall be construed according to the meaning of the parties who use them. The case cited upon the statute of enrolments, I think is expressly in point. That shows that *the day on which the patent bears date is not to be reckoned*. The month, therefore, only began on the 11th of May, and included the tenth of June, the day on which the specification was enrolled."

What defendant  
may prove.

5. The defendant will be at liberty under this issue to give evidence of the same objections that he could prove under a plea denying the sufficiency of the specification (p).

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*Under an Issue on the Plea of Not Guilty.*

Question raised. 1. It has already been stated (q) that the only question under this issue is whether the defendant has committed the alleged grievances, or, in other words, whether he has invaded the plaintiff's patent privilege in the manner alleged in the declaration.

Plaintiff must  
give enrolment

2. The patent grant stated in the declaration, and the validity of it, are therefore admitted for the purposes of this issue; but as the title of the invention in the patent does not afford sufficient information upon the subject, it is necessary to put the enrolment of the specification in evidence, in

(o) Cowp. 714.  
(p) Vide ante, p. 483.

(q) Ante, p. 263, 278, 434.

order that the jury may know to what the patent privilege of specification applies, and be enabled to judge whether any act proved to be done by the defendant amounts to a violation of the plaintiff's exclusive privilege (r). It would not be sufficient to put the specification itself in evidence, because no one is bound to take notice of the contents of it until it is enrolled. But when it has been enrolled in pursuance of the proviso contained in the patent, the enrolment becomes a record of which every one is bound to take notice at his peril, and therefore the plaintiff is entitled to use this record in evidence to show the nature of the invention, which is comprised in the patent privilege. For this purpose the patent and the specification may be considered as one instrument (s), and if a plaintiff should happen to set out his specification in his declaration, he would not be compelled to give any evidence of it under the plea of not guilty. In order to give the enrolment of the specification in evidence, the plaintiff must prove it by an office copy or an examined copy of the record in the usual way (t).

3. In support of his case under this issue, the plaintiff must prove that the defendant used the art invented by the patentee, or violated his patent privilege in the manner alleged in the declaration. Plaintiff must prove that defendant used the art.

4. A patent privilege may be infringed in several ways:—by making or manufacturing articles for use or sale by means of the art which has been invented by the patentee, or by using, exercising, or putting the art in practice, to the prejudice of the patentee in any other way;—by vending or selling articles made in violation of the patent privilege;—by making for use or sale, or vending articles which counterfeit, imitate, or resemble articles made in pursuance of the invention, or by counterfeiting or imitating the invention in any other way. And the breaches in the declaration must of course be framed according to the nature of the infringement complained of (u). Modes in which a patent privilege may be violated.

It will be convenient to consider the evidence to be given under this issue, as to each class of breaches separately.

(r) See *Hill v. Thompson*, 8 Taunt. 382; 2 B. Mo. 433; *Morgan v. Seaward*, 1 Webs. R. 178, 182; *Walton v. Potter*, 1 Webs. R. 587.

(s) See *Hornblower v. Boulton*, Dav. P. C. 229, 235; the judgment of *Bay-*

*ley, J.*, in *Crossley v. Beverley*, 9 B. & C. 62.

(t) Vide *ante*, p. 485.

(u) Vide *ante*, Chap. X. s. 2, p. 258; and the Forms of Declarations, in the Appendix, Chap. II. s. 4.



(a.) *Upon a Breach alleging that the Defendant has injuriously made Articles, or used the Invention in Violation of the Patent.*

Making articles according to invention.

Jones v. Pearce.

1. It seems that a bare making of articles according to the patentee's invention is sufficient evidence of an infringement, unless it be shown that the making was merely for experiment or amusement. Thus in the case of *Jones v. Pearce* (x). Mr. Justice Patteson told the jury that the mere making by the defendant, of wheels such as invented by the plaintiff, would be a sufficient infringement of the patent, unless he merely made them for his own amusement or models.

Using art invented by patentee.

2. So, if it be proved that the patent art has been used, exercised, or put in practice by the defendant in any other way, that will be sufficient evidence of an infringement unless it appears that the use was such as could not injure the plaintiff.

Infringement to be deemed *prima facie* injurious.

3. And any of these acts being clearly within the meaning of the prohibition contained in the patent, they must, *prima facie*, be deemed to be injurious to the plaintiff; and, therefore, when proved in evidence, they will be sufficient to make out the plaintiff's case, unless the defendant proves that they were innocent acts which could not prejudice the plaintiff in any way whatsoever.

Procuring articles to be made.

4. If the plaintiff can show that articles have been made in England according to the patentee's invention, and *in pursuance of the defendant's order*, or directions, that will be sufficient to entitle him to a verdict against the defendant upon this breach.

Gibson v. Brand.

Thus, in the case of *Gibson v. Brand* (y), the Lord Chief Justice Tindal said, in delivering his judgment, "The breach alleged in the declaration is, that the defendant infringed the patent by making, using, and putting in practice the plaintiff's invention; and the evidence is, that an order was given in England, which order was executed in England, for making articles by the same mode for which the plaintiffs had obtained their patent, which articles were afterwards received by the defendant. This is quite sufficient to satisfy an allegation that he made those articles, for he that causes and procures them to be made, may be well said to have made them himself."

(x) 1 Webs. R. 125.

(y) 1 Webs. R. 631.

5. And it seems that the act of sale of an article made according to the plaintiff's invention is not only a direct violation of the patent (z), but is also evidence of an infringement under this breach. Thus in the case of *Gibson v. Brand* (a), the Lord Chief Justice Tindal, at *Nisi Prius*, told the jury that if the defendants had themselves sold an article of exactly the same fabric, made in the same manner as that for which the patent was taken out, such sale *might be considered as a using of the invention* within the terms of the declaration (b).

Sale evidence of making or using.

6. In order to make out his case, it is not necessary that the plaintiff should show that the defendant has used or exercised the whole of the art or invention comprised in the patent, it is sufficient if he can show that the defendant has used any part of it. Thus in the case of *Cornish v. Keene* (c), the patent comprised an invention which was composed of three distinct parts, and the plaintiffs proved that the defendants had used so much only of the invention as related to one of the three parts, yet the evidence was held to be sufficient to entitle the plaintiff to a verdict upon this issue (d). And even if the object of the invention is only the production of one particular kind of article, yet if the plaintiff proves that the defendant has used any essential part of the art or invention, that will be sufficient to entitle him to a verdict. Thus, in the case of *Jones v. Pearce* (e), Mr. Justice Patteson told the jury that the want of two or three circumstances in the defendant's wheel which were contained in the plaintiff's specification would not prevent the plaintiff's recovering for an infringement of his patent. And in the case of *Crane v. Price* (f), it was held by the Court of Common Pleas that as it clearly appeared on the evidence that the defendants had used the invention "either in part or in whole," the plaintiffs were entitled to a verdict on the plea of not guilty to this breach.

Not necessary to show that defendant used the whole.

*Cornish v. Keene.*

Use of a distinct part an infringement.

Use of any essential part an infringement.

*Jones v. Pearce.*

*Crane v. Price.*

7. It is clear, however, that the plaintiff cannot sustain this issue merely upon proof that the defendant has done something which is mentioned or described in the specification, unless it also appears that it is *actually claimed by the patentee*.

Defendant must be shown to have used some essential part of invention.

(z) Vide *post*, p. 491.

(a) 1 Webs. R. 630.

(b) There was no breach in the declaration in this case, alleging a sale or vending.

(c) 1 Webs. R. 501.

(d) See also *Morgan v. Seaward*, 1 Webs. R. 170.

(e) 1 Webs. R. 124.

(f) 4 M. & G. 580.



tee as part of the invention comprised in the patent. For an art or invention may merely amount to a combination of several arts or inventions known prior to the plaintiff's patent, and a defendant will not infringe the patent merely by using one or more of these component parts, if he do use any part of the art which is of the essence of the invention, or if he do not, in any respect, avail himself of the art invented by the plaintiff (g).

Direct evidence not always to be obtained.

Huddart v. Grimshaw.

8. The plaintiff cannot always procure direct evidence of an infringement, and is therefore obliged to have recourse to evidence of a circumstantial character. Thus, in the case of *Huddart v. Grimshaw* (h), the plaintiff was unable to give direct proof of the mode in which the defendant had made the rope, which was alleged to be an infringement of the patent, but it was proved that the defendant carried on his business secretly, and denied the plaintiff and his witnesses access to his manufactory, and that the rope made and sold by the defendant could not be produced by any other mode known to the witnesses, except the invention of the plaintiff. Lord *Ellenborough*, C. J., held this to be sufficient *prima facie* evidence of an infringement, to call upon the defendant if he could, to show that the rope was made by some other means, and not by the use of the plaintiff's invention (i).

Evidence for defendant, that he has not made or used, &c.

Articles substantially different.

9. The defendant may in his defence show, that what he has done did not amount to a user of the art comprised in the patent.

He may therefore prove that the articles which he has made are substantially different from those described in the specification, or that they were manufactured in a mode different in principle from that of the patentee. And if the defendant can show that what he has done is in principle and in substance different from the plaintiff's invention, and not in form merely, he will be entitled to a verdict (k).

Articles made for amusement.

10. And it seems that if a defendant can show that the article which he has made according to the plaintiff's invention, was made for amusement merely, and not with any view to a sale or a beneficial use of it, he will not be guilty of an infringement.

(g) Vide *Hill v. Thompson*, 8 Taunt. 382; 2 B. Moore, 433, S. C.

(h) Dav. P. C. 265.

(i) See also *Hill v. Jervis*, 1 Webs.

R. 100.

(k) See *Morgan v. Secward*, 1 Webs. R. 171; *Walton v. Potter*, 1 Webs. R. 585-589.

Thus in the case of *Jones v. Pearce* (l), Mr. Justice Patteson said to the jury, that the making of the patent wheels would be an infringement, unless the defendant merely made them for his own amusement, or as a model. And the reason seems to be that such a making would not necessarily be injurious to the patentee.

11. But it is no answer for the defendant to show that what he has done is an improvement upon the plaintiff's invention, if the improvement is not available without a use of the plaintiff's invention. Thus in the case of *Neilson v. Harford* (m), it appeared that the apparatus which had been made by the defendant was unquestionably a great improvement upon the plaintiff's invention, but Mr. Baron Parke held that it was nevertheless an infringement of the plaintiff's patent. Nor will it avail a defendant any thing in such a case, that he has himself obtained a patent for his improved invention; for the subsequent patent cannot oust the plaintiff of any part of his privilege (n), and therefore the defendant must wait until the expiration of the plaintiff's patent, before he can exercise any part of his invention, which requires the aid of the plaintiff's (o).

Not sufficient for defendant to show that what he has done is an improvement.

*Neilson v. Harford.*

(b.) *Upon a Breach alleging the vending or selling of Articles made according to the Invention* (p).

1. Proof of a sale by the defendant of an article which has been made according to the invention, is alone sufficient to entitle the plaintiff to a verdict upon this breach. For a sale must necessarily be injurious to a patentee to some extent, because it is chiefly by the profits arising from the sale of articles made in pursuance of his invention, that a patentee can obtain the reward which the law intends him to receive, as a consideration for the benefit which he has conferred upon the community by a publication of his invention.

Proof of sale alone is sufficient.

(l) 1 Webs. R. 125.

(m) *Ibid.* 310-328.

(n) See a proviso in the patent that it shall not have the effect of defeating any prior patent. Vide *ante*, Chap. IV. p. 64, 65, & Appendix, Chap. II. s. 1.

(o) Vide *ex parte Fox*, 1 V. & B. 67; *Harmar v. Playne*, 11 East, 101; 14 Ves. 130; *Crane v. Price*, 4 M. & G. 580.

(p) See the Forms of Breaches, in the Appendix, Chap. II. s. 4.



Not necessary for plaintiff to prove that articles were made in breach of the patent.

2. It is not necessary for the plaintiff to prove that the articles which the defendant has sold were made in breach of the patent privilege, for it will be presumed that they had been made by some person in violation of the plaintiff's rights, until the contrary appears. And the defendant cannot complain of this presumption, for he must know where he obtained the articles which he sold, and if they were made by the patentee or any of his licensees, the defendant can easily show that fact in his defence to the action.

Sale may be an infringement although the articles not made in breach of the patent.

3. Although it is usual to allege that the articles vended or sold by the defendant had been made or manufactured in violation of the plaintiff's privilege, yet a patent may be infringed by a sale of articles made according to the invention, although not made in violation of the patent. Thus, if articles precisely the same as the plaintiff's be made in a foreign country, or in any part of the United Kingdom to which the patent privilege does not extend, it is clear that the making of them could be no infringement of the patent; and if such articles are brought into this country for any other purpose than a sale or user of them, as for instance in order to be re-exported, it is apprehended that the importation would be no violation of the plaintiff's privilege. But if such foreign articles are actually sold in this country, then there can be no doubt that the sale of them would be an invasion of the privilege granted by the patent.

Must be articles produced by the exercise of the art.

4. But in order to amount to an infringement of the patent, the articles sold by the defendant must have been articles actually produced by the exercise of the art or invention comprised in the plaintiff's patent, or in other words, the articles must be of such a description that the making of them by any other person than the patentee, or his licensees in England, would be a violation of the patent. Thus if the patentee has invented an improved lace machine, and obtained a patent for it, the sale of a machine made according to the patentee's invention would be an infringement; but the sale of *lace*, or any other article made by means of the patent machine, would be no infringement of the patent, for the patentee's invention is the art of making the improved lace machine, and that art is not used within the meaning of the patent by a person who merely uses the machine to produce a piece of lace.

Sale of the produce of a patent machine no infringement.

5. In answer to a plaintiff's *prima facie* case, the defendant may show that the articles which he sold were manufactured either by the patentee himself, or by some other person with his licence, and had been sold either to the defendant or to some other person. For when a patentee, or any other person by his authority, makes an article according to the invention, and sells it to the public, it must be understood that the purchaser acquires an absolute dominion over it, with a right to sell it or dispose of it in any manner he pleases. Indeed, when an article has once been sold by the patentee, or his licensee, the object of the law has been attained; the patentee has obtained (or had the means of obtaining) the profit which it was intended he should receive, and any subsequent sale of the article is not within the meaning of the prohibition contained in the patent.

Defendant may prove that articles were made by the plaintiff or his licensee.

(c.) *Upon a Breach which alleges the making for use or sale, or the vending of Articles, which counterfeit, imitate, or resemble Articles made in pursuance of the Invention; or the counterfeiting, imitating, or resembling the Invention in any other way.*

1. Under an issue upon a breach of this description, the plaintiff must prove that the articles which the defendant has made or sold, are substantially the same as those produced by the invention comprized in the patent, or that the art or invention which the defendant has used or exercised for his own profit or benefit, is in substance the same as the plaintiff's.

Plaintiff must prove that the articles are substantially the same as his own.

2. In order to see whether an act which has been done by the defendant was an infringement of the patent, it is most important to attend to what is usually called the principle of the invention. The word principle, when thus used, is not however intended to signify any of those first principles, or laws of nature, which all inventors must call into requisition, more or less, and which cannot be made the subject of a patent. By principle, in this sense, is meant a practical application of some one or more of these first principles, which is properly denominated an art, by means of which articles of commerce

Principle of invention to be attended to.

Principle means the art.



The use of the art is an infringement.

If persons were permitted to evade a patent the inventor would obtain no reward.

Prohibitory clause commands all persons to abstain from counterfeiting.

Hill v. Thompson.

A slight departure for the

may be manufactured, and an art of this description is that which must necessarily be the subject of every valid patent privilege (*q*). Thus in the case of *Watt's* steam-engine, Mr. Watt had invented the art of making a steam-engine with a condenser separate from the cylinder, and in common parlance, it is said that the principle of that invention is the construction of a steam-engine so that the steam shall be condensed in a vessel separate from the cylinder. And whenever it can be shown that an act done by the defendant comes, in this sense of the word, within the principle of the plaintiff's invention, the act is a violation of the patent privilege, for the defendant has used the art invented by the plaintiff contrary to the prohibition in the patent. The law intends a patent to reward the patentee for his invention, by means of the profit to be derived from the exercise of the sole privilege granted by the patent; and if other parties could evade the patent privilege, by making some immaterial variation from the mode of applying the invention, or the articles to be produced by means of it, as described in the specification, the object of the patent would be entirely frustrated; for no one would pay the patentee a profit price for the patent article if he could obtain an article substantially the same at a cheaper rate.

3. The prohibitory clause contained in every patent commands all persons, except the patentee, and those he may agree with, to abstain from counterfeiting, imitating, or resembling the invention, or making any addition unto, or subtraction from, the invention, and it is conceived that this command is only an expression of what the law is on the subject of an evasion of an exclusive privilege granted to an inventor by patent (*r*).

4. What has been said respecting the proof of infringements upon breaches of this description will be best understood by a reference to the law, which has been so clearly laid down on the subject by several eminent Judges.

5. In the case of *Hill v. Thompson* (*s*), Mr. Justice *Dallas* (afterwards Lord Chief Justice) said, in delivering the judgment of the Court of Common Pleas respecting the question of

(*q*) Vide ante, Chap. V. s. 1, p. 92.

(*r*) Vide ante Chap. IV. p. 59.

(*s*) 8 Taunt. 382; 2 B. Mo. 433, S.C.

infringement in that case, "A slight departure from the specification for the purpose of evasion only, would of course be a fraud upon the patent; and, therefore, the question will be, whether the mode of working by the defendant has, or has not, been essentially or substantially different."

purpose of evasions, a fraud on the patent.

6. In the case of *Jones v. Pearce* (t), it appeared that the plaintiff's invention was of a method of making wheels for carriages on the principle of suspension, and Mr. Justice *Patteson* directed the jury that if they thought that in the wheel made by the defendant the suspension principle was applied in the same way as according to the plaintiff's invention it was applied, the plaintiff would be entitled to recover.

*Jones v. Pearce.*  
Application of a principle in the same way.

7. In the case of *Walton v. Potter* (u), the law on this subject was laid down by the Lord Chief Justice *Tindal*, in his address to the jury, thus, "Where a party has obtained a patent for a new invention, or a discovery he has made by his own ingenuity, it is not in the power of any other person, simply by varying in form or in immaterial circumstances the nature or subject-matter of that discovery, to obtain either a patent for it himself, or to use it without the leave of the patentee, because that would be in effect and in substance an invasion of the right; and, therefore, what you have to look at upon the present occasion, is not simply whether in form or in circumstances, that may be more or less immaterial, that which has been done by the defendant varies from the specification of the plaintiff's patent; but to see whether in reality, in substance, and in effect, the defendants have availed themselves of the plaintiff's invention, in order to make that fabric, or to make that article, which they have sold in the way of their trade; whether, in order to make that, they have availed themselves of the invention of the plaintiff."

*Walton v. Potter.*

A variance in immaterial circumstances will not enable a person to evade a patent.

The question is whether defendant has in substance availed himself of plaintiff's invention.

8. In the case of *Morgan v. Seaward* (x), Mr. Baron *Alderson* told the jury that on the subject of the infringement, the question was, "whether the defendant's machine was only colourably different, that is, whether it differed merely in the substitution of mechanical equivalents for the contrivances resorted to by the patentee," and that they were to look to

*Morgan v. Seaward.*  
Substitution of mechanical equivalents an infringement.

(t) 1 Webs. R. 124.  
(u) *Ibid.* 586.

(x) 1 Webs. R. 171.



the substance of the defendant's machine, and not to the mere form, and if it was *in substance* an infringement, they ought to find it so.

*Russell v. Cowley.*

If defendant adopts a mode of accomplishing an object, similar in principle to plaintiff's mode, it is an infringement.

9. In the case of *Russell v. Cowley* (*y*), the invention consisted of a mode of making iron tubes by passing narrow strips of iron turned up at the edges through dies or conical holes in a piece of iron. The defendant made his tubes by passing similar strips of iron between two rollers, each roller having a semicircular groove round it, so that the conjunction of the two grooves formed a round hole through which the strip of iron passed. It was proved by scientific witnesses that the defendant's mode of making tubes was similar in principle to that which had been invented by the patentee, and the plaintiff obtained a verdict on this issue (*z*).

*Crossley v. Beverley.*

Imitation of plaintiff's invention an infringement.

10. In the case of *Crossley v. Beverley* (*a*), tried before Lord Tenterden, C. J., it appeared that the patentee had obtained a patent for an improved gas apparatus, and the infringement complained of was a close imitation of the patent machine, the principles applied in the plaintiff's patent machine and in the defendant's being the same, and the plaintiff accordingly obtained a verdict. A motion was afterwards made in the Court of King's Bench for a new trial in this case (*b*), when the Court refused to grant a rule *nisi*, but there was no objection taken to the sufficiency of the evidence of the infringement.

*Jupe v. Pratt.*

Observations of Alderson, B., on the case of *Crossley v. Beverley.*

And in the subsequent case of *Jupe v. Pratt* (*c*), Mr. Baron Alderson said, speaking of the case of *Crossley v. Beverley*, "There never was a more instructive case than that; I remember very well the argument put by the Lord Chief Baron who led that case for the plaintiff, and succeeded. There never were two things to the eye more different than the plaintiff's invention and what the defendant had done in contravention of his patent right. The plaintiff's invention was different in form—different in construction; it agreed with it only in one thing, and that was, by moving in the water, a certain point was made to open, either before

(*y*) 1 Webs. R. 459.

(*z*) The defendant obtained a rule *nisi* to set aside the verdict for the plaintiff in this case, and enter a nonsuit, but it appears that all objection to the proof of infringement was aban-

doned, and the rule was discharged; see the case reported, 1 C. M. & R. 864.

(*a*) 1 Webs. R. 106.

(*b*) 9 B. & C. 63.

(*c*) 1 Webs. R. 146.

or after, so as to shut up another, and the gas was made to pass through this opening; passing through it, it was made to revolve; the scientific men, all of them, said, the moment a practical scientific man has got that principle in his head, he can multiply without end the forms in which that principle can be made to operate." And his Lordship then proceeded to say with reference to the case of *Jupe v. Pratt*, "The difficulty which will press on you (the plaintiff's counsel), and to which your attention will be called in the present case, is this: you cannot take out a patent for a principle; you may take out a patent for a principle coupled with the mode of carrying the principle into effect, provided you have not only discovered the principle, but invented some mode of carrying it into effect. But then you must start with having invented some mode of carrying the principle into effect; if you have done that, then you are entitled to protect yourself from all other modes of carrying the same principle into effect, that being treated by the jury as piracy of your original invention."

Carrying patentee's principle into effect by any other mode is a piracy.

11. The defendant may, in answer to the plaintiff's case upon such a breach, give evidence to prove that what he has done was not an imitation of the plaintiff's invention, but was substantially different from it (*d*); or that the article which he has sold was not produced by any use or application of the art which is described in the specification.

Defendant may show that what he has done is substantially different from patentee's invention.

12. When a breach alleges that the defendant has done several acts in violation of the patent: as,—that he has made several articles according to the invention; or, that he has sold several of such articles, it is not necessary, in order to entitle the plaintiff to a verdict that he should prove that the defendant has committed the precise number of infringements alleged in the breach, for the allegation contained in a breach being divisible, it is sufficient if it be proved that the defendant has done any one act which amounts to a complete infringement of the patent or any part of it.

Allegations in breaches are divisible.

In the case of *Gillet v. Wilby* (*e*), the plaintiff's patent was for an invention of improvements in a cabriolet. The breach in the declaration alleged that the defendant used

*Gillet v. Wilby.*

(*d*) See the case of *Heath v. Unwin*, in the Exchequer, not yet reported.

(*e*) 9 C. & P. 334.



and put in practice a cabriolet with the plaintiff's improvements, and that the cabriolet used by the defendant did imitate and resemble the plaintiff's improvements, and it was urged for the defendant that the plaintiff must show that the defendant's cabriolet imitated and resembled all the improvements. But Mr. Justice *Coltman* held that the allegation in the breach was divisible, and that it would be sufficient if the cabriolet resembled any one of the plaintiff's improvements.

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## SECTION II.

### *Of the Evidence in Actions of scire facias to Repeal Letters Patent.*

- 1.—*Of the Burthen of Proof.*
- 2.—*Of the Competency of Witnesses.*
- 3.—*Of the Evidence to be given under each of the Issues in the Action of scire facias.*

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#### 1. *Of the Burthen of Proof.*

Burthen of proof on the prosecutor generally.

1. IN an action of *scire facias*, the burthen of proof is upon the prosecutor as to the greater number of the issues which are generally raised in such an action.

On some issues prosecutor must give *primâ facie* evidence.

2. When the patentee is seeking to enforce his privilege against one of the public in a Court of Law, the defendant is entitled to put the plaintiff to the *primâ facie* proof of all the conditions which the law requires to render the patent available. But when one of the public puts the law in motion by *scire facias* against the patentee, the position of the parties is reversed, and the prosecutor must give *primâ facie* evidence of the grounds upon which he alleges that the patent ought to be avoided and repealed. Thus under the suggestions, that the patentee was not the true and first inventor, that the invention was not new, or not useful, the prosecutor must give *primâ facie* evidence in support of the suggestions, or the defendant will be entitled to a verdict.

On some issues the burthen is

3. But there are some issues on the trial of which the burthen of proof is upon the defendant, as where issue is taken upon

a suggestion alleging the falsehood of some material representation made to the Crown by the patentee in order to obtain the patent, the defendant must, by his plea, allege that the representation was true, and he must prove the affirmative of the issue, or the prosecutor will be entitled to a verdict. So if it is suggested that the patentee has not sufficiently complied with the condition which required him to enrol a specification, the burthen of proof is upon the defendant, and he must show that he has enrolled a sufficient specification as required by the patent.

4. If there is any one issue on which the burthen of proof is upon the prosecutor, his counsel has the right to begin at the trial, and this right is generally esteemed to be a great advantage. The prosecutor in this way acquiring the right to begin, it is generally deemed most convenient to go into his whole case, not only as to those issues on which the burthen of proof is upon him, but also as to the other issues.

## 2. Of the Competency of Witnesses.

If the patentee is the defendant in the action, it is clear that he is not a competent witness. But if the action be brought against the assignee of the patent, then it seems that the patentee would be a good witness either for the Crown or the defendant (*f*). So a licensee would be a competent witness either for the prosecutor or the defendant, subject however to any objection affecting his credit by reason of any interest he may have in the continuance of the privilege granted by the patent (*g*). But the assignee of the patent, or of any portion of it, or a person having an exclusive licence, and on whose behalf the action was defended, would not be a competent witness for the defendant (*h*).

## 3. Of the Evidence to be given under each of the Issues in An action of scire facias.

It has been shown (*i*) that the prosecutor must file a Notice of objections.

(*f*) See further on the competency of a patentee as witness, *ante*, p. 435. p. 436.

(*h*) Vide *ante*, p. 436.

(*g*) See further on this subject, *ante*,

(*i*) *Ante*, Chap. X. s. 6, p. 395.



notice of his objections with the declaration in the Petty Bag Office. A copy of this notice must be annexed to the *nisi prius* record, and for the purposes of *the trial* must be considered as part of the pleadings. The only question however which can arise at the trial respecting the notice, is, whether the terms of it are sufficient to include any objection which the prosecutor may take, under any of the issues, to the validity of the letters patent (*k*).

2. With the exception of the difference caused by the burthen of proof being thrown upon the prosecutor on many of the issues, the evidence will be substantially the same upon any issue in this action, as upon a similar issue in an action for an infringement of the patent.

Patentee not  
the true and  
first inventor.

3. Thus under an issue upon a suggestion that the patentee was not the true and first inventor, the prosecutor must prove the affirmative of the suggestion in the same way as a defendant in an action for an infringement must give evidence in support of a plea containing a similar allegation (*l*). And the defendant in *scire facias* may answer the prosecutor's *prima facie* case by the same evidence as he might give as plaintiff upon a similar issue in an action for an infringement of the patent (*m*).

Patentee not  
the importer.

4. If the patent was obtained for an imported invention upon a representation that the patentee had obtained a knowledge of the invention from a foreigner residing abroad, and issue be taken upon a suggestion that that representation was false (*n*), the defendant must prove the affirmative of the issue, and show that the representation was true (*o*).

False represen-  
tation.

5. The same observation applies also to an issue taken upon a suggestion of the falsity of any other representation made to the Crown by the patentee; as, a suggestion that the invention was not such an improvement or not an invention of such a nature as represented by the patentee (*p*).

Invention not  
the subject of a  
legal privilege.

6. Under an issue upon a suggestion that the invention was not of such a nature as could legally be made the subject of a patent grant, the prosecutor must give the enrolment

(*k*) *Neilson v. Harford*, 8 M. & W. 806; 1 Webs. R. 370, S. C.

(*l*) *Vide ante*, p. 443.

(*m*) *Vide ante*, p. 442.

(*n*) See the Form of the Suggestion in the Appendix, Chap. II. s. 7.

(*o*) See the Evidence, *ante*, p. 449.

(*p*) See the Evidence, *ante*, p. 451.

of the specification in evidence in order to show the nature of the invention as described by that instrument, and if it contains any terms of art which require explanation, the prosecutor must give evidence to show the signification of them. When the meaning of the specification has thus been ascertained, it is for the Judge to determine whether invention can legally be made the subject of a patent grant or not (*q*).

7. Upon an issue respecting the want of novelty in the invention, the prosecutor must prove that the invention was not new to the public at the date of the patent. The evidence to be given upon this issue is precisely the same as that to be given upon a similar issue in an action for an infringement of the patent (*r*), with this difference, that the burthen of proof is upon the prosecutor, and he must give evidence to show that the public had acquired a right to the invention before the date of the patent (*s*).

Issue respecting the novelty of the invention.

8. Upon an issue respecting the want of utility in the invention, it must be proved on behalf of the Crown that the invention was of *no* utility whatsoever to the public (*t*). And in answer to a *primâ facie* case for the prosecution, the defendant must show that the invention was of *some* public utility, and if he can satisfy the jury that it is of *any* utility, however small, he will be entitled to a verdict (*v*).

Issue respecting the want of utility of the invention.

9. Upon an issue taken on a suggestion that the patentee has not performed the condition requiring a specification, the burthen of proof is upon the defendant (*w*). But the prosecutor cannot make out a *primâ facie* case upon any of the issues which he is bound to prove, without giving the enrolment of the specification in evidence, and that of course is sufficient proof for the defendant that a specification has in fact been enrolled. It frequently happens also that the prosecutor finds it advantageous to set out the specification in one of the suggestions in the writ of *scire facias*, so as to be able to make use of it in a Court of Error. The question upon an issue of this description, therefore, generally is, whe-

Issue respecting the sufficiency of the specification.

(*q*) Vide *ante*, p. 454.

(*r*) Vide *ante*, p. 455.

(*s*) Vide *ante*, p. 457.

(*t*) Vide *ante*, p. 475.

(*v*) Vide *ante*, p. 474.

(*w*) Vide *ante*, p. 475 and 484, respecting the Proof of a Specification, and the enrolment of it.



ther the specification which the patentee has enrolled is a sufficient compliance with the condition in the patent. The evidence to be given on the one side, or on the other, has already been shown in the first Section of this Chapter, to which it is therefore sufficient to refer (u).

(u) *Vide ante*, p. 475.

## CHAPTER XII.

OF THE PRACTICE RESPECTING LETTERS PATENT FOR INVENTIONS.

SEC. I.—*Of the Practice respecting the obtaining of Patents, enrolling Specifications, and altering Patents and Enrolments.*

II.—*Of the Practice respecting Disclaimers and Memorandums of Alteration.*

III.—*Of the Practice of obtaining the Confirmation and Prolongation of Patents.*

## SECTION I.

*Of the Practice respecting the obtaining Patents for Inventions, enrolling Specifications, and altering Patents and Enrolments.*

1.—*Of the Practice respecting the obtaining Patents for Inventions.*

2.—*Of the Practice respecting the Enrolment of Specifications.*

3.—*Of the Practice respecting the Alterations and Amendment of Patents, Enrolments, &c.*

THE mode in which letters patent are to be obtained, is Patent agents. regulated partly by statute and partly by long established practice.

Patents for inventions are usually procured through the agency of a class of gentlemen who practise as “patent agents,” and inventors generally find it better to have recourse to the assistance of those gentlemen, than to attempt to obtain their patents themselves. Indeed there can be no doubt that it is really more economical for an inventor to employ a patent agent, than to act for himself. There are several gentlemen of talent and experience who devote themselves to this practice, and every person intending to



apply for a patent, will do well to retain one of them to assist him in procuring his patent.

Any person may practise as a patent agent.

According to the existing law, it appears that any person may act as a patent agent, and it is much to be regretted that there are no means of excluding unqualified persons from practising.

Several solicitors now solicit patents.

Several solicitors have recently added the soliciting of patents to their other professional avocations, and it is probable that the profession will do so much more extensively, when the practice of obtaining patents becomes better known than it is at present.

It frequently happens that several inventions relating to the same branch of manufactures are coterminously made by different persons, and if an inventor thinks it probable that application will be made for a patent for any invention similar to his own, it will be better, in the first instance, to communicate to his agent merely the title of his invention and no more.

Caveats sometimes entered.

It is sometimes deemed advisable for an inventor, in the first place, to enter caveats at the chambers of the Attorney and Solicitor-general, against a patent being granted to any other person.

What a caveat is.

A caveat against a patent is in substance a request in writing, filed in some office, and desiring that a patent may not be granted without notice to the party who enters it.

Where caveats may be entered.

Caveats against patents may be entered at the chambers of the Attorney and Solicitor-general, at the Patent Bill Office (generally called the Patent Office), the Signet Office, the office of the Lord Privy Seal, and at the Patent Office.

Form of caveat at Attorney-general's.

A caveat to be entered at the chambers of the Attorney or Solicitor-general, is usually in the form or to the effect following:—*viz.*

“Caveat against her Majesty’s letters patent for [*improvements in steam-engines*] being granted to any person without notice, to me the undersigned [*Andrew Pritchard, of No. 162, Fleet Street, London, Patent Agent.*] Dated this [*first*] day of [*January*] 1846.”

“*A. Pritchard.*”

Caveat at Attorney-general's is a general caveat.

A caveat of this description is called a general caveat, because it is intended to apply, not merely to a specific application for a patent, but to all applications for patents

for inventions such as described in the caveat. But a caveat entered for the purpose of opposing a patent at the bill, or any later stage of the proceedings, is called a specific caveat, because it is intended to apply only to that specific application for a patent.

The object of entering caveats at the chambers of the Attorney and Solicitor-general is, that no application for a patent, either for the same or any similar invention, may be granted without notice of the application being given to the party entering the caveat, so that he may be enabled to oppose the grant of the patent if he thinks that it would be prejudicial to his own claim for a patent, or in any other way affect his interests. And in pursuance of such caveats, the parties entering them will obtain notices of all applications for patents for inventions which come within the meaning of the description contained in their caveats.

A caveat may either be entered by an inventor, or other person in his own name, or in the name of his patent agent, as may be most convenient. If entered in his own name, the clerks of the Attorney and Solicitor-general will send notices of applications for patents direct to him, but if in the name of his patent agent, the notices will go to the patent agent, and he will send a similar notice to the party employing him (x).

Caveats are not necessary in every case, but there are many cases in which inventors intending to apply for patents, ought always to enter them; as where they unavoidably run the risk of their inventions being pirated by others before they can apply for patents for them.

In the experiments which inventors must sometimes make in order to complete their inventions, they are exposed to the risk of having the fruits of their labour purloined by workmen, and others in whom they may be obliged to confide. To guard against such persons surreptitiously obtaining a patent for the stolen invention, the inventor ought to enter a caveat; but it ought always to be borne in mind that a caveat only enables the person entering it to oppose a patent being granted to any other person, it is no security against a publication of a knowledge of the invention to the world by

(x) See the Forms in the Appendix, Chap. II. s. 1.



any person in whom the inventor may confide, or who may surreptitiously obtain a knowledge of the invention. And such a publication would of course defeat any patent subsequently obtained even by the real inventor (*y*).

Caveats must be entered both at Attorney and Solicitor-general's chambers.

As it is the practice to refer petitions for patents to the Attorney or Solicitor-general, (to either of whom they may be taken at the will of the applicant,) an inventor must, in order to be effectually protected, enter a caveat at the chambers of each of those officers.

No particular form requisite.

Description of invention to which it is to apply.

Although the form of caveat already given (*z*) is that now usually adopted, there is no particular form necessary. The chief thing to be attended to is, the description of the kind of invention to which the caveat is intended to apply. The party who enters a caveat is not obliged to describe an invention with much particularity, and it is unnecessary that the description should be even as precise as the title of an invention in a patent.

Invention is usually described in very general terms.

It is therefore the practice in preparing a caveat, to describe in very general terms the kind of invention to which the party entering it wishes it to apply, so that he may the better insure notice of an application for a patent for any invention which may *in any degree* affect him. And a party entering a caveat having thus secured notice of all applications which can affect his interests, he can in every case in which he receives notice exercise his discretion according to the title of the applicant's invention, whether a patent for such an invention is likely to be prejudicial to him, and whether he will oppose the application or not.

Description must be clear and distinct.

An inventor must however be careful to make the description inserted in his caveat sufficiently clear and distinct, to enable the Attorney or Solicitor-general's clerk to understand clearly the kind of invention to which it is intended to apply. And if the description in a caveat is obscure, or not sufficiently distinct, the person entering it will run some risk of not receiving notice of some of the applications to which he intended it to apply. It will be better, therefore, in every case, rather to incur the cost of entering two or more caveats, than to run the risk of failing to obtain the notice which is desired.

(*y*) Vide *ante*, Chap. V. s. 2, p. 102.

(*z*) *Ante*, p. 504.

Caveats are entered not only by actual inventors, but also by many other persons who are occupied in making experiments with the view to discoveries in the useful arts, and also by many who are interested as patentees, or otherwise, in any particular branch of manufactures. Such persons always describe the inventions which are intended to be comprised in their caveats in the largest and most general terms.

Caveats entered by patentees and others as well as inventors.

The object of a patentee in entering such a caveat, is to prevent any other person from obtaining a patent for a more colourable variation of his invention. And with respect to other persons entering such caveats, their object is to prevent patents being granted for any art or manufacture already known and used by them. For although a public knowledge or use of an art or manufacture will render a subsequent patent for it void, yet persons who have acquired the right to use such an art are interested, and entitled to oppose the grant of any patent, which however illegal might bring their rights in question, and put them to the cost and trouble of establishing them against the illegal grant made to the patentee.

Object of patentees and others in entering caveats.

Such general caveats as those just mentioned are beneficial so far as they enable the parties entering them to protect their interests, by preventing any one from surreptitiously or improperly obtaining a patent to which he is not entitled.

Benefit of such caveats.

The notices of applications for patents which are given by the Attorney and Solicitor-general in pursuance of a caveat, are always sent by post to the person named in the caveat, and therefore *care ought to be taken to insert the correct address to which such notices are to be sent.*

Correct address must be inserted.

In order to enter a caveat at the chambers of the Attorney and Solicitor-general, two copies of the document must be prepared, and a copy taken to the chambers of each of those officers. The fee of five shillings must be paid with each copy of the caveat, to the clerk, who will enter it in a book kept for that purpose.

Caveat, how entered.

A caveat at the chambers of the Attorney or Solicitor-general continues in force for one year only from the time it is entered, but it may be renewed from year to year as long as the party pleases.

Caveat continues in force one year.

Whenever a petition is referred to the Attorney or Solicitor-

List of unexpired caveats



examined whenever a petition for a patent received.

tor-general, the clerk of the officer to whom it is taken examines the list of unexpired caveats, and if he finds that the general descriptions contained in any of them have reference to the invention mentioned in the petition, he sends notices to each of the parties who have entered such caveats.

Contents of notice which a party receives in pursuance of a caveat.

The notice of an application for a patent (*a*), which a person receives in pursuance of his caveat, states the name and address of the applicant, and the title of the invention for which the patent is sought to be obtained, and informs the person who entered the caveat that if he considers that the application will interfere with his caveat, he must return an answer within seven days from the date of the notice, otherwise the patent will be allowed to proceed.

Time allowed to answer a notice.

The time allowed for returning an answer to the notice or entering an opposition, is seven days from the date of the notice, exclusive of the day of the date.

Person receiving notice may oppose or not.

Upon receiving notice of an application for a patent, in pursuance of a caveat, the first thing to be decided is whether the title of the invention claimed by the applicant can affect the invention or interest of the person who receives the notice. If it be clear that a patent for such an invention cannot operate to his prejudice, it is unnecessary to pay any attention to the notice; but if it is apprehended that such a patent will be prejudicial to his interests, he may proceed to oppose the grant of it (*b*).

Inventor must first choose a title for his invention.

When a person has made any discovery in the useful arts for which he desires to obtain a patent, he must, in the first place, choose a title for his invention, and it is of the utmost importance that he should make a proper selection.

Title to be stated in petition.

The title of an invention is a short description or definition of it, which the inventor must state in his petition to the Crown for a patent, in order to convey some idea respecting the nature of the invention. The title which a patentee gives to his invention is always adopted in the patent, which shortly recites the material allegations of the petition upon which it is founded (*c*), the title being recited in the very words used by the inventor (*d*).

(*a*) See the Form in the Appendix, Chap. II. s. 1.

(*b*) The mode of opposing is stated,

*post*, in this section.

(*c*) *Vide ante*, Chap. IV. p. 40.

(*d*) *Ibid.* 43.

The requisites of a title have already been stated (e), and an inventor must bear in mind that he gives a title to his invention *at his own peril*; the privilege granted by the patent will apply to whatsoever may be comprised within the meaning of the title, and no more.

There is, sometimes, much difficulty in selecting a proper title for an invention, and many instances have occurred in which inventors have lost the benefit of their patents in consequence of having given erroneous titles to their inventions. In every case of doubt or difficulty, therefore, an inventor ought to obtain advice and assistance, in order to prevent the evil consequences which might follow if he were to select an improper title.

In choosing a title, an inventor should attend to the following general rules:—

A title ought to be sufficiently extensive in its signification to include every part of the invention for which the patent is to be obtained;—it must not be so extensive as necessarily to include any thing which the applicant has not invented. It must describe the same art or manufacture as the petitioner has invented, and not another; it must not contain any misrepresentation (f). It need not be very definite, but it must give *some* idea of the nature of the invention, and as far as it goes it must be correct (g). And if it be not incorrect, the generality of the description it contains will be no objection (h).

It has already been shown (i), that an inventor is not entitled as of right to a patent for his invention, but only by the grace and favour of the Crown, acting on behalf of the public. It has also been shown that in order to obtain a patent for an invention, the inventor must apply by petition to the Queen (k).

In his petition, the inventor must insert his name and addition, and also state the circumstances on which he founds his claim to a patent privilege. If the petitioner is an actual inventor (l), he states (m) that he has invented the art or manufacture for which he seeks to obtain a patent; that he is the

(e) *Ante*, Chap. IV. p. 43-47.

(f) See the cases cited, *ante*, Chap. IV. p. 43-47.

(g) *Sturz v. De la Rue*, 5 Russ. 324.

(h) *Vide ante*, p. 46.

(i) *Ante*, Chap. I. p. 4.

(k) *Ante*, Chap. IV. p. 41.

(l) *Vide* Chap. III. s. 2, p. 22.

(m) See the Forms in the Appendix, Chap. II. s. 1.



true and first inventor of it, and that it is new, and has not been used in this kingdom to the best of his knowledge and belief. If the petitioner has imported a knowledge of the invention from a foreign country, he states that, in consequence of a communication from a foreigner residing abroad, he is in possession of the invention; that it is new, and has not been used in this country, to the best of his knowledge and belief.

Petition ought to state that invention is new in this realm.

Until recently, it was supposed that an invention would possess sufficient novelty to support a patent, if it were new in England and Wales, although known in Scotland or any other part of the United Kingdom, and therefore it has been customary in a petition for a patent merely to allege that the invention is new in England, Wales, and Berwick-upon-Tweed. But the case of *Brown v. Annandale* (n), in the House of Lords, has decided that an invention must be new in every part of the United Kingdom, and therefore a petition for a patent ought now to state that the invention is new within this realm (o), or within the United Kingdom.

Prayer of petition.

The prayer of a petition for a patent is, that her Majesty will be pleased to grant unto the petitioner, his executors, administrators, and assigns, letters patent for the sole use of his invention within England, Wales, and Berwick-upon-Tweed, pursuant to the statute. If the inventor desires to have his patent extended to the colonies or Channel Islands, they must be mentioned in the prayer of the petition.

The allegations of the petition must be supported by some evidence.

If a patent grant is made to an alleged inventor when he cannot give the consideration required to support it, the patent, although void, may be used to the prejudice of her Majesty's subjects. The law therefore requires that when an inventor petitions for a patent, he must correctly inform the Crown respecting the invention which is to be made the subject of the patent privilege which he seeks to obtain (p). And if any material statement he makes be false, the law as a penalty deprives him of his patent.

As it is not proper that the Queen should be advised to make any grant of privilege which cannot be supported, it is

(n) 1 Weba. R. 433.

(o) The words, "this realm," in the Statute of Monopolies, 21 Jac. I. c. 3,

s. 6, since the Union extends to the whole of the United Kingdom.

(p) Vide *ante*, p. 41.

necessary that the allegations of the petition should be supported by some proof that the grant for which the petitioner asks is one that may be legally made.

It was formerly necessary that the allegations of a petition for a patent should be verified by the affidavit of the petitioner, sworn before a Master in Chancery, but the law in this respect was altered by the statute 5 & 6 W. IV. c. 62, s. 11 (*q*), in pursuance of which the petition is now to be verified by the solemn declaration instead of the affidavit of the petitioner.

The solemn declaration which the petitioner makes, in support of his petition, must contain precisely the same allegations as those which are contained in the petition. And if it is the petitioner's intention also to apply for Scotch and Irish patents, that fact ought to be stated in the declaration, in order to enable the petitioner to obtain six months instead of four months, to specify his invention.

The declaration, if made in town, must be made before a Master in Chancery, but if made in the country, before a Master extraordinary.

The petition for a patent, and the declaration in support of it, are to be taken to the office of the Secretary of State for the Home Department (*r*), and left there for her Majesty's answer to the petition. It is the practice for the Secretary of State to answer the petition on behalf of the Crown, by referring it to the Attorney or Solicitor-general to consider and report thereon, in order that the Crown may be advised respecting the legality of the grant which the petitioner seeks to obtain, and the expediency of granting the prayer of the petition, after which it is stated in the reference that her Majesty's further pleasure will be declared.

The reference of the petition to the law officers of the Crown is always written under or indorsed upon the petition itself, and is to be signed by the Secretary of State (*s*). According to the usual course of business, this is generally done within three or four days after the petition and declaration have been left at the Secretary of State's Office. As the reference is always made in the same form, it is usual to take the petition

(*q*) See the material parts of the statute stated in the Appendix, Chap. I. s. 1.

(*r*) Whitehall, Westminster.  
(*s*) The fee payable at the Home Office for the reference is £2 2s. 6d.



to the Home Office with the reference written under it ready for the Secretary of State's signature.

Petitioner must apply for reference.

Petition may be taken either to Attorney or Solicitor-general.

Title is compared with descriptions in caveats.

Notice to such as are applicable.

Parties who receive notice may enter opposition within a week.

Every person may oppose a patent who has entered a caveat.

Opposing party must pay the cost of hearing the opposition.

The petitioner or his agent must apply at the Secretary of State's office for the answer to the petition, and so soon as it is ready, the petition, with the answer signed by the Secretary of State, and the declaration, will be delivered to the applicant, and they must then be taken to the chambers either of the Attorney or Solicitor-general, at the election of the party.

Upon a petition being left at the chambers of the Attorney or Solicitor-general, his clerk will compare the title of the invention inserted in the petition with the descriptions which are contained in all the subsisting caveats in his office. If he thinks that none of the caveats apply to the invention, the patent will be allowed to proceed as of course; but if he is of opinion that the title relates to an invention which comes within the general description contained in any of the caveats, he sends notice (by post) of the application to each party who has entered such a caveat (*t*).

The parties to whom notice has been sent, in pursuance of their caveats, have allowed them *seven* days after the date of the notice (exclusive of the day of the date), within which they must enter their opposition at the chambers of the Attorney or Solicitor-general, if they intend to oppose the patent. If no opposition is entered within the seven days, the proceedings for obtaining the patent will then be permitted to proceed, as of course.

Every person who has entered a caveat is at liberty to oppose the grant of a patent before the Attorney or Solicitor-general. For all persons are interested in such a grant which is really made on behalf of the public, and therefore any one of the public is at liberty, upon entering a caveat and opposition, to go before the Attorney or Solicitor-general to show that the petitioner has no claim to a patent, or that the grant cannot legally be made. And a caveat may be entered in order to oppose a patent at any time before the report is actually signed.

In order to oppose a patent, it was formerly necessary merely to give notice of the opposition, or enter the oppo-

(*t*) The contents of the Notice are stated, *ante*, p. 508, and see the Form in the Appendix, Chap. II. s. 1.

sition at the chambers of the Attorney or Solicitor-general, to whom the petition for the patent had been referred. But oppositions were frequently entered solely for the purpose of delaying a petitioner, and in order to check that practice, it has been made a rule that every person who opposes a patent must deposit the fees payable for the hearing of his opposition, and the amount (3*l.* 5*s.*) must be paid to the Attorney or Solicitor-general's clerk before the opposition can be entered.

The usual and most convenient mode of entering an opposition, is to prepare a note of the opposition, stating the name and address of the opposing party, and that he will oppose the grant of the patent to the person applying (*u*), and then take it to the Attorney or Solicitor-general's chambers, and pay the 3*l.* 5*s.* for the hearing of the opposition, to the clerk, who will file the note and enter the opposition. Opposition how to be entered.

When any person has duly entered an opposition at the chambers of the Attorney or Solicitor-general, and made the required deposit, the further progress of the proceedings for obtaining the patent will be arrested until the hearing before the Attorney or Solicitor-general, which then becomes necessary. Entry of opposition stays proceeding until the hearing.

In order to dispose of an opposition, the applicant for the patent must obtain an appointment for a hearing (*x*), and a summons to be served upon the party opposing the patent to attend on the day appointed. The summons (*y*) must be served upon the opposing party seven clear days before the day appointed for the hearing, but sending the summons by post, addressed to the opposing party by the address contained in his caveat, will be deemed sufficient service. Summons for hearing and service.

At the time appointed for the hearing, the applicant must attend at the chambers of the Attorney or Solicitor-general, with whom the petition has been lodged, and if no one appears to oppose, a report will be made in favour of the applicant as of course (*z*). Hearing.

(*u*) See the Form in the Appendix, Chap. II. s. 1.

(*x*) The fees to the Attorney or Solicitor-general and clerk, for a hearing, amount to 3*l.* 5*s.*, for each party.

(*y*) See the Form in the Appendix, Chap. II. s. 1; the fee for a summons is 5*s.*

(*z*) In order to entitle a petitioner

to a report in his favour as of course, for default of the appearance of a party opposing; the due service of the summons, or the sending it by post to the proper address, ought to be proved by solemn declaration made in the form given by the statute 5 & 6 Will. IV. c. 62. See a Form in the Appendix, Chap. II. s. 1.



It frequently happens that the Attorney or Solicitor-general is prevented by his other engagements from attending at his chambers at the time appointed, and in such cases the hearing will be postponed, from time to time, by the clerk until the matters of the petition and opposition can be heard; and an opposing party must attend the further appointments, from time to time made for that purpose without any fresh summons.

If the opposing party attends at the time ultimately appointed for the hearing, the applicant is first heard in support of his petition for the patent, and then his opponent is heard to state his objections to the grant of the patent.

Parties heard separately and in private.

It is the practice to hear each of the parties separately, in private, the object of which is, that no party may be prejudiced by what they may disclose to the officer of the Crown.

Reasons for hearing applicant in private.

The applicant for a patent proposes to give the public the benefit of his invention in consideration of a privilege to be granted him by the patent, and he discloses his invention to the Attorney or Solicitor-general, only for the purpose of enabling him to determine whether the Crown ought on behalf of the public to accept of the offer made by the inventor. The disclosure which an inventor thus makes to the officer of the Crown, is not therefore intended to be a publication of the invention to the world, but is made upon condition that his application for a patent privilege be granted, or if refused he shall not be prejudiced by the communication. The publication of a knowledge of an invention at any time before the date of a patent obtained for it, renders the patent void, as has been shown in a former part of this work (z); and to require an inventor to state the nature of his invention in detail before his opponents, would enable them to defeat his patent by publishing it to the world before the patent could be sealed. For the reasons which have been stated, the disclosure which the inventor makes to the officer of the Crown is always strictly in private, and must be deemed to be a confidential communication, unless and until the patent is granted.

Reasons for hearing opposing party in private.

The ground upon which an application for a patent is

(z) *Ante*, Chap. V. s. 2, p. 102.

generally opposed, is, that the opposing party claims to have a better right than the applicant to the invention, which he supposes to be described by the title contained in the petition.

The opposing party therefore discloses his invention to the Attorney or Solicitor-general, merely for the purpose of enabling that officer to determine whether his invention, and that of the applicant for a patent, are the same, or whether a patent for the one would in any respect interfere with a patent for the other. Such a disclosure must clearly be deemed to be confidential, and therefore must be made in private.

After hearing the parties, the Attorney or Solicitor-general will determine whether the Queen ought to be advised to grant the prayer of the petition. If he thinks that the petitioner's invention, and that of his opponent, are the same, he will not report in favour of the applicant to the prejudice of his opponent, and in such a case it is usual for the parties to join in obtaining the patent, or enter into some compromise. But if the Attorney or Solicitor-general is of opinion that the inventions are perfectly distinct, he will report in favour of the petitioner.

Attorney-general will decide whether inventions the same.

There are, however, other grounds upon which an application for a patent may be opposed; as, that the invention is already publicly known in this country, that it is not such an invention as comes within the meaning of the exception contained in the sixth section of the Statute of Monopolies (a), or that the petitioner is seeking to obtain a patent with too large a title for some improper purpose.

Other grounds upon which patent may be opposed.

If it appears that the alleged invention of the petitioner is not such as can legally be made the subject of a patent privilege, no report will be made in his favour; but it rarely becomes necessary to refuse an application for a patent on that ground.

If the patent would be illegal it will not be granted.

It is now a rule that in every opposed case, the applicant for a patent shall, if he succeed at the hearing, deposit in the chambers of the Attorney or Solicitor-general, a description of his invention, as stated by him upon the hearing, together with such drawings (if any) as may be necessary to show the general nature of it.

Description of invention to be deposited.

(a) 21 Jac. I. c. 3.



Description to be prepared before the hearing.

Every applicant for a patent ought, therefore, before the hearing, to prepare a proper statement, (with drawings, if necessary,) to be laid before the Attorney or Solicitor-general, and to be deposited in pursuance of the rule just stated, if the opposition should fail to prevent the grant of the patent. If the statement is not sufficiently definite, the petitioner will be ordered to amend it, and the Attorney or Solicitor-general's clerk will not receive any description as a compliance with the rule, unless it has been examined and approved of, and every sheet and drawing signed by the Attorney or Solicitor-general himself. The statement ought to be signed by the petitioner, or if that cannot conveniently be done, then by his solicitor or agent, who attends the hearing on his behalf.

Expediency of requiring descriptions to be deposited.

The practice of compelling an applicant for a patent to deposit a description of his invention, would be most useful if it were extended to all cases, for there can be no doubt that there are quite as many unopposed as opposed cases, in which the deposit of such descriptions would be a great protection to the public. There seems to be no reason why the inventor should not, in every case, be required to file such a description in general terms, of the nature and object of his invention, as would effectually prevent him from appropriating to himself by his specification, any thing to which his original application for a patent did not extend. The document so filed ought, of course, to be kept secret until after the patent has been sealed and the specification enrolled, after which it should be open to the inspection of the public.

Alteration of title.

When the Attorney-general is of opinion that the title of the invention is incorrect, or that it is unnecessarily large, and may be used for a fraudulent purpose, he will compel the applicant to alter it in such manner as he thinks fit. If the Attorney or Solicitor-general orders an alteration to be made in the title, the petition must be altered accordingly; and if the alteration is material the declaration must be altered so as to correspond with the petition, and redeclared before a Master (ordinary or extraordinary) in Chancery.

If decision be against the applicant no report is made.

If the determination of the Attorney or Solicitor-general be against the applicant, no report is drawn up, for the decision is, practically speaking, final, and therefore it would be useless

to incur the expense of preparing any report upon the matters of the petition.

When there is no opposition to an application for a patent, or if there is an opposition, and a decision is given in favour of the petitioner, a report is made to her Majesty in favour of the grant of the prayer of the petitioner. This report is prepared by the clerk of the Attorney or Solicitor-general (b), and it states (c) the reference by virtue of which it is made, the substance of the petition and declaration made in support of it, that as it is entirely at the hazard of the petitioner whether the invention is new or will have the desired success, and that, as it may be reasonable to encourage arts and inventions for the public good, it is the opinion of the Attorney (or Solicitor) general that her Majesty may, by her letters patent, grant unto the petitioner the sole use of his invention, if her Majesty shall be pleased so to do, with a proviso requiring a specification of the invention within a certain time after the date of the patent.

When the petitioner has declared that he intends to apply for patents for Ireland and Scotland, the time recommended to be allowed for specification of the invention is *six* calendar months; if for Ireland or Scotland only *four* calendar months will be recommended, and in other cases two calendar months only will be allowed for that purpose. The reason for allowing a longer time for specification when the party intends to apply for Scotch and Irish patents is, that those patents require a much longer time for their preparation than English patents; and if the English specification were to be enrolled before the sealing of the Scotch and Irish patents, those patents would be void, on the ground of the invention not being new, a knowledge of the invention having been previously given to the public by the enrolment of the specification (d).

Under very special circumstances, the Attorney and Solicitor-general have, in some cases, recommended a longer time than six months to be allowed to the patentee (e). But there is no recent instance of more than the usual time being

(b) The fee payable for the report is 4l. 4s.

(c) See the Form in the Appendix, Chap. II. s. 1.

(d) See *Brown v. Annandale*, 1 Webs. R. 433.

(e) See Parl. Rep. Pat. pp. 6 and 26.



granted, and it would be necessary to make out a very strong case to induce the Attorney or Solicitor-general to recommend more than six months for specifying the invention.

In order to obtain more than the usual time for the enrolment of the specification, application ought to be made to the Attorney or Solicitor-general before he makes his report to the Crown, to recommend a longer time to be allowed. It is entirely in the discretion of the Attorney or Solicitor-general whether he will recommend any additional time for completing the specification, but his recommendation is not final, for the Lord Chancellor may refuse to seal the patent if he thinks the time allowed is too long. Thus, in the case of *ex parte Heathcoat in re Lacy (e)*, fifteen months having been allowed for enrolling the specification, Lord Eldon, L. C., refused to affix the Great Seal to the patent.

Report to be taken to the Home Office.

When the report has been completed and signed by the Attorney or Solicitor-general, it will be delivered, together with the petition and declaration, to the petitioner or his agent, and all the three documents must be taken to the office of the Secretary of State for the Home Department, and left there in order to obtain the Queen's warrant.

Grant is discretionary even after a favourable report.

It is scarcely necessary to observe, that notwithstanding a favourable report by the Attorney or Solicitor-general, it is entirely discretionary with the Crown whether the desired grant shall be made or not (*f*); in practice, however, a patent is rarely refused for an invention, if the officer of the Crown advises that it should be granted.

Form of warrant.

The Queen's warrant (*g*) is directed to the Attorney or Solicitor-general, and contains her Majesty's authority to prepare a bill for the intended patent. The warrant recites the petition and the Queen's willingness to encourage all arts and inventions, which may be for the public good, and directs a bill to be prepared for her Majesty's signature to pass the Great Seal containing a grant to the petitioner of the sole use of the invention within England, Wales, and Berwick-upon-Tweed, and also, if desired, within the Channel Islands and Colonies, for the term of fourteen years, provided the petitioner, within the space of time recommended by the Attor-

(e) 29 Rep. Arts, 251.

(f) Vide *ante*, Chap. I. p. 4.

(g) See the Form in the Appendix, Chap. II. s. 1.

ney-general, cause a particular description of the invention to be enrolled in Chancery, and the warrant also directs the Attorney or Solicitor-general to insert in the bill all such clauses, prohibitions, and provisoes as are usual and necessary.

The warrant is prepared by a clerk in the Home Office (g), after which it is to be signed by her Majesty, and countersigned by one of the principal Secretaries of State, and it is usually signed by the Secretary for the Home Department, in whose office it is prepared.

Warrant prepared at the Home Office.

The warrant may usually be obtained in about a week after the report has been left at the Home Office, but the completion of it may be delayed by holidays, the absence of her Majesty from town, and many other causes.

When obtained.

When the warrant has been completed, it will be delivered to the petitioner or his agent, upon his calling at the Home Office, and he must take it to the Patent Bill Office of the Attorney and Solicitor-general, which is usually but incorrectly called the Patent Office (h). The warrant will be entered by the clerk of the office or his deputy, and then delivered to the engrossing clerk to prepare the bill, after which the warrant is filed and kept in that office.

Warrant to be taken to Patent Bill Office.

The Patent Bill Office is an office of the Attorney and Solicitor-general for the preparation of bills for patents which are to pass the Great Seal. The clerks of the Patent Bill Office (i) are in fact the deputies of the Attorney and Solicitor-general, and as their deputies, they prepare all bills for patents, which those officers are, by warrant from the Crown, directed to prepare. And upon receiving a warrant for a bill, the engrossing clerk will prepare it as of course, if no caveat has been entered against it.

Patent Bill Office is an office of the Attorney-general for preparing bills.

The grant of a patent may now again be opposed at this stage of the proceedings, and such an opposition is usually

The grant of a patent may be opposed at the bill.

(g) The fees payable at the Home Office for a warrant in ordinary cases amount to 7*l.* 13*s.* 6*d.*; if there be more than one patentee there will also be a further fee of 1*l.* 7*s.* 6*d.* for each additional name; and if the patent is to extend to the Colonies and Channel Islands there will be an additional fee of 1*l.* 7*s.* 6*d.* The warrant is liable to a stamp duty of 1*l.* 10*s.*; but it is not stamped until after it is signed, and the

practice is for the clerk of the Patent Bill Office to get the instrument stamped.

(h) This office (which is in Serle Street, Lincoln's Inn) must not be confounded with the office which is properly called the Patent Office, or Letters Patent Office (Quality Court, Chancery Lane), in which patents are engrossed and prepared for passing the Great Seal.

(i) The offices are in the gift of the Attorney-general for the time being.



called an opposition at the bill. Any person may oppose a patent at this stage whether he has opposed it at the previous stage or not, and for that purpose he must enter a caveat at the Patent Bill Office, which may be done at any time before the bill has received the signature of the Attorney or Solicitor-general.

Caveat to be entered at the Bill Office.

Object of entering a caveat at Bill Office.

The object of entering a caveat is twofold: *firstly*, that the bill may not be signed without the knowledge of the party who enters it; and *secondly*, to prevent the preparation of the transcripts of the bill until the opposition is disposed of, so that the party who opposes shall not have to pay the cost of the transcripts, if it be decided that the patent cannot be granted.

Form of caveat.

The caveat (*k*) is in substance a request that a bill for a patent to the petitioner for the particular invention, may not be granted without notice to the person who enters it, and the caveat being against the grant of a specific thing to a particular person named, it is called a specific caveat,—a caveat at the previous stage (the Attorney or Solicitor-general's chambers) being on the contrary a general caveat.

To be entered with clerk.

The caveat is to be entered with the clerk of the Patent Bill Office, or his deputy, and he will send a copy or notice of the caveat to the chambers of the Attorney and Solicitor-general (*l*).

Bill prepared by clerk of Patent Bill Office.

The warrant from the Crown for the preparation of a bill for a patent, is directed to the Attorney or Solicitor-general, and it is the duty of the officer to whom the warrant is delivered to see that the bill is prepared in accordance with the directions which are contained in the warrant. The Attorney or Solicitor-general does not, however, in ordinary cases, personally superintend the preparing or settling of the bill for a patent, the duty being performed by the clerks of the Patent Bill Office, as his deputies (*m*).

The established form of patent

The bill is prepared by the engrossing clerk of the Patent

(*k*) See the Form in the Appendix, Chap. II. s. 1.

(*l*) The fee for entering the caveat is 1*l.* 1*s.*

(*m*) The fees payable at the Patent Bill Office for the bill including stamp, amount to 15*l.* 16*s.* in ordinary cases; if there are two or more inventors there

is a further fee of 2*s.* 6*d.* to be paid for every additional name; and if the patent is to extend to the Channel Islands and Colonies or any of them, there will be an additional fee of 2*s.* 6*d.* The stamps amount to 6*l.*, which includes 1*l.* 10*s.* for the stamp to be impressed upon the warrant.

Bill Office, who adheres strictly to the established form in which the Crown has been accustomed to grant the sole use of inventions, and inserts, as directed by the warrant, "all such clauses, prohibitions, and provisoes, as are usual and necessary" (*n*), varying them indeed in some particulars when, according to the circumstances of the case, the patent grant is to be made to an actual inventor, or to a person who is an importer of a foreign invention;—or where the grant is to extend only to England, Wales, and Berwick-upon-Tweed; or where it is also to extend to the Channel Islands and Colonies.

In preparing the bill, the clerk first copies the address or direction (*o*), and then the recital from the Queen's warrant, after which follows the grant, and other clauses in the usual form, as already mentioned.

The officers of several departments of the public service sometimes require the insertion of a reservation of a right to use the invention, and in such a case the special clause or clauses to be inserted in the patent are settled by the officers of the Crown requiring the reservation, and furnished to the engrossing clerk at the Patent Office, who will submit the clause to the Attorney or Solicitor-general, and if approved of by him, insert it in the patent.

When it becomes necessary to make any alteration in any part of the ordinary form of bill for a patent, the alteration must be specially approved of and ordered by the Attorney or Solicitor-general before it can be made.

The bill for the intended patent (*p*) contains the whole of the instrument precisely as it is intended to be made, with the exception of the formal conclusion, instead of which the words, "In witness, &c. Witness, &c." are written at the end of it.

The bill is always written upon parchment (*q*), and at the foot of it is written the word "Examined," opposite to which the Attorney or Solicitor-general is to sign his name, in order to

(*n*) As to the Form and Construction of a Patent, and its several clauses, see Chap. IV. p. 36.

(*o*) Vide *ante*, p. 40.

(*p*) See the Form in the Appendix,

Chap. II. s. 1.

(*q*) A stamp duty of 17. 10s. must be impressed upon the bill, and upon each of the transcripts prepared for the signet and privy seal.

Reservations in favour of the Crown.

Form of patent how altered.

Bill contains the whole of intended patent.

Bill to be written upon parchment and signed by Attorney-general.



testify that the bill has been prepared under his authority, and in the form which he approves of.

Docket to the bill.

Underneath the bill is also to be written a docket, or statement, certifying her Majesty of the nature, form, and effect of the intended grant, that all such clauses, prohibitions, and provisoes, are inserted in the bill, as are usual and necessary in grants of the like nature, and that the bill has been prepared by warrant under her Majesty's sign manual, and countersigned by the Secretary of State (r). This docket or statement is also to be signed by the Attorney or Solicitor-general before the bill is taken to the Home Office.

Bill sent to Attorney-general for signature.

The bill having been thus prepared at the Patent Bill Office, it will be taken by the engrossing clerk to the chambers of the Attorney or Solicitor-general for his signature to the bill and to the docket, and it is immaterial which of them signs it. If the bill is not opposed, the clerk to the Attorney or Solicitor-general will get the bill and docket signed by that officer, and return it to the engrossing clerk, who will take it back to the Patent Bill Office.

But when the patent is opposed at the bill, the bill, when prepared as already stated, will be marked "OPPOSED" by the engrossing clerk, and will be left at the chambers of the Attorney or Solicitor-general, in order to have the opposition disposed of, and it is the practice to take it to the chambers of the officer who reported in favour of the grant of the patent. The Attorney and Solicitor-general, however, frequently hear cases and sign bills for each other.

As soon as a bill against which a caveat has been entered is received from the engrossing clerk at the chambers of the Attorney or Solicitor-general, his clerk sends notice to the clerk of the Patent Bill Office, who immediately sends notice, by post, to each person who has entered a caveat against the patent, informing him that the bill has been lodged for signature, and also informing him of the time within which an opposition must be entered and a deposit made.

Opposition must be entered

If a person who has entered a caveat at the Patent Bill

(r) See the Form in the Appendix, Chapter II. s. 1.

Office intends to oppose the grant of the patent, he must enter his opposition at that office within three days after the date of the notice which he receives from that office, or the patent will be allowed to proceed. And a person entering a caveat after the warrant has been lodged, must, if he receives notice at the time of the warrant having been received, immediately enter his opposition, or the proceedings for obtaining the patent will not be stayed. within three days after notice.

A person, who has entered a caveat, may, however, enter an opposition to a patent at the Patent Bill Office, at any time before the bill has actually been signed by the Attorney or Solicitor-general, but an opposition will not be entertained afterwards, although the signed bill has not been delivered to the petitioner or his agent. Any person may enter opposition before bill signed.

A person who intends to oppose at this stage, must also, when he enters his opposition, deposit the sum of 30*l.* as a security for costs; and if he fails to do so, he cannot be heard in opposition to the grant of the patent to the petitioner, and the bill will be prepared as of course. Person opposing must deposit 30*l.*

The reason why this deposit is required is, that if a person intends to oppose the grant of a patent for any particular invention, he ought to be sufficiently vigilant, and make his opposition in the first instance at the report, as it is called (*s*), that is, when the applicant comes to the Attorney or Solicitor-general for a report upon his petition. And if a person who has good ground for opposing the grant of a patent is guilty of *laches*, and by his negligence causes the applicant for a patent to incur costs which would be unnecessary if he had opposed at an earlier stage, it is but just that he should pay the unnecessary costs which he has in fact caused, if he succeeds in his opposition. And if a person opposing fails to make out a sufficient case against the applicant upon the hearing of the opposition, it is but fair that he should pay the applicant the costs of the hearing which the opposition has made necessary. Reason why deposit required.

By compelling a person who seeks to oppose at this stage, first to deposit a sufficient sum as a security for costs, the Attorney or Solicitor-general acquires the means of awarding

(*s*) Vide *ante*, p. 512.



such amount of costs as he may think just, to the party whose petition is opposed.

Entry of opposition.

In order to enter an opposition to a patent at the bill, the party opposing, his solicitor or agent, should prepare a note of the opposition stating the name and address of the opposing party, and that he opposes the grant of a bill for the patent. This note should be taken to the Patent Bill Office, and the required amount (30*l.*) deposited with the clerk of that office, or his deputy, as a security for costs, who will then file the note and enter the opposition, of which he will send notice to the chambers of the Attorney or Solicitor-general.

If opposition entered a summons must be obtained.

If the grant of a patent is opposed at this stage, and the party opposing has made the necessary deposit, and entered his opposition, the patent will not be allowed to pass until the opposition has been disposed of, and the petitioner must, in order to proceed with the patent, procure from the clerk of the Attorney or Solicitor-general an appointment for a hearing before that officer, taking care that sufficient time is allowed for serving the summons upon the opposing party to attend the hearing. The Attorney or Solicitor-general's clerk will prepare a summons for the opposing party to attend the hearing, and transmit it to the Patent Bill Office, where it will be delivered to the petitioner or his agent, by whom a copy of it must be served upon the opposing party.

Service of summons.

The summons must be served upon the opposing party, or sent to him by post, so that it may be received three clear days before the day appointed for the hearing.

Hearing.

The hearing at this stage is conducted in precisely the same manner as the hearing of an opposition at the report which has already been described (*t*).

Decision.

If the opposition is successful, all further proceedings for obtaining the patent will be stayed, but if not the bill will be signed and passed as of course.

Deposit of description.

If the patent is to be granted, the applicant must deposit a description of his invention if he has not previously done so upon an opposition at the report (*u*), and if the previous description is found to be insufficient, it will be ordered to be amended.

(*t*) *Ante*, p. 513, 514.

(*u*) *Vide ante*, p. 515.

Although a party opposing a patent at this stage has been Costs. compelled to make a deposit as a security for costs, yet the Attorney or Solicitor-general may in his discretion either give or refuse costs as he may think fit. The general rule, however, is, that when an opposition succeeds, the petitioner for the patent is allowed the amount which he has paid for the report, the Queen's warrant, the bill, the summons and hearing, and his agency fees (*x*). And when the determination upon the hearing of an opposition is in favour of the applicant for a patent, then the opposing party must pay the petitioner's fees payable for the hearing (*y*), as well as his own costs of the opposition.

When the opposition has been disposed of, the clerk of the Patent Bill Office will (unless otherwise directed by the At- Petitioner paid his costs and balance returned to opposing party. torney or Solicitor-general) pay the petitioner the amount he is entitled to under the general rule just mentioned, and, after also deducting the fees payable by the party who opposed the patent, return the residue of the 30*l.* to him.

The amount of the costs to be allowed to an applicant for a patent after disposing of an opposition at the bill, will be determined by the clerk of the Patent Bill Office, according to the result of the hearing, and the rules already mentioned; but if either party is dissatisfied with the determination of the clerk, he may appeal to the Attorney or Solicitor-general before whom the matter of the opposition was heard. Amount of costs determined by clerk, subject to appeal.

The bill is now ready for delivery, and may be obtained at the office upon application by the petitioner, his solicitor or agent, by whom it must be taken to the office of the Secretary of State for the Home Department (*z*). To be taken to Home Office.

The bill will then be laid before her Majesty by the Secretary of State for the sign manual, which is always affixed at Bill receives the sign manual. the commencement of the instrument.

(*x*) The amount allowed the petitioner in ordinary cases is 18*l.* 10*s.* 6*d.*—being 4*l.* 4*s.* for the report; 7*l.* 13*s.* 6*d.* for the warrant; 1*l.* 1*s.* for the bill; 3*l.* 10*s.* for the warrant and hearing; and 2*s.* 2*s.* for agency fees.

(*y*) The amount usually allowed is 3*l.* 10*s.* for the petitioner's hearing and summons; the opposing party must also pay 3*l.* 5*s.*, the fees for the hearing of his opposition, which will also be de-

ducted from the 30*l.*

(*z*) The fees upon the bill at the Home Office amount to 7*l.* 13*s.* 6*d.* in ordinary cases; if the patent is to be granted to more than one person there will be a further fee of 1*l.* 7*s.* 6*d.* for each additional name; and if the patent is to extend to the Channel Islands and Colonies, or any of them, there will be an additional fee of 1*l.* 7*s.* 6*d.*



Bill then becomes the Queen's bill.

The bill when thus completed by the sign manual is called "The Queen's bill," and it is returned to the Secretary of State's office, where an entry of it will be made in a book kept for that purpose, and then the instrument will be delivered to the petitioner, his solicitor, or agent, upon application at the Home Office.

Transcripts of bill sent to Signet and Privy Seal Offices.

After the clerk of the Patent Bill Office has prepared the bill in the manner already described, he also prepares two transcripts of it on parchment (*a*), one of which he sends to the Signet Office, and which is intended to become the signet bill, and the other he sends to the Privy Seal Office to be afterwards made the Privy Seal bill, or writ of Privy Seal.

Queen's bill to be taken to Signet Office.

When the Queen's bill has been obtained from the Home Office, it must be taken to the Signet Office (*b*) to be passed (*c*). The signet is a royal seal which is always in the custody of the Secretary of State, and he has clerks under him called Clerks of the Signet (*d*), to whom are assigned the office of passing the Queen's bills to the Privy Seal (*e*), and which by the statute of 27 Hen. VIII. c. 11, s. 1 (*f*), they are directed to do within eight days after the Queen's bill is received at the Signet Office.

Queen's bill filed at Signet Office.

The Queen's bill is filed at the Signet Office as the warrant to the clerk of the signet in attendance (*g*), for preparing and issuing the signet bill to the Lord Privy Seal (*h*).

Signet bill.

In order to prepare the signet bill (*i*), the clerk of the signet takes the transcript of the bill prepared and transmitted to him from the Patent Bill Office, as already men-

(*a*) Each transcript must be impressed with a stamp duty of 1*l.* 10*s.*

(*b*) No. 28, Abingdon-street, Westminster.

(*c*) Stat. 27 Hen. VIII. c. 11, s. 1. See the statute in the Appendix, Chap. I. s. 1.

(*d*) 2 Inst. 556.

(*e*) See the statutes 57 Geo. III. c. 63, and 2 & 3 Will. IV. c. 49, respecting the offices of the clerks of the signet.

(*f*) See the statute in Appendix, Chap. I. s. 1.

(*g*) There were formerly four clerks of the signet who attend in person or by deputy in rotation for three months at a time; but the office of one of them

has been abolished, and there are now only three clerks, each of whom attends in person, or by deputy, for four months during the year. The business of the office is, however, chiefly transacted by the record clerk.

(*h*) See 8 Co. R. 18 b.

(*i*) The fees payable for a signet bill for a patent to be granted to one person amount to 4*l.* 7*s.*; if to more than one person 5*l.* 18*s.* 6*d.* extra is payable for every additional name, and if the patent is to extend to the Colonies and Channel Islands, the additional fees amount to 13*s.* 6*d.* The expedition fee is 1*l.* 11*s.* 6*d.* for which the signet bill may be passed the same day the Queen's bill is taken to the office.

tioned, and after examining it with the Queen's bill, and thus ascertaining that the transcript is a correct copy of the bill, he writes above it a command in the Queen's name to the Lord Privy Seal, to issue the Privy Seal bill to the Lord Chancellor commanding him to make the intended patent.

Below the bill the clerk writes some words to testify that the command given is made under her Majesty's signet and the date of the bill, and then in pursuance of the statute (*k*), he subscribes his name to the bill. On the outside of the bill is also written a direction to the Lord Privy Seal (*l*).

A docket of the bill having been entered in the docket book of the Signet Office, stating the name of the intended patentee, and the substance of the grant, the bill is taken by one of the clerks in that office to the office of the Secretary of State for the Home Department, where it is to be sealed with the signet, and then it is to be taken back to the Signet Office. Bill to be sealed at Home Office.

An opposition to a patent is now never made at the signet bill, but the writer has been informed at the Signet Office that caveats were formerly entered in that office; and there can be no doubt that any person may oppose the grant of a patent at that as well as at every other stage of the proceedings for obtaining it. The opposition would however be referred by the Secretary of State to the Attorney or Solicitor-general, and therefore, if the patent has been previously opposed, the opposition at this stage would only produce a rehearing before the same officer. And as a party would gain no advantage by such a rehearing, or by an opposition at the signet bill instead of any preceding stage, oppositions at this stage have fallen into disuse. Opposition at Signet bill.

When the signet bill has been completed in the manner already described, it is to be taken to the Privy Seal Office, in order to procure the Privy Seal bill or writ of Privy Seal, and as the Signet Office and Privy Seal Office are at present both in the same building (*m*), it is usual for a clerk in the Signet Office to take the signet bill to the Privy Seal Office, when it has been completed. Signet bill sent to Privy Seal Office.

The signet bill being received in the Privy Seal Office, the Privy Seal bill

(*k*) 27 Hen. VIII. c. 11, s. 1. Appendix, Chap. I. s. 1.

Appendix, Chap. II. s. 1.

(*l*) See the Form of the bill in the

(*m*) No. 28, Abingdon-street, Westminster.



to be prepared in eight days. clerk of the Privy Seal is, in pursuance of the statute 27 Hen. VIII. c. 11, s. 2, to prepare the Privy Seal bill within eight days afterwards, unless he is otherwise commanded by the Lord Privy Seal (m).

Patent may be opposed at the Privy Seal. The grant of a patent may again be opposed when the bill comes to the Lord Privy Seal (n). For although the signet bill commands the Lord Privy Seal to issue her Majesty's warrant or writ to the Lord Chancellor to make the letters patent, yet the command is to be understood as a qualified command; that is, that his Lordship is to issue the warrant or writ if it be legal or just so to do.

Caveat at Privy Seal Office. In order to oppose the proceedings for a patent before the Lord Privy Seal, the party opposing it must enter a caveat (o) and opposition at the Privy Seal Office, in the same manner as at the Patent Bill Office (p).

Before whom opposition heard. An opposition at this stage has sometimes been heard before the Lord Privy Seal himself, and at other times he has referred the matter to a committee, or officer, to consider and report to his Lordship (q).

The Privy Seal is now seldom delivered to a lawyer, and therefore oppositions to patents at this stage have become of very rare occurrence; but the power remains, and if the Lord Privy Seal were a lawyer, it is probable that oppositions would frequently be made before him instead of the Lord Chancellor, as being less expensive and likely to be more expeditiously disposed of.

Privy Seal bill, how prepared. In the absence of any caveat, or opposition, the clerk of the Privy Seal, in order to prepare the writ of Privy Seal, or Privy Seal bill, having examined the transcript of the bill sent from the Patent Bill Office and compared it with the signet bill, writes above the former her Majesty's command to the Lord Chancellor, that under the Great Seal in his custody, he cause her Majesty's letters to be made patent in the form which follows (r). And underneath the bill he writes, "Given under our Privy Seal at our Palace at Westminster," and also the date when the Privy Seal is affixed to the instrument (r).

(m) See the statute in the Appendix, Chap. I. s. 1.

(n) *Ex parte Daly*, Vern. & Scriv. 499.

(o) See the Form in the Appendix,

Chap. II. s. 1.

(p) *Vide ante*, p. 524.

(q) *Ex parte Daly*, Vern. & Scriv. 502.

(r) See the Form in the Appendix,

Chap. II. s. 1.

To the Privy Seal bill thus prepared, the clerk of the Privy Seal, subscribes his name in pursuance of the statute 27 Hen. VIII. c. 11, s. 2, and an entry or docket of it is then to be made in the docket book of the office, stating the name of the grantor, the substance of the grant, and the date of the Privy Seal bill. Bill to be subscribed by clerk.

Documents to be sealed with the Privy Seal, which are addressed to particular officers or persons, are always folded, so that when sealed the contents may be completely concealed (*r*). The Privy Seal bill is therefore folded in this manner by the clerk, with a label attached to it and exposed to view, directed to the Lord Chancellor, to whom the bill or writ is to be delivered. Bill folded so as to conceal contents.

There is a public seal day on Friday in every week, at which Privy Seal bills may be sealed, but a bill may be sealed at a Private Seal, on any other day on payment of an additional fee (*s*). Public seal on Friday.

In order to procure a Privy Seal bill to be sealed on the public seal day, the signet bill must be taken into the Privy Seal Office on the day before the seal day; but a Privy Seal bill will be prepared and sealed the same day that the Signet bill is delivered at the Privy Seal Office, upon payment of an expedition fee (*t*). Privy Seal bill when prepared.

The Privy Seal being in the custody of the Lord Keeper of it, all bills and other instruments which are to be sealed with the seal, must be taken to his Lordship, and when he is out of town, the instruments are forwarded to him by post to be sealed by one of his officers. Privy Seal bill, how sealed.

The Privy Seal bill having been sealed is taken back to the Privy Seal Office, where the signet bill is filed, as the Lord Privy Seal's warrant for what he has done in pursuance of it (*u*). Signet bill filed at the Privy Seal Office.

When the Privy Seal bill, or writ of Privy Seal, has thus been completed, it will be delivered to the petitioner, his solicitor, or agent, upon application at the Privy Seal Office,—to be taken into Chancery (*x*). Privy Seal bill delivered to applicant.

(*r*) Grants which pass under the Privy Seal only, are called letters of Privy Seal, and are not folded as mentioned above, but are left open like a patent.

(*s*) Vide 2 Inst. 556; 8 Co. R. 18, b.

(*t*) 2*l*.

(*u*) 1*l*. 11*s*. 6*d*.

(*x*) The fees payable at the Privy

Seal Office upon a patent to a single person for England and Wales amount to 4*l*. 2*s*.; if to more than one person 5*l*. 18*s*. 6*d*. extra is payable for each additional name, and a further fee of 13*s*. 6*d*. is to be paid if the patent is to extend to the Colonies and Channel Islands, or any of them.



Privy Seal bill  
to be taken to  
Patent Office.

The Privy Seal bill is to be taken to the Patent or Letters Patent Office (*t*), and left with the clerk of that office, or his deputy, by whom the letters patent are to be prepared, and he will take off the Privy Seal (which he must do to open the instrument) and indorse upon it the day of the month when he receives it.

Subsequent  
proceedings are  
in Chancery.

After the delivery of the Privy Seal bill to the clerk of the patents, the whole of the proceedings for obtaining a patent take place on the Common Law side of the Court of Chancery (*u*), of which the Lord Chancellor is sole Judge (*x*). And there are several officers of this Common Law side of the Court whose duty it is to prepare, seal, and enrol letters patent and other instruments which pass the Great Seal; as, the clerk of the patents (*y*), the sealer or sigillator (*z*), the chafe wax (*a*), and the clerk of the enrolments (*b*).

Making a patent  
is a judicial act.

It is the delivery of the Great Seal which constitutes the Lord Chancellor sole judge of the Court of Chancery, and the making of a patent by affixing the Great Seal, is a judicial act by which the Lord Chancellor, as Judge of the Queen's Court of Chancery, makes a record of the Queen's grant in pursuance of her command (*c*).

Patent may be  
opposed at the  
Great Seal.

The grant of a patent may be again opposed when the petitioner comes to the Lord Chancellor to have it made under the Great Seal, in pursuance of the writ of Privy Seal,—for, as it has already been shown (*d*), the command contained in the writ of Privy Seal must be understood as being conditional, and that the Lord Chancellor is only to make the patent if he shall be of opinion that the proposed grant will not be illegal or unjust.

Caveat.

When a person intends to oppose a patent at the Great Seal, he must enter a caveat (*e*) at the Patent Office, against affixing the Great Seal to the patent (*f*). If such a caveat be entered before the Privy Seal bill comes into the Patent Office, the person who enters the caveat will be entitled to

(*t*) In Quality Court, Chancery Lane.  
(*u*) See 1 Shep. Abr. tit. Court, p. 464.  
(*x*) 4 Inst. 80, 84.  
(*y*) 1 Shep. Abr. tit. Court, pl. 14, p. 467; 4 Inst. 82.  
(*z*) 2 Inst. 554; 4 Inst. 82; 1 Shep. Abr. p. 467.

(*a*) 4 Inst. 82; 1 Shep. Abr. p. 467.  
(*b*) 1 Shep. Abr. p. 467.  
(*c*) Vide *ante*, Chap. IV. p. 37.  
(*d*) *Ante*, Chap. IV. p. 38.  
(*e*) See the Form in the Appendix, Chap. II. s. 1.  
(*f*) The fee for entering a caveat is 10s.

receive notice by post from the Patent Office of the Privy Seal bill having been lodged at that office.

A caveat may however be entered at the Patent Office against a patent, at any time before the Great Seal has actually been affixed to the patent, and if it be entered after the Privy Seal bill has come into the office, notice of that fact will be given to the person who enters the caveat at the time of entering it.

The caveat which is thus to be entered at the Patent Office, is a specific caveat against a particular grant; and although it was formerly the practice to receive and enter general caveats at that office, in precisely the same way that such caveats are now entered at the chambers of the Attorney and Solicitor-general, that practice was abolished by order of Lord *Brougham*, L. C., and no general caveat can now be entered at the Patent Office against a patent for an invention.

A caveat has the effect of staying all proceedings respecting the patent during the three days allowed to the party for entering an opposition.

When notice is sent to a person who has entered a caveat, he is (in effect) allowed three days to determine whether he will oppose the patent or not, and if he intends to oppose the preparation and sealing of the patent in pursuance of the Privy Seal bill, he must enter an opposition on or before the expiration of the third day after the date of the notice, or the patent will be allowed to pass as of course. But when a person who enters a caveat, receives notice at the time of entering it, that the Privy Seal bill has already been lodged at the Patent Office, he must then enter an opposition, or the patent will be passed as of course.

An opposition to a patent may, however, be entered at any time before the patent has actually been sealed with the Great Seal.

The opposition to a patent at this stage must be entered at the Patent Office with the clerk of the patents, and it will have the effect of preventing any proceedings from being taken upon the Privy Seal bill, if none have been taken at the time it is entered; or if the opposition is not entered until after the preparation of the patent has been commenced, the entry



will have the effect of staying all further proceedings, until the opposition is disposed of, and the Lord Chancellor orders the patent to be prepared and sealed.

Applicant must  
petition to have  
the patent  
sealed.

Form of peti-  
tion.

In order to discharge the caveat and remove the stop (as it is called) to the preparation and sealing of the patent, the applicant for the patent must prepare a petition stating all the facts and proceedings, and praying that letters patent may be made and sealed in pursuance of the writ of Privy Seal. The facts to be stated in the petition respecting the invention, will be the same as those stated in the petition to the Crown, and it must also be shown, that the petitioner applied by petition to the Queen, that all the necessary proceedings have been taken, that the writ of Privy Seal has been lodged at the Patent Office, and that the preparation or sealing of the patent has been prevented, by a caveat and opposition entered at the same office.

Affidavits.

The material allegations of this petition must be supported by affidavit, to be sworn before a Master (ordinary or extraordinary) in Chancery (*g*).

Petition to be  
lodged at  
Patent Office.

The petition, together with the affidavits, must be lodged at the Patent Office, and the clerk of the patents will procure the petition to be answered by the Lord Chancellor (*h*), directing it to be put in the paper for the next petition day, and the petitioner or his solicitor must immediately afterwards serve his opponent with a copy of the petition and answer.

Affidavits of  
party opposing.

If the party opposing wishes to bring any additional facts before the Lord Chancellor, he must do so by affidavit, sworn before a Master in Chancery, and filed at the Patent Office.

Office copies.

Each party may obtain office copies of his opponent's affidavits, or any other documents filed at the Patent Office, in the ordinary way (*i*).

Solicitors to be  
employed in  
opposed cases.

Parties soliciting an opposed patent at this stage, and the party opposing must conduct their proceedings in person, or employ a solicitor of the Court, for patent agents who are not solicitors cannot legally conduct any proceeding in Chancery.

(*g*) An affidavit to be used on the Common Law side of the Court of Chancery, ought not to be sworn before the clerk of the Affidavit Office, for he is an officer of the Equity side of the Court only.

(*h*) The fees for this amount to

13s. 6d. being the same as upon Chancery petitions.

(*i*) The cost of office copies is the same as for other office copies in Chancery, which at present is four pence for every Chancery folio of ninety words.

It is usual to apply to the Lord Chancellor to have the petition advanced, and to have a day appointed for hearing the matters of the petition and opposition, and his Lordship will generally appoint an early day for that purpose.

Appointment of hearing.

The hearing sometimes takes place in the Lord Chancellor's private room, and his Lordship will, *if necessary*, hear each party separately and in private (*h*). In one case (*i*), there was a hearing in public; his Lordship then saw the parties and their models, and afterwards gave his judgment in open Court.

Hearing sometimes in private.

But the parties will be heard in the presence of each other, or in public, if such a hearing will not prejudice either of them. Thus, in *Cutler's* case (*h*), the opposing party did not intend to obtain a patent for his invention, and he was therefore desirous that each party should be heard in the presence of the other, in order that he (the opposing party) might have the advantage of knowing what the petitioner's invention was, and judging whether it was such an invention as might be legally made the subject of a patent privilege. And as the petitioner had of course previously delivered the Privy Seal bill into Chancery, the Lord Chancellor was able to make a patent bearing date prior to the day of the hearing, and therefore the petitioner could not be materially prejudiced if his application for a patent was granted. For these reasons, each party was heard in the presence of the other, upon the reference by the Lord Chancellor to the Attorney-general, and afterwards before the Lord Chancellor himself.

Parties heard in presence of each other, or in public in some cases.

The Lord Chancellor will generally refer the matters of the petition and opposition to the Attorney or Solicitor-general to report specially to his Lordship respecting the facts, and the propriety of granting the prayer of the petition (*l*), and direct the petition to stand over until after the report has been made.

Reference to Attorney-general.

Upon such a reference the Attorney or Solicitor-general must have copies of the petition and affidavits laid before him, and he will appoint a day for hearing the parties, when he will

Hearing before Attorney-general.

(*h*) See the reasons given, *ante*, p. 514, for a hearing in private before the Attorney or Solicitor-general.

(*i*) *Ex parte Fox*, 1 V. & B. 67.

(*k*) 1 Webs. R. 418.

(*l*) *Ex parte Henson in re Alcock*, 1 Webs. R. 432; *in re Cutler*, 1 Webs. R. 418.



hear the parties and their counsel separately, or in the presence of each other, according to the circumstances of the case.

Order on report.

If the parties are satisfied with the Attorney or Solicitor-general's report, the Lord Chancellor will, as of course, make an order in accordance with the recommendation contained in the report.

Hearing after report.

But if either party is dissatisfied with the Attorney or Solicitor-general's decision, he must prepare a petition to the Lord Chancellor, stating his exceptions to the report, and lodge it at the Patent Office to be answered and put in the paper in the manner already mentioned, and upon application to the Lord Chancellor, his Lordship will appoint a day when he will hear the parties and their counsel, and dispose of the petitions as he may think just.

Cutler's case.

In *Cutler's case* (m) there had been no opposition at any prior stage of the proceedings, and upon a petition to discharge a caveat at the Patent Office, and to seal the patent, Lord *Cottenham*, L. C., ordered the matters of the petition to be referred to the Attorney-general to enquire and report to the Lord Chancellor whether the patent ought to issue, that all parties should be restrained from doing any act respecting the invention until after the report, and that if the Attorney-general should report that the patent ought to issue, it should be sealed as of the 12th March, being the day the patent would have been sealed if there had been no caveat. The Attorney-general reported to the Lord Chancellor that he was of opinion that the patent ought not to issue, and the petitioner being dissatisfied with the Attorney-general's determination, presented another petition to the Lord Chancellor to seal the patent, stating the grounds upon which he excepted to the Attorney-general's report, and the petition was also supported by further affidavits. This petition was heard before the Lord *Cottenham*, L. C., and his Lordship ordered the patent to be sealed as prayed.

Cases of *Samuda* and *Griffiths*.

In two recent cases, *in re Samuda*, and *in re Griffiths*, each party was applying for a patent for an invention which had previously been made the subject of a *specified* patent

(m) 1 Webs. R. 418.

granted to Mr. Samuda for Scotland (n), and each party had gone through all the preliminary proceedings for obtaining a patent without opposition, but when they came to the Patent Office, each party was opposed by a caveat entered by the other. Each party then petitioned the Lord Chancellor to seal his patent, and his Lordship referred both petitions to the Solicitor-general to enquire and report whether the patents, or either of them, ought to issue. The Solicitor-general, after hearing counsel for each of the parties, reported that the invention had already been published in the United Kingdom, (in Scotland,) and therefore, according to the decision in *Brown v. Annandale* (o), it could not legally be made the subject of a patent, and that no patent ought to be granted to either of the petitioners. The petitioner *Griffiths* being dissatisfied with the Solicitor-general's report presented a second petition stating his exceptions to the report, and praying that his patent might be sealed. The matters of these petitions were heard before Lord *Lyndhurst*, L. C., when his Lordship held, that the invention having been published in another part of the realm, it could not be made the subject of a patent privilege in England, and that neither of the patents could be sealed.

In *ex parte Dyer* (p), it appeared that a person had *Ex parte Dyer.* applied for a patent, and another person had subsequently applied for a patent for the same object. In consequence, however, of the progress of the first application having been delayed, the second applicant was in advance of the other, and in a position to seal his patent first, and Lord *Eldon*, L. C., held, that in concurrent applications for a patent, for the same object, that which obtains the Great Seal first, will have the sole right at Law, and his Lordship said, "I can see no other mode of deciding, than by awarding the patent to him who runs the quickest through the process."

The Lord Chancellor has jurisdiction (as Judge of the Costs. Court of Chancery) to give costs to parties who appear before him upon petitions to seal patents.

In the case of *ex parte Fox* (q), Lord *Eldon*, L. C., re- *Ex parte Fox.*

(n) See *Brown v. Annandale*, 1 Webs. R. 433.

(o) 1 Webs. R. 433.

(p) Parl. Rep. on Pat. 1829, p. 197, and *Holroyd on Pat.* 59, S. C.

(q) 1 V. & B. 67.



refused to give the petitioner his costs, on the ground that his Lordship did not think that the opposition was unreasonable. But *in re Alcock* (r), Lord Brougham, L. C., granted the petitioner his costs, and Lord Cottenham, L. C., ordered the opposing party to pay the petitioner's costs in *Cutler's case* (s). So also in *Nickel's case* (t), Lord Cottenham, L. C., ordered a party petitioning to have an altered patent resealed, to pay the costs of a party who had entered a caveat, and successfully opposed the petition.

*In re Alcock.*

*Cutler's case.*

*Nickel's case.*

*Cutler's case.*

Taxation of costs.

In *Cutler's case* (u), the costs of Cutler, the petitioner, were taxed in the ordinary manner as between party and party, and the petitioner being dissatisfied with the taxation, presented a petition to the Lord Chancellor, stating that by the taxation, the travelling expenses of the petitioner and his solicitor, incurred in procuring evidence, certain fees to counsel, scientific men, &c. &c. were disallowed, and praying that it might be referred back to the Master to review his taxation, and to allow the petitioner all costs, charges, and expenses reasonably incurred in consequence of the opposition to the patent. The petition was heard before Lord Cottenham, L. C., who dismissed it with costs.

If patent refused, no order drawn up unless costs ordered.

If the Lord Chancellor decides that a patent ought not to be sealed in pursuance of the Privy Seal bill, it is unnecessary to draw up any order unless the petitioner is directed to pay the opposing party his costs. But the clerk of the patents records the Lord Chancellor's judgment by an indorsement on the Privy Seal bill, which is filed of record in the Patent Office.

If patent to be granted or costs paid, an order is drawn up.

When the Lord Chancellor grants the prayer of a petition to have a patent sealed, or refuses it, and orders the petitioner to pay his opponent's costs, an order must be drawn up for giving effect to the Lord Chancellor's judgment. The order will be drawn up by the clerk of the patents, who will also procure the Lord Chancellor's signature to it (v). The order is filed in the Patent Office.

If no caveat, patent pre-

If no caveat or opposition has been entered at the Patent

(r) Cit. 4 My. & Cr. 511, and Webs. on Pat. p. 134 (101).

(s) 1 Webs. R. 418.

(t) Turn. & Phil. 36; 1 Webs. R. 656; but not reported in the point

above stated, vide ante, p. 218.

(u) 4 M. & Cr. 510.

(v) The cost of the order varies according to the length of it.

Office against the sealing of a patent, it will be prepared and sealed, as of course, in pursuance of the Privy Seal bill, or writ of Privy Seal. If the patent has been opposed, and the Lord Chancellor upon petition has decided that the patent must be granted, it will be prepared and sealed as soon as his Lordship's order for that purpose has been drawn up and signed.

pared as of course.

If patent opposed, it will be sealed as soon as order made.

When the patent is to be prepared, the clerk of the patents in the first place writes the *recepti* in the margin of the Privy Seal bill, stating the day when the Lord Chancellor received the bill, being the same day that the patent is to bear date. The *recepti* is to be signed by the Lord Chancellor, and it is usually in the following form:

*Recepti.*

“Received the [eighteenth] day of [September,] 1845.”

(Signed)

“LYNDHURST, C.”

This is done in pursuance of the stat. 18 Hen. VI. c. 1 (x), which requires the date of the delivery of the bill to the Lord Chancellor to be entered of record in Chancery, and prohibits a patent being made in pursuance of the bill bearing date on any prior day.

*Recepti* made in pursuance of stat. 18 Hen. VI. c. 1.

The delivery of a Privy Seal bill to the clerk of the patents, who is the officer of the Lord Chancellor, is in effect a delivery of it to the Lord Chancellor himself, and therefore his Lordship may direct the date of the delivery to be recorded in the *recepti* as of any day after the Privy Seal bill is lodged at the Patent Office.

Date of *recepti.*

The sealing of a patent is sometimes very considerably delayed by an opposition, and in order to prevent the petitioner being prejudiced in such a case, the Lord Chancellor will generally direct the delivery of the Privy Seal bill to be recorded in the *recepti* as of the earliest day upon which the patent might have been sealed if there had been no opposition, so that the patent when made may bear date as of that day (y). But in other cases it is the practice to record the delivery of the Privy Seal bill as of the day when the *recepti* is signed by the Lord Chancellor, and the patent sealed. And as a party may at all times procure an unopposed patent to be prepared with expedition, and sealed

(x) See the Statute in the Appendix, Chap. I. s. 1.

(y) See *Cutler's Case*, 1 Webs. R. 418, 430.



at a private seal, it is his own fault if he is prejudiced by any delay in the preparation and sealing of it.

Clerk of patents engrosses the patent.

The clerk of the patents also engrosses the patent upon parchment, copying it verbatim from the Privy Seal bill, only instead of the abbreviated conclusion "In witness, &c., witness, &c.," he adds the proper conclusion, with the date in words at length (z).

Patent to be dated the day recorded by receipt.

According to the statute of 18 Hen. VI. c. 1 (a), a patent is to be made in pursuance of a warrant or writ from the Crown, bearing date the day mentioned in the *recepti*, and not before. And the Act declares that if any letters patent be made to the contrary they shall be void.

A patent is always dated as of the current year of the Queen's reign, not as of the year of our Lord.

Patent how subscribed.

Patents for inventions are always made in pursuance of a command to the Lord Chancellor, contained in a bill or writ under the Privy Seal, and therefore every patent of that description is subscribed, "By writ of Privy Seal," in order to show upon the face of it by what authority the patent has been made (b).

A patent is also to be subscribed with the name of the clerk of the patents as the officer by whom the instrument has been prepared.

Docket.

The clerk of the patents also prepares a docket (c) for the Lord Chancellor's signature containing the name of the party to whom the patent is to be granted, the title of the invention, the extent and duration of the grant, the time allowed for specification, and the date of the patent. The words, "By writ of Privy Seal," and the name of the clerk of the patents, are also to be subscribed to the docket.

Documents to be signed by Lord Chancellor.

The documents having been prepared in manner already described, the Privy Seal bill is laid before the Lord Chancellor to obtain his Lordship's signature to the *recepti*. The docket is also to be signed by his Lordship to authorize the sealing of the patent, and he usually signs it with his initials only.

(z) See the Form in the Appendix, Chap. II. s. 1.

(a) See the Statute in the Appendix, Chap. I. s. 1.

(b) Vide 8 Co. R. 18, b.

(c) See the Form in the Appendix, Chap. II. s. 1.

The sealing of a patent, as well as any other instrument, may take place either on a public seal day, or at a private seal (*d*). And in order to have a patent prepared and sealed on a public seal day, the Privy Seal bill must be taken to the Patent Office two clear days before the seal day. Sealing patent.

The patent is sealed by the sigillator, or sealer, to whom must be produced the docket bearing the Lord Chancellor's signature as his warrant, and the engrossment of the patent, and upon seeing that they correspond with each other, he will affix the Great Seal to the patent (*e*).

The patent having been sealed, all the documents are taken back to the Patent Office, where the Great Seal and patent will be put into a case, and then delivered to the patentee or his agent (*f*). Patent delivered to patentee.

The docket is then entered into the docket book of the Patent Office, to which the public has access, and from that book the public derive their information respecting patents which have been sealed. Entry in docket book.

The Privy Seal bills and dockets upon which patents have been made, are kept in the Patent Office until they are sent to the Enrolment Office, which is done annually in the month of October, in order that the clerk of records and enrolments may prepare the enrolments of the patents, which have been made in pursuance of those Privy Seal bills. Privy Seal bill sent to Enrolment Office.

Patents are always enrolled or entered of record, upon rolls called patent rolls (*g*), and as a Privy Seal bill contains the whole of the patent made in pursuance of it, the patent itself is always delivered to the patentee, in order that he may have evidence of his title and immediate possession of his privilege, and the enrolment is made from the Privy Seal bill. Although copied from the Privy Seal bill for the sake of convenience, the enrolment is, however, the enrolment of the patent and not of the Privy Seal bill (*h*). Patents enrolled upon patent rolls.

(*d*) Vide *ante*, p. 390. If an applicant opens the Great Seal in order to procure his patent to be sealed he must pay an extra or opening fee of 2*l*.

(*e*) The fees payable at the Patent Office for a patent to one person for England and Wales only, when sealed at a public seal, amount to 48*l*. 17*s*.; and if there are two or more patentees

an additional fee of 2*l*. 13*s*. 4*d*. is to be paid; but there is no further fee when the patent extends to the Channel Islands and Colonies.

(*f*) Vide *ante*, p. 38.

(*g*) Vide *ante*, pp. 38. and 219; and 2 Blac. Com. 347.

(*h*) See *Nickel's case*, 1 Webs. R. 660.



Abbreviations.

In enrolling a patent, it is the practice to abbreviate the direction or address at the commencement of the enrolment of a patent, thus, "Victoria, by the grace of God, &c. To all to whom these presents shall come greeting, Whereas," &c., and after copying the whole of the body of the patent verbatim, then to abbreviate the conclusion thus, "In witness, &c., witness, &c., the [eighteenth] day (g) of [September]," and these abbreviations seem to be made for the purpose of avoiding unnecessary repetitions upon the rolls.

Patent rolls, how prepared.

The patent rolls are composed of long narrow strips of parchment called membranes, fastened together, and rolled up. The patents of each year of the Queen's reign are entered upon a distinct set of rolls, although perhaps, in contemplation of law, all the patent rolls are to be considered as but one roll or record. The patents of every year are copied upon membranes, such as have been mentioned, nearly in the order of their dates (but that is not requisite), the commencements and conclusions of the patents being abbreviated in the manner which has been described.

Each membrane of parchment is numbered, and also indorsed in this manner:—"Patents of the [ninth] year of the reign of Queen Victoria," and the enrolments having been written or engrossed upon them, they are fastened together in proper order so as to form rolls, called parts, of a convenient size, and these parts are numbered in arithmetical order, "first part," "second part," and so on. There are about thirty of these parts or rolls for each year of the Queen's reign, and there are about fifty membranes in each part.

Where the rolls are kept.

The patent rolls are kept about two years in the Enrolment Office, after which they are sent to the Petty Bag Office, together with the Privy Seal bills and dockets; and the reason for adopting this practice seems to have been, that the clerks of the Petty Bag might examine the rolls and see that they were correct (h). It has, however, long ceased to be the practice to examine the enrolments after they are transferred to the Petty Bag Office.

The patent rolls remain in the Petty Bag Office until they are about fifteen years old, and then they are finally sent

(g) See the Form in the Appendix, Chap. II. s. 1.

(h) See Collier on Patents, p. 196.

into the Office of the Rolls Chapel, together with the Privy Seal bills.

Office copies of the enrolment of a patent may be had at any of the offices in which the enrolment is deposited (a).

## 2. *Of the Practice respecting the Preparation and Enrolment of Specifications for Patent Inventions.*

After a patent has been sealed, the patentee ought to examine the list of patents granted during the preceding six months, in order to ascertain whether there is any patent for an invention with such a title as would be large enough to include his invention. If he finds that the title contained in any prior unspecified patent would be sufficient to describe or include his invention, he ought to be very circumspect, and ought not to communicate his invention to any but persons in whom he can place reliance, until the prior patent has been specified. The reason is, that a prior patentee having a patent with a title sufficiently large to include the subsequent invention, might, if it came to his knowledge, introduce into his specification a description not only of his own invention, but also of that of which he has subsequently obtained a knowledge, and thus the subsequent patentee might be totally deprived of the fruits of his labour and ingenuity.

Patentee ought to enquire if there is any prior patent with a title which might include his invention.

And it is the more necessary for a patentee to be cautious in this respect, because persons have frequently been known to obtain patents containing titles couched in the most general and indefinite terms, for the purpose of afterwards including in their specifications any novelty of which they may obtain a knowledge during the time allowed for the enrolment of that instrument, and which would be covered by the title.

Patents occasionally obtained for a fraudulent purpose.

The patentee has now to perform the condition upon which he has obtained his patent, in pursuance of which he must, within the time limited by the proviso, ascertain and de-

Performance of condition for enrolling specification.

(a) At the Enrolment Office the cost of an office copy is 8d. for every folio of ninety words, 2d. per sheet for the paper, 2s. for the certificate of examination, and 1s. for the search;—at the Petty Bag Office the charge is also 8d. per folio, and 2d. per sheet for the paper,

but the certificate fee is 3s. 4d. and the search and inspection 3s. 6d.;—and at the office of the Rolls Chapel, 6d. per folio is charged for a plain copy, and 1s. per folio for an authenticated copy;—the stamps are to be paid for in addition to these fees at each of the offices.



scribe the nature of his invention, and the manner in which it is to be performed, by an instrument in writing under his hand and seal, which is usually called a specification; and he must also cause that instrument to be enrolled in Chancery.

Importance of specification.

The specification is a most important instrument, with reference to the patentee's title to the privilege granted by the patent, and the utmost care ought to be taken to prepare it correctly.

Great skill required for preparing specification.

Few instruments require greater skill to be exercised in their preparation than specifications, and more patents have been lost in consequence of the insufficiency of specifications than for any other cause. Specifications are, indeed, now prepared in a much less objectionable manner than formerly, but there is still room for very great improvement.

Advantage of having it prepared by a competent person.

In consequence of the great cost of a patent, the patentee is generally anxious to have his specification completed at as small a cost as possible, and therefore he either prepares the instrument himself, or has recourse to the assistance of some person who is willing to render his services for a small remuneration, and such persons are generally wholly incompetent to discharge the duty of settling this most important instrument.

If an invention is really of value, the patentee will always find it cheaper to have his specification prepared or settled by a competent person, for although by so doing he will enhance the cost in some degree, yet he will render his patent more secure, and probably save the cost of proving the sufficiency of the instrument in a Court of Law.

Form and requisites of specification.

The form and requisites of a specification have already been examined in a former part of this work (h), to which the reader is referred. And it ought always to be borne in mind by those who settle specifications, that *the law requires the specification to be prepared with the utmost good faith on the part of the patentee*, and that too great care cannot be taken to ensure the accuracy of the instrument. The object of the specification being that the public should have information of what the prohibition in the patent extends to, during the term it grants, and what the public are to acquire the right of

(h) *Ante*, Chap. VII. p. 151; and see the Form in the Appendix, Chap. II. s. 1.

doing after the patent has expired; the specification should distinctly point out what the invention is, so that every one may clearly understand what he is prohibited from doing; and the manner of using or practising the invention should be described with such accuracy, that any competent person will after the expiration of the term be enabled to practise the invention without difficulty or further instruction.

The specification is usually written upon parchment, and although it might be put upon paper, it is always better to have it written upon a more durable article (i). Ought to be written on parchment.

It must be signed and sealed by the patentee himself, or if there be two patentees, it will be sufficient if it be signed and sealed by either of them. To be signed and sealed.

If the specification is intended to be enrolled in the Enrolment Office, it must be acknowledged before a Master (ordinary or extraordinary) in Chancery (k), for without such an acknowledgment, it cannot be enrolled in that office (l). But in the Petty Bag and Rolls Chapel Offices no acknowledgment is required. Acknowledgment.

There are three offices in Chancery in which specifications may be enrolled; they are the Enrolment Office (m), the Petty Bag Office (n), and the Rolls Chapel Office (n), and a patentee is at liberty to enrol his specification in whichever of those offices he thinks fit (o). Specification where to be enrolled.

When a specification is enrolled in the office of the Rolls Chapel, the patentee and the public acquire the advantage of Advantage of enrolling in the Rolls Chapel Office.

(i) It must be stamped with the duty of 5*l.*, and a progressive duty of 1*l.* must be paid for every entire quantity of fifteen folios (of seventy-two words each) over and above the first fifteen folios.

(k) See the Form of Acknowledgment in the Appendix, Chap. II. s. 1.

(l) In Co. Lit. 225, b, it is said that no deed, &c. can be enrolled unless it be duly and lawfully acknowledged.

(m) Chancery Lane.

(n) In the Rolls Yard, Chancery Lane.

(o) The cost of enrolment in the Rolls Chapel Office is much less than in either of the other offices. In the Roll's Chapel Office it is sixpence for every Chancery folio of ninety words;—at the Enrolment Office the charge is 10*s.* for every membrane or skin en-

tirely occupied by the enrolment, (a membrane usually containing about ten Chancery folios) and for any portion of a membrane less than the whole a charge is made at the rate of 6*d.* for every five lines;—the cost of enrolment at the Petty Bag Office is 10*s.* 6*d.* for every skin; any portion of a skin less than half a skin is charged as half a skin, and a portion of a skin more than half is charged as a whole skin; and the patentee is at each of those offices allowed to prepare the drawing for the roll himself, at any time within fourteen days after the specification has been left for enrolment. When the patentee does not supply the drawing for the roll, it will be prepared in the office; and of course an extra charge will be made for it.



being enabled to prove the enrolment by an authenticated copy (*p*), for that office is now a branch of the public Record Office within the provisions of the statute 1 & 2 Vict. c. 94. In consequence, however, of the facility afforded at the Rolls Chapel Office to persons examining enrolments and other records, some patentees will not enrol their specifications at that office notwithstanding the advantages of enrolling there (*q*).

Enrolment may be at any time before 12 o'clock at night.

It has already been shown within what time a specification must be enrolled, and it only need be added, that the enrolment will be in time, if the specification be left at the office for enrolment at any time before twelve o'clock at night of the last day allowed for that purpose, for the instrument is always enrolled as of the day it is left at the office for that purpose.

Rolls on which specifications entered.

In the Enrolment Office, specifications are entered (*r*) upon the "Close Rolls," being so called because upon those rolls writs close are enrolled. In each of the other offices; viz. the Rolls Chapel and Petty Bag, there is a roll called the Roll of Specifications and Surrenders, and upon that roll a specification is entered at either of those offices.

How prepared.

These rolls are prepared in a similar manner to the patent rolls, which has already been described; but they are indorsed "Close Rolls," or "Roll of Specifications and Surrenders," as the case may be.

Entry of acknowledgment.

If the specification has been acknowledged, the acknowledgment will be entered of record upon the roll (*s*) as well as the specification itself, and the date of the enrolment.

Certificate of enrolment.

When the enrolment has been completed, a certificate will be indorsed upon the specification stating that it was enrolled on the day it was left at the office for that purpose.

(*p*) Vide *ante*, p. 485.

(*q*) It is very much to be regretted that all specifications are not enrolled in one office. It is extremely inconvenient for the public to have three offices to search for enrolments; and it frequently happens that a person searches each of the offices before he finds the specification he wants—and he must pay a fee for each office he searches whether he finds the enrolment there or not. The Attorney-general might frame the condition in the form of patent, so

as to compel patentees to enrol their specifications in the Rolls Chapel Office, in which the greatest facilities are afforded to the public, and the Master of the Rolls has power to order all the existing enrolments in the Petty Bag or Enrolment Office to be transferred to the Rolls Chapel.

(*r*) See the Form of Enrolment in the Appendix, Chap. II. s. 1.

(*s*) See the Form in the Appendix, Chap. II. s. 1.

The close rolls are taken from the Enrolment Office to the Rolls Chapel Office, when they are about fifteen years old. The roll of specifications and surrenders is not removed either from the Rolls Chapel or Petty Bag Office.

Each of the enrolment offices which have been mentioned may be searched for the enrolments of specifications, by any person within the usual office hours (t), the fee being one shilling for each search (u).

For the same fee which is paid for a search at the Rolls Chapel Office, the party searching is entitled to peruse the whole of the enrolment of the specification, and to inspect the drawing (if any) annexed to the roll, and he may *in pencil* take extracts from or copy any part of the enrolment of a specification, or a drawing annexed to the roll. A copy of the whole, or of any part of a specification may be had at a moderate charge (x); and if a copy of a drawing is required, the charge is equally moderate, the party requiring it being only charged the actual cost of preparing it. These facilities have been given to the public by the Master of the Rolls (y), under the statute of 1 & 2 Vict. c. 94 (z), the Rolls Chapel Office being now a branch office of the public Record Office of the kingdom.

The copies which are furnished to applicants at the Rolls Chapel Office may, in pursuance of the statute 1 & 2 Vict. c. 94, s. 12, to be examined and certified as true and authentic copies, by the deputy keeper of the records, or one of the assistant record keepers, and sealed or stamped with the seal of the Record Office, and by sect. 13, copies so sealed

(t) The office hours at the Rolls Chapel Office, and Petty Bag Office, are from 10 o'clock a. m. to 4 o'clock p. m. during the whole year; at the Enrolment Office, during each term and until the Second Seal after Hilary term, and Last Seal after Michaelmas term, the hours are, from 10 a. m. to 2 p. m., and from 6 a. m. to 8 p. m.; at other times from 10 a. m. to 3 p. m., holidays excepted.

(u) At the Petty Bag Office a fee of 2s. 6d. is charged for an inspection in addition to the fee for a search; but the fee for a search at the Enrolment Office includes an inspection.

(x) Sixpence for every Chancery folio of ninety words.

(y) The public are greatly indebted to Lord *Langdale*, the present Master of the Rolls, for the great facilities which he has given to parties desiring to have access to specifications. It is greatly to be regretted, however, that the privileges intended for the benefit of the public have been much diminished in value, in consequence of the small number of specifications now enrolled at the Rolls Chapel Office.

(z) See the Statute in the Appendix; Chap. I. s. 1.



are to be received in evidence in every case in which the original record would be received (y).

Copies of enrolments, &c. at Petty Bag or Enrolment Office.

At the Petty Bag or Enrolment Office, a person inspecting the enrolment of a specification is not allowed to take any extract, or to copy any part of the record, nor can he obtain a copy of any part of the enrolment without taking or at all events paying for the whole. The cost of an office copy is greater at either of these offices (z) than at the Rolls Chapel Office, and it is not admissible in evidence unless proved to be correct by a person who has examined it with the original record (a).

### (3.) *Of the Practice respecting the Alteration and Amendment of Patents, Enrolments, &c.*

Prior proceedings must be altered before the patent.

When any error is sought to be amended, or alteration made in a patent (b), all the prior proceedings must be altered before the Lord Chancellor can alter or amend the patent in the manner desired by the patentee.

Petition to the Queen.

In order to obtain an alteration, or amendment, or alteration of the Queen's warrant and bill, and subsequent proceedings, the patentee must present a petition to the Crown, praying for the amendment or alteration which is desired, this petition must be left at the office of the Secretary of State for the Home Department, and it will be answered by the Secretary of State by a reference to the Attorney or Solicitor-general, in the same way as a petition for a patent.

Reference to Attorney-general.

When the petition with the reference has been obtained, it must be taken to the chambers of the Attorney or Solicitor-general, and an appointment must be obtained for a hearing, when the petitioner, his solicitor, or agent, must attend and support the prayer of the petition.

Caveats and oppositions.

There is no definite practice with respect to the mode of entering caveats against amendments or alterations being

(y) Vide *ante*, p. 485. The cost of authenticating a copy is 6d. per folio, which makes the total cost 1s. per folio besides stamps.

(z) See the cost of office copies, stated *ante*, p. 543, and there will be an addi-

tional charge for copying any drawing annexed to the specification.

(a) Vide *ante*, p. 485.

(b) Vide Chap. VIII. s. 3, *ante*, p. 211.

allowed, such proceedings being of rare occurrence, but it seems that they ought to be entered in the same way as other caveats, and if any one has entered a caveat with the Attorney or Solicitor-general, he will be heard in opposition to the prayer of the petition in the same way as a person is heard upon an opposition to an application for a patent. And if there have been any proceedings taken upon the patent, the Attorney or Solicitor-general will sometimes direct the petitioner to give notice of the application to the parties.

If the Attorney or Solicitor-general reports in favour of the application, the petition and report must be taken to the office of the Home Secretary. Report to be taken to Home Office.

Upon a favourable report being made to the Crown by the Attorney or Solicitor-general, the application for the alteration or amendment will be granted, and for that purpose the Secretary of State for the Home Department will send for the Queen's warrant and the Queen's bill, which he will take with him to an audience of her Majesty, and in her presence the alteration will be made in each of those documents. In the margin of each document will be written a memorandum signed by the Secretary of State, certifying that the alteration was made in the presence and by command of her Majesty, and stating the date when it was done, after which the documents are restored to their former custody. Alteration of Queen's warrant and Queen's bill.

The next step is to procure the signet bill to be altered to make it correspond with the Queen's bill, for which purpose the clerk of the signet will obtain the signet bill at the Privy Seal Office, and having made the necessary alteration of it, and of the entry in the docket-book (when necessary), in accordance with the altered Queen's bill, he will take it to the office of the Secretary of State for the Home Department, and get it resealed, and then return it to the Privy Seal Office. Alteration of signet bill.

In order to procure the Privy Seal bill to be altered or amended, it is necessary to present a petition to the Master of the Rolls, stating all the facts, and praying for leave to have the Privy Seal Bill taken to the Privy Seal Office to be altered or amended and resealed. Before this petition is presented, it is necessary to obtain the signature of the Attorney or Solicitor-general to a consent on the part of the Petition to Master of the Rolls for leave to amend Privy Seal bill.



Crown, that the prayer of it may be granted. This petition must be taken to the secretary of the Master of the Rolls, and his Lordship will grant the application if he thinks the case one in which an amendment or alteration ought to be allowed. If there be any proceedings at Law or in Equity pending upon the patent, it is usual to require notice of the application, to be given to the parties in order that they may, if necessary, be heard against the prayer of the petition (c).

Alteration of  
Privy Seal bill.

If the Master of the Rolls grants the requisite leave for the Privy Seal bill to be amended, it is taken to the Privy Seal Office, and there altered so as to make it accord with the signet bill, and it is then to be folded up and taken to the Lord Privy Seal and resealed. If the alteration affects the entry of the bill in the docket-book of the office, the entry must also be altered so as to make it correspond with the bill.

Delivery of  
Privy Seal bill  
to the Lord  
Chancellor.

The Privy Seal bill, or writ of Privy Seal, together with the patent, must then be taken to the Patent Office, and the Privy Seal bill must be re-delivered to the Lord Chancellor in precisely the same way as it was delivered in the first instance; and his Lordship again signs a *recepti* stating such re-delivery, and the object of it (d).

Recepti.

Caveats, &c. at  
Patent Office.

If no caveat has been entered against sealing the amended or altered patent, it will be done as a matter of course, but caveats and oppositions may be entered in precisely the same way as caveats and oppositions against the sealing of any other patent (e), and if there be any caveat against altering or sealing the patent, the applicant must petition in the same way as already stated (f), respecting an opposition to the sealing of a patent originally.

Hearing.

The hearing and proceedings upon a petition to alter or amend and reseat a patent are precisely the same as upon a petition for the sealing of a patent, except that the hearing is not in private.

Altering and  
resealing  
patent.

In order to alter and reseat a patent, the Great Seal is first to be cut off, and the required alteration having been made,

(c) See *Nickel's Case*, 4 Beavan, 563; 1 Webs. R. 650.

(d) See *Nickel's case*, Turn. & Phil. 47; 1 Webs. R. 663, S. C.

(e) Vide *ante*, p. 530.

(f) Vide *ante*, p. 532, and see *Nickel's case*, Turn. & Ph. 46; 1 Webs. R. 661.

the patent is to be sealed in precisely the same way as before (g).

The patent having been altered and resealed, the Privy Seal bill will be restored to its former custody, and then the Master of the Rolls will upon petition or application order the enrolment to be altered so as to make it correspond with the altered patent. Alteration of enrolment.

The jurisdiction of the Lord Chancellor and Master of the Rolls to alter or amend enrolments of specifications, &c. has been considered in a former part of this work (h) to which the reader is referred. Amendment of enrolments of specifications.

In order to procure any alteration or amendment of the enrolment of a patent or specification, the patentee must present a petition to the Master of the Rolls, stating the facts, and praying that the alteration or amendment may be made. This petition must be left with his Lordship's Secretary, and the facts stated in it must be verified by affidavit. Petition to Master of the Rolls.

If there be any proceedings pending upon the patent, the parties must have notice in order that they may oppose the alteration in case it should be to their prejudice. Notice to parties of proceedings pending.

The petitioner's counsel will be heard in support of the application, and if the application is opposed, the counsel of the party opposing will be heard in opposition to the prayer of the petition. Hearing.

If the Master of the Rolls grants the prayer of the petition, an order must be drawn up directing the alteration or amendment to be made, and the order must then be taken to the officer by whom it is to be executed. Order.

Either party may appeal to the Lord Chancellor (i). Appeal.

## SECTION II.

*Of the Practice respecting Disclaimers and Memorandums of Alteration, under the Statute 5 & 6 Will. IV. c. 83, s. 1.* Stat. 5 & 6  
W. IV. c. 83.  
s. 1.

The enactment under which a patentee or assignee of a patent may obtain leave to alter or disclaim any part of the

(g) Vide *ante*, p. 539.

(h) Chapter VIII. s. 3. p. 211.

(i) Vide *ante*, p. 220.



title or specification of the invention comprised in a patent, has already been stated in a former part of this work (i).

Rules of practice.

Shortly after the passing of the statute, the Attorney and Solicitor-general laid down certain rules of practice (k), respecting the mode of proceeding by parties applying for leave to enter disclaimers or memorandums of alteration under its provisions, and those rules still remain in force.

Applicant must petition.

A person desiring to disclaim or alter any part of his title or specification must apply by petition (l) to the Attorney-general or Solicitor-general for leave to enter the proposed disclaimer or memorandum of alteration.

What the petition must state.

The petition must state the date of the patent, and the nature of the grant it makes, the title of the invention being stated *verbatim* as contained in the patent. The petition must also state when the specification was enrolled, and also so much of the instrument itself (if any) as may be necessary to make the petition intelligible. If the applicant is an assignee of the patent, he must state how and when he became the assignee (m). And the applicant must also state what the proposed disclaimer or alteration is, and the reasons why it is sought to be made.

Disclaimer and alteration by the same instrument.

When a party is desirous of disclaiming some parts of his title or specification, and of altering some other part, the petition must, of course, be framed accordingly.

Petition may be either to Attorney or Solicitor-general.

The petition may in general be addressed either to the Attorney or Solicitor-general at the election of the applicant. But if either of those officers has acted as counsel in any cause respecting the patent, it is the practice to address the petition to the other of them, and if they have both been engaged in a similar manner, then the petition may be addressed to either of them, and he will desire some gentleman who has filled the office of Attorney or Solicitor-general, to advise him respecting the disposal of the matters of the petition.

(i) Chap. VIII. s. 2, p. 203, 205.

(k) See the Rules in the Appendix, Chap. I. s. 2.

(l) See the Form of Petition in the Appendix, Chap. II. s. 2.

(m) When any part of a title or specification is disclaimed or altered by an assignee, it seems to be desirable that

the assignment, under which he claims, should be enrolled in Chancery, in order that his title to enrol the disclaimer or memorandum of alteration may appear upon the records of the Court. The Attorney or Solicitor-general might require an enrolment of the deed before granting his *fiat*.

The petition must be lodged at the chambers of the Attorney or Solicitor-general, to whom it is addressed, and it must be accompanied by a copy of the specification and of the proposed disclaimer or memorandum of alteration.

Petition with copy of specification and disclaimer to be lodged.

The statute (n) expressly authorises the Attorney and Solicitor-general to require the party applying to advertise his disclaimer or alteration in such manner as that officer may think fit, and whenever legal proceedings have been taken upon the patent, or the Attorney or Solicitor-general is of opinion that the disclaimer or alteration may prejudice third parties, he will direct the applicant to publish such advertisements as he thinks necessary, and will delay granting his *fiat* until about ten days after the advertisements have been duly published (o).

Advertisements.

A caveat (p) may be entered by any person against granting a *fiat* for the entering and enrolling of a disclaimer or memorandum of alteration (q). Such a caveat is to be entered in the same way as a caveat against the grant of a patent, the practice respecting which has already been stated (r), and may be entered at any time before the actual issuing of the *fiat* (s).

Caveat.

A caveat against a particular disclaimer or alteration which has been advertised, is a specific caveat, which is only to be entered at the chambers of the Attorney or Solicitor-general, to whom the application has been made; but parties may also enter general caveats against any disclaimer or alteration of a patent or specification, and in such cases caveats must be entered at the chambers both of the Attorney and Solicitor-general. A caveat will only be in force for one year, but it may be renewed as often as the party entering it pleases.

Caveats are specific or general.

When a patentee applies for leave to enter a disclaimer or alteration, and the advertisements (if required) have been duly published, the Attorney or Solicitor-general's clerk sends notice of the application to every person who has entered a

Notice of application.

(n) 5 & 6 W. IV. c. 83, s. 1.

(o) The advertisements when required are usually ordered to be inserted three times in *The Times*, *The Morning Chronicle*, and *London Gazette*, and if the patentee carries on business in the country, then also in a newspaper published in the neighbourhood.

(p) See the Form of Caveat in the

Appendix, Chap. II. s. 2.

(q) See the statute 5 & 6 Will. IV. c. 83, s. 1, which entitles parties to enter caveats, and to have notice of hearings.

(r) *Ante*, s. 1, p. 507.

(s) The fee for entering a caveat is 5s.



caveat, that if he intends to oppose the application, he must within four days send notice or enter his opposition at the chambers of the Attorney or Solicitor-general to whom the application has been made, and if no opposition be entered within the four days the petition will be treated as unopposed.

Entering  
opposition.

A party who intends to oppose an application for leave to enter a disclaimer or memorandum of alteration, ought to enter his opposition at the chambers of the Attorney or Solicitor-general within four days after the date of the notice which he receives; an opposition may however be entered at any time before the fiat is granted. The effect of an opposition being entered is to stay all proceedings upon the petition until the party opposing has been heard, or had an opportunity of being heard against the granting of the prayer of the petition, and he is entitled to have a week's notice of the time appointed for a hearing of the matter of the petition.

Must be a  
hearing in  
every case.

There must in every case be an actual hearing of the matters of the petition before the Attorney or Solicitor-general, at which every person who has entered an opposition is entitled to attend.

If grant of *fiat*  
is not opposed.

If the grant of a *fiat* is not opposed the Attorney or Solicitor-general will peruse the petition and other documents, and if it appears to him that the proposed disclaimer or alteration will not be prejudicial to the public he will grant his *fiat* for the entry and enrolment of it. But if he is not satisfied respecting the propriety of allowing the disclaimer or alteration he may require, the applicant to furnish him with further information, or to vary the form of the instrument to be entered and enrolled.

Appointment  
and summons.

In order to obtain a hearing, the petitioner must procure an appointment from the clerk of the Attorney or Solicitor-general, and in an opposed case also a summons for the parties to attend on the day appointed for the hearing. A copy of the summons must be served upon every opposing party.

Hearing.

At the time appointed for the hearing the application will be heard in support of his petition, and if any opposing parties attend they will also be heard before the Attorney or Solicitor-general; and this hearing is not private like the hearing upon an opposition to the grant of a patent, but each party is

heard in the presence of the other, first the applicant for a *fiat*, then each of his opponents.

Each party must produce such evidence of any material Evidence. facts as may be satisfactory to the Attorney or Solicitor-general, but those officers are not bound to adhere strictly to the rules respecting legal evidence. Affidavits or solemn declarations made before a Master (ordinary or extraordinary) in Chancery, of the insertion of advertisements, &c., may be read at the hearing. And, in order to dispense with advertisements, the applicant must satisfy the Attorney or Solicitor-general that no legal proceedings have been taken upon the patent.

The parties may, and in opposed cases usually do, appear by Parties may appear by agents, &c. counsel at the hearing.

The Attorney or Solicitor-general having heard the applicant, and all his opponents, if any, will grant or refuse the application as he thinks fit. The granting of leave is entirely discretionary with the officer to whom the application is made, and his decision is final. Decision.

If the Attorney or Solicitor-general decides that the prayer of the petition ought to be granted, the intended disclaimer or memorandum of alteration ought to be completed, and the *fiat* obtained without delay, for a caveat and an opposition may, as has already been stated, be entered at any time before the *fiat* has actually been granted (*r*). Disclaimer or alteration ought to be completed without delay.

The instrument ought to be written on parchment, and that is to be done by the party himself, his solicitor, or agent.

The statute (*s*) provides that a patentee may *enter* with the clerk of the patents a disclaimer or memorandum of alteration, "and such disclaimer or memorandum of alteration, being What is to be done to complete the disclaimer or alteration. filed by the said clerk of the patents, and enrolled with the specification," shall be deemed to be part of the patent or specification. Three things are, therefore, to be done in order to comply with the provisions of this statement; viz. to enter the instrument with the clerk of the patents;—to file it with that officer;—and to enrol it in the office in which the specification was enrolled. The order in which these three things are done does not seem to be material, but they must

(*r*) The fees payable at the chambers of the Attorney or Solicitor-general amount to about 7*l.* 14*s.*

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



all be done before the instrument can have complete effect given to it.

Mode of entering, &c. which has been adopted.

The most generally prevailing mode which has been adopted for the purpose of complying with the provisions of this Act seems to be very loose and unsatisfactory.

It has become the practice to prepare what is called an entry paper, stating the whole of the intended disclaimer or alteration as it is proposed to be made, and if the Attorney or Solicitor-general determines to grant his *fiat*, the disclaimer or memorandum of alteration is also engrossed on parchment, and each document is signed by the patentee. The *fiat* is written under or indorsed upon the disclaimer or memorandum of alteration, and signed by the Attorney or Solicitor-general, and under the entry paper is written a certificate directed to the clerk of the patents, stating that a *fiat* has been granted, which certificate is signed in like manner. The entry paper is then taken to the clerk of the patents to be entered and filed, and the disclaimer or memorandum of alteration to the office where it is to be enrolled, after which it is returned to the patentee.

Party must at his own peril comply with the act.

It is to be observed that a party seeking to disclaim or alter his patent or specification must at his own peril comply with the provisions of the statute, and if he fails to do so, the instrument will be unavailing.

The mode in which the disclaimer ought to be completed.

It seems that the best course to be adopted in case of a disclaimer or memorandum of alteration, is to take the instrument, after it has been signed and (if necessary) acknowledged by the party, and the *fiat* signed by the attorney or solicitor, to the office where it is to be enrolled, and the enrolment having been completed (which it generally will in the course of a few days), the document ought to be taken to the Patent Office, and there left to be entered and filed by the clerk of the patents.

Enrolment of a disclaimer or memorandum of alteration.

The statute (s) speaks of an enrolment of the disclaimer or memorandum of alteration with the specification, but that has been construed to mean an enrolment at the office in which the specification was enrolled. As all the parts of a roll are to be deemed in law but as one roll, and as there is only one roll at any office upon which such an instrument can be en-

(s) 5 & 6 Will. IV. c. 83, s. 1.

rolled, an enrolment in this manner appears to be a literal compliance with the statute. The object of the legislature seems to have been that any one searching the records of any of the offices for the enrolment of a specification, should find the disclaimer or memorandum of alteration in the same office as the specification. The disclaimer or memorandum is entered upon the roll in the same way as the specification, and upon a part of the roll for the year in which it is enrolled (t). A reference is always made opposite the enrolment of the specification to that of the disclaimer or memorandum of alteration, and also opposite the enrolment of the disclaimer or memorandum of alteration, to that of the specification, thus, "See Disclaimer [memorandum of alteration or specification], 24th part, 1844."

If a disclaimer or memorandum of alteration is to be enrolled in the enrolment office (as it must be if the specification was enrolled in that office), it is necessary that the instrument should first be duly acknowledged before a Master (ordinary or extraordinary) in Chancery (u), without which that office will not receive it, or enter it upon the roll.

Acknowledgment of disclaimer.

In order to enter a disclaimer or memorandum with the clerk of the patents, the document must be taken to the Patent Office (x), where a book is kept for the purpose of making such entries. The entry is made by copying the whole of the instrument in the book; and if there are any drawings, they are also inserted in the book, and the party making the entry is at liberty to furnish the necessary drawings (y). The object of the legislature in requiring this entry seems to have been that when the title of an invention has been altered, or any part of it disclaimed, the books of the Patent Office shall give information of the fact to the public. And in order to carry out this intention, whenever a disclaimer or memorandum of alteration is entered and filed, a reference is made opposite the entry of the patent in the

Disclaimer or alteration how to be entered at Patent Office.

(t) Vide *ante*, p. 544. The fees payable for enrolling a disclaimer or memorandum of alteration, are the same as the fees for enrolling a specification.

(u) See the Form of Acknowledgment in the Appendix, Chap. II. s. 1.

(x) In Quality Court, Chancery Lane.

(y) The fee for filing and entering is 10s. if the instrument is short, but if long the fee for filing is 1s. and for entering it 4d. per folio; but of course an extra charge is made for a drawing, if a copy of it is not furnished by the party making the entry.



Disclaimer, &c. to be filed. docket book, to the folio of the entry book in which the disclaimer or alteration is to be found, so that any person searching the docket, will have the means of ascertaining how far the effect of the patent has been varied.

The disclaimer or alteration having been entered and enrolled, it must be filed with the Clerk of the patents at the Patent Office, and the instrument will thenceforth become part of the patent and specification (a).

When a disclaimer or memorandum of alteration has been enrolled, and also entered and filed in pursuance of the Attorney or Solicitor-general's *fiat*, the Master of the Rolls has no jurisdiction to order it to be removed from the rolls of the Court (b).

### SECTION III.

#### *Of the Practice of the Judicial Committee of the Privy Council respecting the Confirmation and Prolongation of Patent Privileges.*

Power to confirm patents.

The power of the Crown with the advice of the Privy Council to confirm a patent privilege has been stated in a former part of this work (c), to which the reader is referred for an explanation of the scope and object of the enactment (d), by which the Crown was invested with that power.

Prolongation of patents.

Before the statute 5 & 6 Will. IV. c. 83 (e) was passed, the term of a patent privilege in an invention could only be extended by Act of Parliament. Applications to Parliament for such extensions were of frequent occurrence notwithstanding the great expense of obtaining a private Act of Parliament.

Power vested in Queen in council.

By the Act just mentioned (the provisions of which have since been amended and enlarged (f)), the Queen in Council is invested with the power of prolonging such patent privileges.

If any person who has obtained a patent,

Section *four* of the statute enacts, "That if any person who now hath or shall hereafter obtain any letters patent as

(a) See the statute 5 & 6 Will. IV. c. 83, s. 1; and *Perry v. Skinner*, 2 M. & W. 471.

(b) *Sharpe's case*, 1 Webs. R. 641; vide *ante*, p. 226.

(c) Chap. VIII. s. 1, p. 199.

(d) 5 & 6 Will. IV. c. 83, s. 2; see

the Statute in the Appendix, Chap. I. s. 1.

(e) See the Statute in the Appendix, Chap. I. s. 1.

(f) By 2 & 3 Vict. c. 67, and 7 & 8 Vict. c. 69.

aforesaid (g), shall advertise in the *London Gazette* three times, and in three London papers, and three times in some country paper published in the town where or near to which he carried on any manufacture of any thing made according to his specification, or near to or in which he resides in case he carried on no such manufacture, or published in the county where he carries on such manufacture, or where he lives in case there shall not be any paper published in such town, that he intends to apply to his Majesty in Council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in Council to that effect, it shall be lawful for any person to enter caveat at the Council Office; and if his Majesty shall refer the consideration of such petition to the Judicial Committee of the Privy Council, and notice shall first be by him given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his Counsel and witnesses to prove his case, and the person entering caveats shall likewise be heard by their counsel and witnesses; whereupon, and upon hearing and inquiry upon the whole matter, the Judicial Committee may report to his Majesty that a further extension of the term in the said letters patent should be granted, not exceeding seven years (h); and his Majesty is hereby authorised and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary in anywise notwithstanding. Provided (i) that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent."

for an invention shall advertise that he intends to apply for a prolongation, and shall petition to that effect, his Majesty may, upon the report of the Judicial Committee, grant a further term not exceeding seven years.

The power which this enactment and the statute 7 & 8 Vict. c. 69 (h), vest in the Crown being confined within definite limits as to the length of the additional terms which may be

(g) In section one of the act the phrase used (and to which the reference seems to be here made) is, "any person who as grantee, assignee, or otherwise, hath obtained or shall hereafter obtain letters patent for the sole making, exercising, vending, or using of any invention."

(h) Extended to fourteen years by stat. 7 & 8 Vict. c. 69, s. 2.

(i) This proviso has been repealed by the 2 & 3 Vict. c. 67, sec. 1. Vide *post* and in *re Bodmer's* patent, 2 Moore, P. C. C. 471; 1 Webs. R. 740.

(k) See sec. 2 of the statute, stated *post*, pp. 575, 576.



granted, application must be made to the legislature as heretofore (k), whenever the extension which the Crown is thus authorised to grant shall happen to be insufficient.

Judicial committee established by 3 & 4 W. IV. c. 41, s. 1.

By the statute 3 & 4 Will. IV. c. 41, s. 1, a committee of the Privy Council was formed with the style of "the Judicial Committee of the Privy Council," and by subsequent sections of the Act, all the judicial powers of the Privy Council were transferred to the Judicial Committee (l).

Registrar may be appointed.

By section eighteen it is enacted, "That it shall be lawful for his Majesty, under his Sign Manual, to appoint any person to be Registrar of the said Privy Council, as regards the purposes of this act, and to direct what duties shall be performed by the said Registrar."

Power of Crown to refer matters to judicial committee.

By section 4 it was enacted, that it should be lawful for his Majesty to refer to the Judicial Committee for hearing or consideration any such matters as his Majesty should think fit, and that such Committee should thereupon hear or consider the same and advise his Majesty thereon. It is under the power thus conferred upon the Crown that a petition to the Crown for the confirmation or prolongation of a patent privilege is referred to the Judicial Committee.

Patentee may apply for a confirmation at any time during the continuance of the patent.

A patentee may apply for a confirmation of his patent at any time during the continuance of the term it grants, and he will of course do so with as little delay as possible after he has discovered the defect in his title which he seeks to remedy.

Patentee must not apply for a prolongation until term nearly expired.

But a patentee must not apply for a prolongation of his patent until the term has nearly expired, for the amount of profit made by a patentee is generally greatest during the last two or three years of his term, and it may be sufficient to remunerate him. Thus, *in re Macintosh's* patent (m), the petitioner lodged his petition and applied to the Council to have a day fixed for the hearing about eighteen months before the expiration of the patent, but their Lordships were of opinion that the profits accruing during that period might

(k) As an application to parliament for the prolongation of a patent will rarely, if ever, become necessary, it is not deemed necessary in this work to say anything as to the practice of par-

liament respecting bills for that purpose.

(l) See Macqueen's Practices, pp. 687-724.

(m) 1 Webs. R. 739.

materially affect the question of extension, and therefore directed the application to stand over.

The 5 & 6 Will. IV. c. 83, s. 4, provided (n) that no extension should be granted if the application by petition should not be made and prosecuted with effect before the expiration of the term originally granted by the patent.

Application for prolongation to be prosecuted with effect before expiration of patent.

*In re Bodmer's* patent, the petitioner duly presented his petition, and obtained an appointment for a hearing on a day before the expiration of his patent; but a sufficient number of the members of the Court did not assemble on the day appointed, and consequently the patent expired before the hearing. Upon the hearing which subsequently was obtained, (after the expiration of the patent), it was objected by the Attorney-general on behalf of the Crown that their Lordships had no power to entertain the application, which had not been prosecuted with effect before the expiration of the patent. The Judicial Committee held that the objection was fatal, and that the words "prosecuted with effect" in the proviso required that something more than the application by presenting the petition and obtaining a day to be fixed for the hearing must have been done to satisfy the proviso in the statute, and the application was consequently refused (o). This decision led to the repeal of the proviso in the 5 & 6 Will. IV. c. 83, s. 4, by the statute now to be noticed.

*In re Bodmer's* patent.

By stat. 2 & 3 Vict. c. 67, s. 1, after reciting the Act 5 & 6 Will. IV. c. 83, s. 4, and reciting that it had happened since the passing of the said Act, and might happen again, that parties desirous of obtaining an extension of the term granted in letters patent of which they were possessed, and who might have presented a petition for such purposes in manner by the said recited Act directed, before the expiration of the said term, might nevertheless be prevented by causes over which they had no control from prosecuting with effect their application before the Judicial Committee of the Privy Council; and it was expedient therefore that the said Judicial Committee should have power, when under the circumstances of the case they should see fit, to entertain such application,

Statute 2 & 3 Vict. c. 67.

(n) Vide *ante*, p. 557.

(o) The petitioner afterwards ob-

tained a prolongation under the statute 2 & 3 Vict. c. 67.



Repeals proviso requiring application to be prosecuted with effect before expiration of original term.

If application for a prolongation not prosecuted with effect from any other cause than the petitioner's neglect, extension may be granted although the original term has expired.

and to report thereon according to the provisions of the said recited Act, notwithstanding that before the hearing of the case before them the terms of the letters patent sought to be renewed or extended might have expired: it is enacted, "that so much of the said recited Act as provides that no extension of the term of letters patent shall be granted as therein mentioned if the application by petition for such extension be not prosecuted with effect before the expiration of the term originally granted in such letters patent, shall be and the same is hereby repealed."

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

The proper time for applying for a prolongation is from twelve to six calendar months before the expiration of the patent term. But it seems that the omission to present a petition at least six months before the expiration of the patent, will only prevent the grant of a prolongation when a hearing cannot be obtained during the continuance of the original term, for the proviso only appears to extend to "any such extension or new letters patent" as mentioned in the previous part of the section, that is, extensions and new patents granted at hearings after the expiration of the original terms.

Proper time for applying for a prolongation.

Whether application is intended to be made for the confirmation or prolongation of a patent, the patentee must, in the first place, give public notice by advertisement of the application which he intends to make. The necessity for giving notice by advertisement is imposed on a petitioner for the prolongation of a patent by the provisions of the Act (*k*) under which the application must be made, and upon a petitioner for a confirmation by one of the rules of practice published by the Privy Council (*l*), the provisions of the Act, and of the rule being the same in effect.

Notice to be advertised.

The notice which an applicant is thus required to give must state the nature of the intended petition or application, and the day on which he intends to apply to the Judicial Committee for a time to be fixed for hearing the matter of the petition (*m*). The day for which such notice is given must not be less than four weeks after the date of the publication of the last of the advertisements to be inserted in the *London Gazette* (*m*).

Notice must state the nature and time of application.

If the intention is to petition for a confirmation, the advertisement must state that on or before the day mentioned, notice must be given of any opposition intended to be made to the petition. But if the petition is to be for the prolongation of a patent, the notice to be advertised must state that caveats are to be entered on or before the day for which the notice is given.

That notices of opposition must be given or caveats entered.

The notice of application must in every case be advertised three times in the *London Gazette*, three times in a London newspaper, and three times in a country newspaper. The

In what newspapers notice is to be advertised.

(*k*) 5 & 6 Will. IV. c. 83, s. 4.  
(*l*) Reg. P. C. r. 1.

(*m*) Reg. P. C. r. 1, and 2, Appendix, Chap. I. s. 2.



insertion of the advertisements once in each of three several London newspapers will be sufficient. The country newspaper must be a paper published in the town where or near to which the applicant carries on any manufacture of any thing made according to his specification, or near to or in which he resides if he carries on no such manufacture; or a paper published in the county where he carries on such manufacture or where he lives, if there be no paper published in the town in or near to which he carries on his manufacture or resides. When a patentee resides abroad and does not carry on any manufacture in this country, it will be sufficient if the notice is advertised in a newspaper published in or near to the place where licencees under the patent carry on business (*n*). But in one case (*o*), which was an application for a confirmation, the Privy Council required notice to be sent by post to a party interested who resided abroad.

Form of petition  
for a confirma-  
tion.

The petition for a confirmation (*p*) must be directed to her Majesty in Council, and it must state the patent, the specification, and if the applicant is an assignee, the assignment under which he derives his title. It must also state the particular defect which renders it necessary for the applicant to petition for a confirmation, that the invention had not been publicly and generally used before the date of the patent, that the petitioner has published all the necessary advertisements required by the rules of the Privy Council, and concluding with a prayer that her Majesty will be pleased to confirm the patent.

Form of petition  
for a prolonga-  
tion.

The petition for the prolongation of a petition must also be addressed to the Queen in Council, and state the patent, and specification, and the assignment, if any, to the applicant. It must then set forth the circumstances which have prevented the petitioner from obtaining a proper amount of recompense by means of the exercise of his invention; and if the petitioner intends to apply under the 7 & 8 Vict. c. 69, s. 2 (*q*), for an extension for fourteen years, it must be stated that a further term of seven years will not suffice for his remuneration (*r*).

(*n*) *De Rosne's* case, 20 May, 1844.

(*o*) *Baron Heurteloup's* case, 1  
Webs. R. 553.

(*p*) See the Form of Petition in the  
Appendix, Chap. II. s. 3.

(*q*) See the Statute in the Appendix,  
Chap. I. s. 1.

(*r*) See the Form of Petition in the  
Appendix, Chap. II. s. 3.

A petition, whether for a confirmation or prolongation, must be presented within one week after the insertion of the last of the advertisements required to be published in the *London Gazette* (q). And it must be accompanied with affidavits that advertisements have been duly inserted in the *London Gazette* and other papers in the manner already mentioned (r).

Petition, when to be presented.

The petition, together with the affidavits of the due publication of the advertisements, must be taken to the Council Office and filed there, and her Majesty's reference of the petition to the Judicial Committee will be obtained by the Clerk of the Council.

Petition and affidavits to be filed at Council Office.

Any person may oppose an application for the confirmation of a patent provided he lodges notice of his intention so to do at the Council Office on or before the day named in the applicant's notice (s). And a petition for the prolongation of a patent may also be opposed by any one who shall enter a caveat (s) against the prolongation at the Council Office, before the day mentioned in the advertisement. And parties who intend to oppose the confirmation or prolongation of a patent, may lodge caveats or notices of opposition at the Council Office, although no petition has been lodged and no advertisement published.

Persons may oppose upon giving notice or entering caveats.

The Judicial Committee will in some cases give parties leave to enter caveats after the day mentioned in the advertisements (t). And under special circumstances, probably notice of opposition would also be allowed to be given after the day appointed.

Leave to enter caveat after time expired.

The Judicial Committee of the Privy Council does not always sit on the day mentioned in the advertisements, but when the Council does not sit on that day, the application to fix a hearing is made on the first day the Council sits afterwards.

Copies of the petition to be served upon parties opposing.

Before applying for a time to be fixed for hearing the matter of a petition for a confirmation, the petitioner's solicitor must serve all parties to any former suit or action respecting the patent mentioned in the petition, and all

(q) Reg. P. C. r. 3, Appendix, Chap. I. s. 2.

(r) *Ibid.* r. 4.

(s) See the Form in the Appendix,

Chap. II. s. 3.

(t) Such leave was granted in *Macintosh's* case.



persons who have lodged notices of opposition to the application, with copies of the petition (*u*). And previous to an application to fix a time for hearing a petition for a prolongation, the solicitor must serve all persons who have entered caveats against the application with copies of the petition (*u*).

As parties can lodge notices of opposition and caveats, even on the day of application for a hearing, it will be necessary for the petitioner's solicitor to search the Council Office for notices and caveats up to the close of the day prior to the application, in order that he may be enabled to comply with the rules of the Privy Council, by serving the copies of petitions as already mentioned.

Service of  
copies of peti-  
tion to be veri-  
fied.

The service of parties with copies of the petitions must be verified by affidavit, without which the Privy Council will not entertain an application to fix the hearing.

Application to  
fix a hearing.

On the day mentioned in the advertisements, the petitioner must apply by counsel to the Judicial Committee of the Privy Council, to fix a time for hearing the matter of his petition. If the petition is opposed, the day to be fixed for the hearing must be more than four weeks from the time of the application, because the petitioner must give at least four weeks' notice of the time appointed for the hearing.

Notice of ob-  
jections.

Every person who has been served with a copy of a petition, whether for a confirmation or a prolongation, must, within a fortnight after such service, lodge at the Council Office notice of the grounds of his objections to the granting of the prayer of the petition (*w*). If a party neglects to lodge such a notice he cannot be heard in opposition to the prayer of the petition; and a person who has lodged a notice, will be confined to what is contained in his notice, and will not be allowed to oppose the petition upon any ground which is not mentioned in the notice.

Notices of  
hearing.

Upon a petition for a confirmation, the solicitor of the applicant must give notice of the time appointed for the hearing to every person who has lodged a notice of opposition at the Council Office (*x*). And upon a petition for a prolongation a similar notice must be given to every person who has entered a caveat at the Privy Council Office (*y*).

(*u*) Reg. P. C. r. 5.

(*w*) *Ibid.* r. 6.

(*x*) *Ibid.* r. 1.

(*y*) *Ibid.* r. 2.

The notice of a hearing must be served at least four weeks before the day for which it has been appointed (z). When to be served.

All affidavits, notices, &c., relating to the matter of any petition which has been referred to the Judicial Committee must be intitled, "In the Judicial Committee of the Privy Council," and also in the matter of the petition to which they relate. Affidavits, &c. how to be entitled.

Parties may obtain office copies of all papers lodged at the Council Office, respecting the matter of a petition (a). Office copies.

The petitioner may either appear in person, or by counsel, at the hearing of the matter of the petition. And as he is bound to make out a good *prima facie* case, independent of any objections to be raised by his opponents, he must begin at the hearing, and of course he will be entitled to the reply. Petitioner may appear in person or by counsel.

The practice of the Privy Council respecting the number of counsel to be heard is the same as in the House of Lords; viz. two only for each party, and two counsel only will be heard on behalf of several opposing parties, unless they have independent and distinct grounds of opposition founded on separate and independent interests (b). Two counsel only will be heard on each side.

The Attorney-general always attends the hearing in order to watch the case on behalf of the Crown and the public.

The petitioner must in the first place show at the hearing that he has duly advertised notice of his application, and also served copies of his petition upon all persons who are required to be served by the rules of the Judicial Committee. Proofs at the hearing.  
Advertisements and notices.

The petitioner must also give in evidence his patent and an office copy of the enrolment of his specification. And if he is an assignee of the patent, his title deed or title deeds must be given in evidence, the execution of them being proved by the attesting witnesses (c). Patent and specification.  
Assignment.

Any of these formal proofs may be made either by affidavit or by the examination of witnesses at the hearing.

The petitioner for a confirmation must show whether there have been any proceedings taken upon the patent, and the result of them. And if there have been any actions or suits respecting the patent, he must prove that the parties have Proofs in support of petition for confirmation.

(z) Reg. P. C. r. 1 and 2.

(a) Reg. P. C. r. 7, Appendix, Chap. I. s. 2. The cost of an office copy is 5s. for every side or page of the copy.

(b) *Woodcroft's* patent, 3 Moore's P. C. C. 172.

(c) *Wright's* patent, 1 Webs. R. 561; *Galloway's* patent, *Ibid.* 725.



been served with copies of the petition. The petitioner must himself, by affidavit, state that he was ignorant of the defect in his title at the time of his application for the patent; and it would be prudent to have the patentee in attendance, as the Judicial Committee might desire to examine him respecting his want of knowledge of a discovery or use of the invention by any other person prior to the grant of his patent (e).

The petitioner must also show the particular defect in his title, occasioned by a prior discovery or use of the invention which he is seeking to cure by a confirmation; and the Privy Council will require the fullest possible information respecting this part of the case, and the way in which the defect was discovered.

To make out the petitioner's case, evidence must also be given to show that the invention had not been publicly known, or used at any time before the date of the patent.

Petitioner for a confirmation must make out a strong case.

In order to obtain the report of the Judicial Committee in favour of a confirmation, the petitioner must make out a strong case for the interposition of the Crown in his favour, and if he has any other remedy, as by a disclaimer or a memorandum of alteration, the confirmation will not be granted (f).

Petitioner for a prolongation must make out a *prima facie* title to the patent privilege.

In support of a petition for a prolongation, a patentee must make out a *prima facie* title to his patent privilege, by giving in evidence his patent and an office or examined copy of the enrolment of his specification as already mentioned (g); and if he is an assignee, he must complete the proof of his title by giving in evidence the assignment or assignments under which he claims a right to the privilege granted by the patent (h). So, if any disclaimer or memorandum of alteration has been filed and enrolled, an office or examined copy of the enrolment must be given in evidence (i).

*Prima facie* evidence of validity of patent.

The petitioner must also, in support of his petition for an extension, make out a *prima facie* case respecting the validity of the patent (k). He must therefore show that

(e) Vide *in re Jones's patent*, 1 Webs. R. 578.

(f) See *Baron Heurteloup's case*, 1 Webs. R. 553; and *Well's case re Westrupp and Gibbin's patent*, 1 Webs. R. 554, stated *ante*, pp. 201 and 202.

(g) *Ante*, p. 567.

(h) *In re Wright's patent*, 1 Webs.

R. 561; and *in re Galloway's patent*, 1 Webs. R. 724.

(i) See *in re Galloway's patent*, 1 Webs. R. 724.

(k) See *in re Erard's patent*, 1 Webs. R. 557, n. (a); *in re Wright's patent*, *Ibid.* 561.

the invention was now at the date of the patent, which will be sufficient (the specification being in evidence) not only to prove the novelty of the invention, but also that the patentee was the inventor (i). The utility of the invention must also be proved, and (as it will be shown presently) in the most satisfactory manner. And general evidence must be given respecting the sufficiency of the specification.

The petitioner must also make out a strong case for the continuance of his patent privilege (k), the granting of the prayer of the petition being any thing but a matter of course in any case (l), and the jurisdiction of the Judicial Committee is only to be exercised on special grounds to be alleged and proved in each particular case (m).

Petitioner for a prolongation must make out a strong case.

In order to make out a sufficient case for the prolongation of a patent, the petitioner must show, *firstly*, great, or at least some very considerable merit on the part of the patentee and party applying,—*secondly*, that the public has derived or will derive some material benefit from the invention, and, *thirdly*, that the patentee, or his assignee, has not been sufficiently rewarded by means of the first grant, for the benefit which he has conferred upon the public. The length of the additional term which the Privy Council may recommend the Crown to grant, will in every instance depend upon the strength of the case which the petitioner makes out as to each of the three particulars which have been mentioned.

What must be shown to obtain a prolongation.

### (1). *Merit of the Patentee or Assignee.*

Merit in the patentee is required, because the consideration for the grant of privilege contained in the patent must move from the grantee (n); and the object of the patent law is, that patent privileges should be granted to reward those who first give useful inventions to the public, and to encourage others, by the hope of obtaining similar rewards, to confer similar benefits upon the public (o). And in order to determine the amount or extent of reward which ought to be given

Reason why patentee must have merit to obtain a prolongation.

(i) See the reason of this explained, *ante*, p. 443.

R. 737.

(k) *In re Erard's patent*, 1 Webs. R. 557.

(m) Per Lord Brougham, *in re Jones's patent*, 1 Webs. R. 579.

(l) *In re Morgan's patent*, 1 Webs.

(n) *Vide ante*, p. 23.

(o) *Vide Chap. III. ante*, p. 19.



in any particular case, it is essential to consider the degree of merit belonging to the patentee (*p*).

An actual inventor has more merit than an importer.

*In re Soame's patent.*

In order to ascertain the personal merits of the patentee, it is necessary to consider whether he was an actual inventor, or only imported a knowledge of the invention from abroad, an actual inventor being of course a much more meritorious person than an importer. Thus *in re Soame's patent* (*q*) in the Privy Council, Lord *Brougham* said, "The merit of an importer is less than of an inventor. We are now sitting judicially, and it is an argument against the patent, that it (the invention) was imported, and not invented. I do not say it takes away the merit, but it makes it much smaller." And in the same case, Lord *Campbell* said, "I should say, sitting here, if it (the invention) had been published in a foreign journal, considering whether the patent should be prolonged, I should be influenced by what I saw published in a foreign journal, without inquiring whether it was known in England; though when sitting in a court of justice, and considering the validity of the patent, I should require that it should be known in England."

Inventor's merit depends upon the skill, &c.

If the patentee is an actual inventor, his personal merit will depend upon the skill and ingenuity which he has shown in making his invention, and the labour and expense which he has bestowed in bringing it to perfection, and rendering it useful and valuable to the public.

*In re Whitehouse's patent.*

In the case of *Whitehouse's patent* (*r*), Lord *Brougham*, in delivering the judgment of the Privy Council in favour of a prolongation of the patent, relied much upon the great merit of the inventor. So also *in re Downton's patent* (*s*) in the Privy Council, the great ingenuity of the patentee was considered by their Lordships as one great reason for a prolongation.

*In re Downton's patent.*

Utility of invention a great criterion of merit.

The utility of the invention to the public, is of course one great criterion in judging of the merit of a patentee, and if his merit is not very considerable, the Privy Council will not recommend a prolongation of the patent. Thus

(*p*) See *in re Whitehouse's patent*, 1 Webs. R. 473; *re Russell's patent*, 2 Moore, P. C. C. 496; *in re Downton's patent*, 1 Webs. R. 565; and in

*re Morgan's patent*, 1 Webs. R. 737.

(*q*) 1 Webs. R. 729.

(*r*) *Ibid.* 477.

(*s*) *Ibid.* 565.

*in re Morgan's patent* (s), Lord *Brougham* said, in delivering the judgment of the Privy Council, "Their Lordships do not consider that this invention is entirely without merit, but it seems of a very moderate degree, being the substitution of the chemical process of washing with sulphuric acid for the scaling process by fire, making a cheaper and somewhat better article. It is not without merit, at the same time it cannot be said to be of great merit—merit which would lead their Lordships to strain much in favour of the inventor." And a prolongation was refused (t).

There were doubts in the profession respecting the power to grant a prolongation to an assignee (u), but notwithstanding such doubts, the Privy Council, in several instances, recommended the grant of extensions to assignees (x), and, in one case (y), a prolongation was granted to an administratrix. All doubt on this subject has, however, been obviated by the statute 7 & 8 Vict. c. 69, s. 4 (z).

Upon a petition by the assignee of a patent, the Privy Council will consider the assignee as representing the merit of the patentee and inventor, and will recommend the grant of an extension to an assignee although Parliament would not have granted such an extension (a).

Thus *in re Galloway's patent* (b) Lord *Brougham* stated that the Judicial Committee thought it for the benefit of patentees that the assignee should represent the whole merit of the inventor. And *in re Morgan's patent* (c), his Lordship said, in delivering the judgment of the Privy Council, "When application is made to their Lordships for the extension of a patent term, (that is to say, of a monopoly under letters patent,) by assignees to whom the interest of the patentee has been parted with, and in whom it is vested, their Lordships

(s) 1 Webs. R. 737.

(t) See *in re Woodcroft's patent*, 3 Mo. P. C. C. 171.

(u) See the observations of Lord *Brougham*, *in re Galloway's patent*, 1 Webs. R. 725; the case of *Spilsbury v. Clough*, 2 Q. B. 466, and *ante*, pp. 149 and 205.

(x) *Whitehouse's patent*, 1 Webs. R. 473; *S. C. nom. re Russell's patent*, 2 Moore, P. C. Cases, 496; *Southworth's patent*, 1 Webs. R. 486; *Wright's*

*patent*, *ibid.* 561; *Jones's patent*, *ibid.* 577; *Galloway's patent*, *ibid.* 724; and *Soames's patent*, *ibid.* 729.

(y) *Downton's patent*, 1 Webs. R. 565.

(z) *Vide ante*, p. 149, and see the Statute in the Appendix, Chap. I. s. 1.

(a) *In re Soames's patent*, 1 Webs. R. 729.

(b) 1 Webs. R. 724.

(c) *Ibid.* 737.



have always been used to consider that by taking into their view, and favourably listening to the application of an assignee, they are, though not directly, yet immediately, and consequentially, as it were, giving a benefit to the inventor, because if the assignee is not remunerated at all, it might be said that the chance of the patentee of making an advantageous conveyance to the assignee, would be materially diminished, and consequently, his interest damnified. For this reason, consideration has been given to the claims of the assignee who has an interest in the patent."

Assignee's personal merit will be considered.

And the Privy Council will not only consider an assignee as representing the patentee, but will also take into consideration the personal merit of the assignee himself, and his claim to be further rewarded. Thus *in re Whitehouse's* patent (*d*), in which Mr. Russell, the assignee, was applying for a prolongation of a patent, Lord *Brougham* said, in delivering the judgment of the Privy Council in favour of the application, "Their Lordships have taken into account Mr. Russell's merit in patronizing the ingenious and deserving author of this invention, in expending money till he was enabled to complete this invention, and in liberally supplying the funds which were requisite for the purpose of carrying the invention into execution."

If the patentee himself has no great merit or claim to be rewarded, the Privy Council will investigate the claims of the assignee, and if the assignee has not some very considerable merit or claim to be rewarded by the public, their Lordships will, of course, refuse to recommend any extension of the patent (*e*).

## (2.)—*Utility of the Invention.*

Utility of an invention to support a patent.

It has been shown in former parts of this work (*f*), that it is sufficient if an invention possesses some degree of utility in order to make it the subject of a valid patent privilege, and that a patent is not void on the ground of a deficiency of public utility in the invention, unless there is a total absence of it (*g*).

(*d*) 1 Webs. R. 473.

(*e*) Vide *in re Morgan's* patent, 1 Webs. R. 737.

(*f*) Vide *ante*, pp. 3 and 133.

(*g*) *Ibid.* pp. 3 and 137.

At the time when a patent is granted it would be difficult, and in many cases it would be impossible, to ascertain the degree of benefit which an invention will confer upon the public; and, therefore it is that patents are granted without much, if any inquiry into the utility of the inventions for which they are obtained; and because (according to the language of the Attorney-general's Report) it is entirely at the hazard of the patentee whether the invention is now, or will have the desired success; and because it is reasonable for her Majesty "to encourage all arts and inventions which *may be* for the public good" (*h*).

Patent granted without inquiry as to utility of invention.

A patentee, therefore, takes a grant, knowing it to be entirely at his own risk; and if the merit of his invention is so small that the patent produces him little or no profit, he has no claim upon the public; he has had all that he bargained for, all that he had any right to expect, and the public ought not to be inconvenienced by the continuance of a monopoly of an invention, which, although itself of small utility, yet may be of some importance as a component part of some other art or invention.

Patentee takes a grant at his own risk.

It has been shown that the object of the patent law is by the grant of patent privileges to encourage ingenious persons to benefit the public by new and useful inventions; and it is the policy of the excellent statute (which the public owe to Lord *Brougham*) to hold out further encouragement, by additional rewards to the patentees of useful inventions, who have not already been sufficiently recompensed by their patents; the reward in every case being an extension of the patent term in proportion to the merit of the applicant, the utility of the invention, and the want of prior remuneration.

Object of patent law to encourage inventors, and prolongations are granted as additional rewards for useful inventions.

The grant of a patent privilege is made by the Crown on behalf of the public (*i*), the consideration for which is the public utility of the invention comprised in it (*k*), and this applies to a patent for a prolongation as well as to an original patent.

Consideration for extension, is the public utility of invention.

It is very fit and proper to grant patents in the first in-

Reason why a patent granted

(*h*) The recital in a patent also shows the intent of the Crown in making the grant to be "to encourage all arts and inventions which *may be* for the public good." Vide *ante*, pp. 47, 48,

517, and the Forms of Report and Patent, in the Appendix, Chap. II. s. 1.

(*i*) Vide *ante*, p. 52.

(*k*) *Ibid.* p. 132, 133.



without inquiry into utility of invention. stance at the risk of the public receiving very small consideration for some of the grants; for, if a contrary course were adopted, the community would run some risk of losing the benefit of really useful inventions, or what would be nearly as bad, delaying the publication of them to the world.

The same reason does not apply to an extension. But when an invention has once been published, and by the inventor's own act dedicated to the public, after the expiration of a patent, there is no reason for prolonging the patent privilege, if it is not shown that the invention confers some substantial benefit upon the public; for, if such an invention really does benefit the public, the patentee can have no difficulty in proving the fact after he has had the advantage of a fourteen years' monopoly, and the opportunity of ascertaining whether he has produced any thing the public requires.

Utility of invention must be proved. In order to obtain the prolongation of a patent, therefore, it is necessary that the petitioner should prove to the satisfaction of the Privy Council, that the invention comprised in the patent has given some considerable benefit to the public as consideration for the new grant, as an equivalent for the inconvenience which must result from the continuance of the patent privilege. And in all the cases of applications for prolongations which have been made, the Judicial Committee has required the utility of the invention to be satisfactorily proved, and has refused to grant extensions in those cases in which the public have not received some considerable benefit.

*In re Erard's patent.* In *Erard's* case (l), Lord *Lyndhurst* said, in delivering the judgment of the Privy Council, upon an application for the prolongation of a patent, "In cases of this kind we expect a very strong case of hardship, as well as a strong case upon the utility of the invention." So *in re Downton's* patent (m), upon an application to extend a patent, it was laid down by the Privy Council that the questions were, "is it a useful invention; is it beneficial to the public; is it an invention of that character which would lead us to interpose; is there ingenuity in the invention, and has the party been remunerated" (n).

It is no objection that inven- It is no objection to the claim of a patentee for a pro-

(l) 1 Webs. R. 557.

(m) *Ibid.* 565.

(n) See also *in re Wright's* patent,

1 Webs. R. 575; *in re Jones's* patent, 1 Webs. R. 577; *in re Galloway's* patent, *ibid.* 724.

longation that improvements have been made upon his invention, if the invention itself, which is comprised in the patent, was itself at the date of the patent really useful and meritorious.

tion has been improved.

Thus *in re Galloway's* patent (o), which was an application for the prolongation of a patent for an invention of improvements in machinery for propelling vessels, Lord *Brougham* said, in delivering the judgment of the Privy Council, "Now it appears that improvements were made in the float, such manifest improvements, that no person would after these ever think of persisting in using the invention as it originally stood, but would have recourse to the improvements. That, however, is no reason against the claim of the original inventor; it is only saying that his invention, though useful, has been capable of improvement, and its having been improved, affords no reason for denying him an extension of the patent, if upon other grounds he has merit, and if upon other grounds he is shown not to have reaped a due benefit in proportion to that merit. If such an argument were to prevail, any improvement made by him upon the patent would at once take away the patentee's right to obtain, under whatever circumstances he may come before this Court, a recommendation to have, under the Act of Parliament, an enlargement of the term."

*In re Galloway's* patent.

And *in re Soame's* patent (p), the same law was laid down by Lord *Brougham*.

*In re Soame's* patent.

It is evident, indeed, that it is rather to the advantage of the public to hold out inducements to patentees to improve their inventions, and to grant more liberal extensions in cases where inventors have, by improvements, made their inventions of greater utility and value to the public.

Patentees who improve their inventions more meritorious.

And no argument can or ought to prevail against the utility of an invention, by reason of the small step which the patentee made in advance of the previous state of public knowledge respecting the particular art or branch of manufactures to which the invention relates. This was laid down and most lucidly explained by Lord *Brougham*, in delivering the judgment of the Privy Council upon an application for a

Smallness of step no argument against an extension.

(o) 1 Webs. R. 724.

(p) *Ibid.* 734.



*In re Soame's patent.*

prolongation of *Soame's* patent (*q*), in which his Lordship said, "It is very fit their Lordships should guard against the inference being drawn, from the small amount of any step made in improvement, that they are disposed to undervalue that in importance; if a new process is invented, if new machinery is invented, if a new principle is found out and applied so as to become the subject of a patent right, embodied in a manufacture, then, however small it may be in advance of the state of science, or of art previous to the period of that step being made, that is no reason whatever for undervaluing the merits of the person who makes a discovery in science or an invention in art, because the whole history of science, from the greatest discoveries down to the most unimportant—from the discovery of the system of gravitation itself, and the fractional calculus itself, down to the most trifling step that ever has been made, is one continued illustration of the slow progress by which the human mind makes its advance in discovery; it is hardly perceptible, so little has been made by any one step in advance of the former state of things, because generally you find that just before there was something very nearly the same thing discovered or invented. Therefore it is no argument whatever in general, if there is a new principle, or a novel invention, a new process for instance."

(3.) *No sufficient reward.*

Patentees often fail to acquire any reward from first patent.

A patent is granted for the purpose of rewarding an inventor for the benefit which his invention confers upon the public. From many causes over which patentees have no controul, they very frequently suffer great loss, or fail to acquire such an amount of remuneration as it is just and expedient that they should receive; even when their inventions are very meritorious and most valuable to the public (*r*).

Object of stat. 5 & 6 W. IV. c. 83, s. 4, to grant extents to those not sufficiently rewarded.

The object of the statute 5 & 6 Will. IV. c. 83, s. 4, was to enable the Crown, with the advice of the Privy Council, to prolong patent rights, as rewards to patentees, in cases where they possess great merit, and have not been sufficiently recompensed by means of the grant contained in the first patent.

(*q*) 1 Webs. R. 735.

(*r*) Vide *ante*, pp. 145, 146.

The want of a sufficient amount of recompense or reward arising from the exercise of the privilege granted by the first patent, is therefore in every case essentially necessary, in order to bring an applicant for a prolongation within the meaning of the statute (s), and a petitioner must prove, to the satisfaction of the Privy Council, that he has not been sufficiently remunerated. Want of recompense essential, and must be satisfactorily proved.

Every case laid before the Privy Council will be thoroughly investigated (t), and if a meritorious petitioner is able to satisfy their Lordships that he has not received any sufficient recompense, such an extension of the patent will be recommended—as in the judgment of their Lordships will meet the justice of the case (u). Cases are well investigated.

In cases in which it has been shown that meritorious patentees have received no remuneration, or have suffered a loss, extensions have generally been recommended for the full period of seven years, authorized to be granted under the 5 & 6 Will. IV. c. 83. s. 4 (x). Cases in which extensions for seven years have been granted.

In other cases their Lordships have recommended extensions for various additional terms, according to the particular degree of merit of each petitioner, and the extent to which he has already been remunerated (y). Cases in which less than seven years have been granted.

But when it appears that a patentee, or his assignee, has received as much remuneration as he deserves (z), or that the patent has not been productive of remuneration, in consequence of the gross negligence on the part of the patentee (a), the Privy Council will not report in favour of a prolongation. Cases in which extensions are refused.

The power of prolonging a patent privilege was enlarged by the statute 7 & 8 Vict. c. 69, s. 2, which recites that, "It is expedient for the further encouragement of inventions Power of prolonging patents enlarged by stat. 7 & 8 Vict. c. 69, s. 2.

(s) *In re Soame's patent*, 1 Webs. R. 733; *in re Kay's patent*, *ibid.* 571.

(t) See *in re Swaine's patent*, 1 Webs. R. 559.

(u) See the various cases reported in the first vol. of Mr. Webster's Reports.

(x) See *in re Stafford's patent*, 1 Webs. R. 563; *in re Kollman's patent*, *ibid.* 564; *in re Robert's patent*, *ibid.* 573; *in re Wright's patent*, *ibid.* 575; *in re Jones's patent*, *ibid.* 577; and *in re Wright's patent*, *ibid.* 736.

(y) See *in re Southworth's patent*, 1 Webs. R. 486; *in re Downton's patent*, 1 Webs. R. 565; *in re Kay's patent*, *ibid.* 568; *S. C. 3 Moore's P. C. C. 24*; *in re Galloway's patent*, 1 Webs. R. 724; and *in re Soame's patent*, *ibid.* 729.

(z) See *in re Morgan's patent*, 1 Webs. R. 737; *in re Quarill's patent*, *ibid.* 740.

(a) See *in re Simister's patent*, 1 Webs. R. 721.



If patentee shows that an extension for seven years will not remunerate him, a term not exceeding fourteen years may be granted.

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

Lesser term may be granted than prayed for by petition.

And by section 4 of the Act it is enacted, that nothing therein contained, shall prevent the Judicial Committee from reporting that an extension for any period not exceeding seven years should be granted, or prevent her Majesty from granting an extension for such lesser term than the petition shall have prayed.

Object of stat. 7 & 8 Vict. c. 69, s. 2.

The object of this statute as shown by the recital, is to provide the means of rewarding meritorious inventors in cases where prolongations for seven years would be sufficient for that purpose.

Petition for prolongation for fourteen years.

In order to obtain a prolongation under this statute, the petition must allege that an extension for seven years would

(b) The stat. 5 & 6 Will. IV. c. 83, which is previously recited.

be insufficient to remunerate him, and pray for the grant of an additional term of fourteen years.

The petitioner must also show to the satisfaction of their Lordships, that a prolongation would not be sufficient to remunerate him for his expense and labour in perfecting his invention. What petitioner must prove.

Although the proceeding before the Judicial Committee to obtain the prolongation of a patent, is substituted for an application to Parliament for an Act, yet the provisions of the statutes 5 & 6 Will. IV. c. 83, and 7 & 8 Vict. c. 69, s. 2, were intended to apply to some cases in which Acts of prolongation could not have been obtained. The statutes extend to cases in which Acts of Parliament would not have been obtained.

This is clearly explained by Lord *Brougham* in giving the judgment of the Judicial Committee upon a petition for the prolongation of *Soames'* patent (c), in which his Lordship said, "their Lordships have always considered that it was with the view of affording a better remedy, not only cheaper and easier, but better in this respect, that there might be cases which never would have prevailed on the legislature to make a new personal law prolonging a monopoly, which, nevertheless might seem meritorious enough in respect of the individual, beneficial enough in respect of the public, and deficient enough in remuneration to justify interference; which, nevertheless, had they been presented in the form of a petition to Parliament would have failed to procure an Act," In re Soame's patent.

A person who has entered a caveat against the prolongation of a patent, is entitled (if he gives a sufficient notice of his objections) to dispute the petitioner's claim, and to disprove any part of the case which is laid before the Privy Council in support of the petition. Opposition to an extension.

Thus an opposing party may give evidence to show that the patentee was destitute of merit, that the invention was of no use to the public, or that the patentee has been sufficiently rewarded, or failed to obtain a sufficient recompense only in consequence of his own gross negligence. What an opposing party may show.

So also it may be shown in opposition to such an application that the patent is clearly void, either for want of novelty or utility in the invention, or for any other cause.



Patent will be assumed to be good unless the contrary clearly appears.

But the Privy Council will assume a patent to be good until the contrary be shown, either by the judgment of a Court of Law or Equity, or by some other proof which can leave no doubt on the subject. If a patent is clearly void, the Privy Council will not recommend Her Majesty to make another void grant, but their Lordships will not take upon themselves the office of a Court of Law or Equity to investigate the legality of a patent, and in all doubtful cases they will leave the legal objections to a patent to be determined by those Courts (*d*).

Provision for patentee when extension granted to an assignee.

*In re Whitehouse's patent.*

The Privy Council will in some cases where an assignee is applying for an extension, grant the prayer of a petition upon the terms that some further reward be given to the patentee.

Thus, *in re Whitehouse's patent* (*e*), the Privy Council granted an extension to Mr. Russell, the assignee of the patent, upon condition that he secured to Mr. Whitehouse the payment of 500*l.* per annum, during the further term which was granted.

Licensees.

So also the Privy Council will take care that licensees are not unfairly prejudiced by a prolongation (*f*), and if a petitioner has not made terms with a licensee, the licensee may oppose the grant of an extension.

Evidence.

The Judicial Committee adopts rules of evidence as nearly as possible resembling those which prevail in our Courts of Law (*g*), and a petitioner must prove all facts necessary to support his petition to the satisfaction of their Lordships. No admission made by a party opposing the petition will dispense with any necessary proof, for their Lordships are bound to protect the interests of the public (*h*).

Evidence of want of remuneration.

For the purpose of proving the insufficiency or want of remuneration, the petitioner's original account books must be produced, and an accountant must be called who has examined them, and can state the actual amount of profit and loss arising from the exercise of the patent. And a balance sheet ought to be produced showing the actual receipts and ex-

(*d*) See *in re Kay's patent*, 1 Webs. 568; *S. C.* 3 Moore, P. C. Cases, 24.

(*e*) 1 Webs. R. 568; *S. C. nom. re Russell's patent*, 2 Moore, P. C. Cases, 496.

(*f*) Upon this subject, *vide ante*, p.

148.

(*g*) See *in re Erard's patent*, 1 Webs. R. 557, n. (*a*).

(*h*) See *in re Soame's patent*, 1 Webs. R. 732.

penditure of the patentee as well as the balance of profit or loss. The Privy Council will require the most satisfactory evidence upon this part of a petitioner's case which is so essential to entitle him to the extension he is seeking to obtain (i).

By section 7 of the statute 3 & 4 Will. IV. c. 41, it is enacted, "That it shall be lawful for the said Judicial Committee in any matter which shall be referred to such Committee to examine witnesses by word of mouth (and either before or after examination by deposition), or to direct that the depositions of any witness shall be taken in writing by the Registrar of the said Privy Council, to be appointed by his Majesty as hereinafter-mentioned, or by such other person or persons, and in such manner, order, and course as his Majesty in Council, or the said Judicial Committee shall appoint and direct; and that the said Registrar, and such other person or persons so to be appointed, shall have the same powers as are now possessed by an examiner of the High Court of Chancery, or of any Court Ecclesiastical."

Evidence may be taken *videlicet*, or upon written depositions.

By section 9 it is enacted, "That every witness who shall be examined in pursuance of this Act, shall give his or her evidence upon oath, or if a Quaker or Moravian, upon solemn affirmation, which oath and affirmation respectively shall be administered by the said Judicial Committee and Registrar, and by such other person or persons as his Majesty in Council, or the said Judicial Committee shall appoint; and that every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury, and shall be punished accordingly."

Witnesses to be examined on oath before Judicial Committee, Registrar, &c.

By section 19 it is enacted, "That it shall be lawful for the President for the time being of the said Privy Council to require the attendance of any witnesses, and the production of any deeds, evidences, or writings, by writ to be issued by such President in such and the same form, or as nearly as may be, as that in which a writ of *subpœna ad testificandum*, or of *subpœna duces tecum*, is now issued by his Majesty's Court of King's Bench, at Westminster; and that every person disobeying any such writ so to be issued by the said President, shall be considered as in contempt of the said Judicial Com-

Attendance of witnesses and production of papers, &c. may be compelled by *subpœna*.

(i) Vide *in re Quarrill's* patent, 1 Webs. R. 740; and *in re Swaine's* patent, *ibid.* 560, n. (a).



mittee, and shall also be liable to such and the same penalties and consequences as if such writ had issued out of the said Court of King's Bench, and may be sued for such penalties in the said Court."

Provisions of 13 Geo. III. c. 63, and 1 Will. IV. c. 22, respecting the examination of witnesses, extended to Judicial Committee.

By section 14, after reciting that by the statutes of 13 Geo. III. c. 63, and 1 Will. IV. c. 22, certain powers are given to certain courts therein mentioned to enforce, and provisions are made for the examination of witnesses upon interrogatories and otherwise; it is enacted, "That all the powers and provisions contained in the two last-mentioned Acts, or either of them, shall extend to and be exercised by the said Judicial Committee, in all respects as if such Committee had been therein named as one of His Majesty's Courts of Law at Westminster."

Under this section of the Act the Judicial Committee may order witnesses to be examined before the Registrar, or issue commissions for the examination of witnesses, and such examinations may be upon interrogatories or otherwise (*h*).

Costs to be paid by such parties as Judicial Committee shall direct.

By section 15, it is enacted that the costs incurred in the prosecution of any appeal or matter referred to the said Judicial Committee, and of such issues as the same Committee shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the aforesaid Registrar, or such other person or persons to be appointed by his Majesty in Council, or the said Judicial Committee, and in such manner as the said Committee shall direct."

Under this enactment the Judicial Committee has power to compel a party petitioning or opposing a petition to pay costs to his opponent. Thus, *in re Mackintosh's patent (l)*, the petitioner having abandoned his application for a prolongation, the Privy Council ordered him to pay the opposing parties their costs. *In re Downton's patent (m)*, an opposing party was ordered to pay the petitioner the extra costs occasioned by the opposition. And *in re Westrupp and Gibbon's patent (n)*, a petition for the confirmation of a patent being opposed, was dismissed with costs. And in the case just cited, Lord *Lyndhurst* said, "My opinion on the subject of

(*h*) See the provisions of the Act, 1 Will. IV. c. 22.

(*l*) 1 Webs. R. 739, n.

(*m*) 1 Webs. R. 567.

(*n*) *Ibid.* 556.

costs is this; if a party entitled to oppose does come and oppose, and opposes successfully, if we do not give costs, we shall discourage persons coming to protect the interests of the public. We have the power to give costs in any matter referred to us, and sitting here as a Judicial Committee, we can give costs under the general Act (o), not under the patent Act" (p). And in the same case their Lordships refused to allow evidence to be given as to costs after the close of the case.

The costs to be paid in pursuance of an order of the Privy Council are generally taxed by the clerk of appeals; but the Council may direct the costs to be taxed by any other officer.

By section 17, it is enacted, "That it shall be lawful for the said Committee to refer any matters to be examined and reported on to the aforesaid Registrar, or to such other person or persons as shall be appointed by his Majesty in Council, or by the said Judicial Committee, in the same manner and for the like purposes as matters are referred by the Court of Chancery to a Master of the said Court; and that for the purposes of this Act, the said Registrar and the said person or persons so to be appointed, shall have the same powers and authorities as are now possessed by a Master in Chancery."

References may be made to the Registrar or any other officer.

If the Privy Council refuses to report in favour of the prayer of a petition, whether for a confirmation or prolongation, a report is unnecessary, and none will be prepared.

When the Privy Council has determined to report to the Crown in favour of a confirmation or prolongation, a report is accordingly drawn up by the clerk of appeals stating that the Judicial Committee recommend the prayer of the petition to be granted; and if the petition be for a prolongation, also stating the additional term which her Majesty is advised to grant to the petitioner, and the conditions (if any) upon which the new grant is to be made (q).

Report in favour of petitioner.

The report when prepared will be approved of by the Queen in Council, at the first meeting of the Privy Council after the matter of the petition has been heard; and the order

Report to be approved of by the Queen in Council.

(o) 3 & 4 Will. IV. c. 41, s. 15.

(p) 5 & 6 Will. IV. c. 83.

(q) The cost of the report is 17. 10s.



in Council made thereupon (r) will then be delivered to the petitioner's solicitor to be taken to the Office of the Secretary of State for the Home Department, to procure the Queen's warrant for a patent in pursuance of the recommendation of the Privy Council.

Warrant for a bill for new patent.

Upon a report of the Privy Council in favour of a confirmation (if by a new patent) or prolongation, a warrant will be prepared reciting the facts stated in the report, and commanding the Attorney or Solicitor-general to prepare a bill for the intended patent by which the confirmation or prolongation is to be granted. This warrant is prepared at the Home Office, and is signed by her Majesty, and countersigned by the Secretary of State, in the same way as a warrant for an ordinary patent (s).

The warrant will be delivered to the petitioner, his solicitor, or agent, at the Home Office, and it must then be taken to the Patent Bill Office, in order that the bill and two transcripts may be prepared.

It is unnecessary here to describe the subsequent proceedings for obtaining the patent, they are the same as the proceeding in ordinary cases which have already been detailed (t).

(r) The cost of the order in Council is 3*l.* 2*s.* 6*d.*

same as in other cases.

(s) The cost of the warrant is the

(t) Vide Section 1 of this Chapter, *ante*, p. 519.

# APPENDIX.



## CHAPTER I.

STATUTES, RULES, AND TABLES OF FEES AND STAMPS.

## CHAPTER II.

FORMS AND ENTRIES.



# A P P E N D I X.

## CHAPTER I.

### STATUTES, RULES, AND TABLES OF FEES AND STAMPS.

SECT. I.—*Statutes relating to Letters Patent.*

II.—*Rules of Practice relating to Letters Patent for Inventions.*

III.—*Tables of Fees and Stamps.*

## SECTION I.

### *Statutes relating to Letters Patent.*

18 HEN. VI. c. 1. [A. D. 1439.]

“ WHEREAS, by suit made to the King by divers persons, it hath been desired by their petitions to have offices, farms, and other things of the gift and grant of the King by his gracious letters patents thereof to them to be made, desiring by the same petitions the same letters patents of the King to bear date at a certain day limited in the same, the which day is often long before the King's grant to them made upon their said petitions, whereby the King's letters patent to them thereupon made have borne the same date, by reason whereof divers of the King's liege people having such offices, farms, and other things of the gift or grant of the King by his gracious letters patents thereof to them long time before duly made, by such subtle imagination of such ante dates desired by such petitions of such offices, farms, and other things, often have been put out, removed, and expelled against right, good conscience, and reason” (a). Our said Lord the King willing to put out such imaginations, by the advice and assent of the Lords spiritual and temporal aforesaid, and at the special

(a) The deed of a subject has relation to the time of delivery; but a patent, on the contrary, has relation only to the day of the date. The reason is, that a patent being a record cannot be contradicted, and it could not be al-

lowed to be alleged against a patent, that it was made at any other time than the day it bears date, Plow. 491. Hence the mischief produced by antedating patents as mentioned in this preamble.

request of the said Commons, hath ordained, by authority of the same Parliament, that of every warrant hereafter sent by the same our Lord the King, or his heirs, to the Chancellor of England for the time being, the day of the delivery of the same to the Chancellor shall be entered of record in the Chancery (b). And that the Chancellor do cause letters patents to be made upon the same warrant bearing date the day of the said delivery in the Chancery, and not before in anywise (c). And if any letters patents be from henceforth made to the contrary, they shall be void, frustrate, and holden for none (d).

27 HEN. VIII. c. 11. [A. D. 1535.]

*An Act concerning Clerks of the Signet and Privy Seal.*

“Whereas the King’s clerks of his Grace’s Signet and Privy Seal (e), giving their daily attendance for the passing and writing of his Majesty’s great and weighty affairs, and the causes of this his realm, having for their entertainment and their clerks no fees, nor wages certain for those offices other than such fees as cometh and groweth of the said Signet and Privy Seal, to the intent that from henceforth they should not by any manner of means be defeated of any part or portion of the same their fees:” be it therefore ordained, established, and enacted, by the consent and assent of the Lords spiritual and temporal, and the Commons in this present Parliament assembled, and by authority of the same, that all and every gift, grant, and other writing, which shall be made or given in writing by the King’s Highness, or any of his most noble posterity, to any person or persons signed with his Grace’s sign, or the sign or signs

The king’s grants shall be brought to the secretary or to a clerk of the signet.

(b) In pursuance of this enactment, an entry, usually called a *recepti*, is always entered in the margin or upon some part of a writ of privy seal, as follows:—

“Received the *first* day of *August*, one thousand eight hundred and forty-five.

Signed,

“LYNDHURST, C.”

And when a writ of privy seal is altered it must be re-delivered to the Lord Chancellor, and an entry made of the re-delivery. See the Practice, Chapter XII. pp. 536, 548, and the Forms, *post*, in the Appendix, Chapter II. s. 1.

(c) See *Daniel’s* case, Dyer, 133. If the Chancellor makes a patent without any date it is not therefore void, 10 Hen. VII. f. 20, and 20 Hen. VII. 7, 8, Godb. 416.

(d) By means of the record, made in pursuance of the statute, a person aggrieved is enabled to show when a writ of privy seal was delivered to the Chan-

cellor; and if it appears that the patent has been made in contravention of this statute it will be void. But if the officer of the Lord Chancellor merely omits to make an entry of record according to this statute, a patent properly made, and not dated before the day of the actual delivery of the writ, will not be void for want of such a record, *Plow.* 491.

(e) By the statute 57 Geo. III. c. 63, s. 1, it is provided that the duties of these offices are to be executed in person; and by section 2, the commissioners of the treasury are authorised to regulate the duties of the offices and establishments. By the statute 2 & 3 Will. IV. c. 49, s. 1, the commissioners of the treasury are authorised to abolish the offices of any of the clerks of the signet or privy seal as they shall become vacant, and to direct the duties of the offices abolished to be performed by the remaining clerks in the office.



manual of any of them, to be passed under any his Grace's great seals of England, Ireland, Duchy of Lancaster, or any of his Highness's counties palatines, or principality of Wales, or by other process, out of the Exchequer after the fifteenth day of April, in the twenty-seventh year of his most noble reign, and that all and every gifts, grants, and other writings of what name or names, quality or qualities soever, the same may be or hereafter shall be named, deemed, or called, which the master of the King's wards, or general surveyors of the King's lands for the time being, or any other officer or officers that now be or hereafter shall be made, shall by virtue of an Act of Parliament, or any the King's grants to them, or any of them made or hereafter to be made in that behalf, give, grant, or make after the aforesaid fifteenth day of April, to any person or persons in the King's name to be passed under any of his Majesty's seals, be in anywise first and before the same grant, or any of them, be passed under any the King's said seals or other process made of the same, brought and delivered to the King's principal secretary, or to one of the King's clerks of his Grace's signet for the time being, to be at the said office of the signet passed accordingly.

2. And be it also ordained and enacted by the authority aforesaid, that one of the clerks of the said signet to whom any of the said writings, signed with the King's most gracious hand, or the hand of any other aforesaid, or any of them fortune to be delivered, may and shall, by warrant of the same bills, and every of them within the space of eight days next after he shall have received the same, unless he have knowledge by the said secretary or otherwise of the King's pleasure to the contrary, make or cause to be made in the King's name letters of warrant subscribed with the hand of the same clerk, and sealed with the King's signet, to the Lord keeper of the King's Privy Seal for further process to be had in that behalf: and that one of the King's clerks of the said Privy Seal upon due examination had by the said Lord keeper of the said Privy Seal, of the said warrant to him addressed from the office of the said signet as afore, may and shall, within the space of eight days next after he shall have received the same, unless the Lord keeper of the Privy Seal do give them commandment to the contrary, make or cause to be made by warrant of the aforesaid warrant to the said Lord keeper of the Privy Seal address from the office of the signet aforesaid, other letters of like warranty subscribed with the name of the same clerk of the Privy Seal to the Lord Chancellor of England, Lord keeper of the Great Seal, Chancellor of the Duchy of Lancaster, Chancellor of the King's land of Ireland, treasurer and chamberlains of the Exchequer, and chamberlains of any of his counties palatines, or principality of Wales, or other officer, and to every of them, for the writing and ensealing with such seals as remain in their custody of letters patent, or closed or other process making due and requisite to be had, or made, upon any the said grants, according to the tenor of the warrant to them or any of them directed, from the officer of the Privy Seal, as is afore specified.

A warrant by the clerk of the signet to the lord keeper of the privy seal.

Warrant from the privy seal to the Lord Chancellor.

3. And also be it enacted by the authority aforesaid, that no manner of Penalty for altering the

course afore-  
said.

clerk or clerks, or other person or persons, do write or make any manner of writing, warrant or warrants, upon any manner of gift or grant made by the King's Highness, or by any other his Grace's officers as aforesaid, or procure the same or any of the same to be passed under the seals aforesaid after any other sort, manner or fashion, or by any other warrant or warrants than as before is specified and delivered, upon pain to forfeit for every bill, warrant or writing, passed contrary to the order before limited and prescribed, the sum of 10*l.* sterling, the one half thereof to be to our Sovereign Lord the King, and the other half to him that shall first sue for the same by action of debt, writ, bill, plaint, or information, in any of the King's Courts; in which action or suit, no essoin, protection, privilege, nor wager of law shall be admitted; any manner, act, statute, provision, proclamation, or other ordinance heretofore had or made contrary to this present Act, or any article of the same in anywise notwithstanding.

Fees for writ-  
ings which pass  
by immediate  
warrant.

4. And nevertheless be it also enacted, that every of the said clerks or other person which shall pass in writing, or procure to be passed in writing, any grant or grants by immediate warrant, wherefore fees be paid at the Great Seal, shall of the parties receive for the offices of the said signet and Privy Seal, as well such fees as in this Act is taxed for writing of any such grant or other writings, as also the fees for the seal of the same; which fees and every part and portion thereof the same clerk or clerks by whom any grant shall pass in writing by immediate warrant, shall upon a bill of the hand of one of the said clerks of the said signet or Privy Seal, deliver unto one of the same clerks of the signet or Privy Seal, within the space of three months next and immediately ensuing after the passing and sealing of any of the said grant or grants, by immediate warrant, upon pain of 10*l.* sterling, to be by every such of the said clerks or other person as shall offend, forfeited, to be levied in form aforesaid, as often as he or they shall offend contrary to the meaning of this Act.

This Act not to  
prejudice the  
Lord Treas-  
urer's warrants  
to the Lord  
Chancellor.

5. Provided also, that this Act or any thing contained in the same, be not in anywise prejudicial to the Lord Treasurer of England for the time being, concerning such warrants or precepts as he by virtue of his office, shall and may direct immediately to the Lord Chancellor of England, or to any other person or persons for making out of the King's grants or letters patents to any person or persons of any offices, farms, of lands, or tenements, or of any other thing belonging to his nomination or disposition; but that as well he may direct his said warrants or precepts for the causes above said, as also his clerk or clerks, or other person, may procure the same to be sealed under any of the seals aforesaid without any warrant to be before or after sued or obtained under the King's signet or Privy Seal for the same in as large and ample manner, and after such sort or fashion, as he or they might have done at any time before the making of this Act; any thing in the same Act mentioned to the contrary notwithstanding.

6. (This section provides that the Act shall not extend to leases granted under the seals of the Duchy of Lancaster, or the county palatine of Lancaster.)



7. (This section provides that the Act shall not extend to grants under the Duchy or county palatine seal of Lancaster of any offices the yearly fees of which do not exceed two-pence per diem).

9. Provided also, that the Lord Chancellor of England for the time being, shall and may at all times use his discretion in passing and speeding any thing by the Great Seal, and delivering the same without paying any fees for the Great Seal signet and Privy Seal, as the case of necessity shall require, and as hath been accustomed; and that the clerks for writing or procuring such writings and patents by his commandment, shall be discharged of all penalties expressed before in this Act for not receiving and paying fees to the signet and Privy Seal; any thing in this Act contained to the contrary hereof notwithstanding.

10, 11, and 12. [These sections of the Act do not apply to patents such as are the subject of this work].

3 & 4 Ed. VI. c. 4. [A. D. 1549].

*An Act concerning Grants and Gifts made by Patentees out of Letters Patent.*

Where the right noble and famous King of full worthy memory, King Henry the Eighth, father to our most dread and now natural Sovereign Liege Lord, sithence the fourth day of February, in the xxvij. year of his late reign, and also the King's most excellent Majesty by their several letters patents, have given, granted, bargained, sold, and exchanged to and with divers and sundry the subjects of this realm, bodies politick and corporate, in fee-simple, and fee-tail for term of life or years, divers honours, castles, manors, lands, tenements and other hereditaments and offices; after and since which grants, bargains, sales, and exchanges, divers of the said patentees, their heirs, successors or assigns, have bargained, sold, given, exchanged or demised divers particular parts, parcels or portions of the said honours, castles, manors, lands, tenements, hereditaments and offices, or other things thereunto pertaining, or belonging to other person or persons, bodies politick and corporate; that is to say, to some of them in fee-simple, to some others in fee-tail, for term of life or years, or otherwise; and after the same patentees, for considerations them moving, have surrendered and given up their said letters patents to the Chancery, or otherwise the same letters patents have been forfeited by attainder, lost, cancelled, imbessed, or by other ways or means have come to the hands of the King's Majesty his late father; And thereupon oft-times the enrolment of the same hath been made void and frustrate, sometime in part, and sometime in the whole, by reason whereof such persons, bodies politick or corporate, as have had interest or title in or to the same castles, manors or particular portions or parcels of the same so to them given and granted, have been in time past, and in time to come are like to be disherited, or in danger or loss of their interest in or to the same, to their no little hindrance and peril.

Explained and amended by 13 Eliz. c. 6, *post*.  
Grants made by patentees out of patents.

An exemplification of letters patent under the great seal shall be of the like force as if the letters patent were showed.

2. For remedy whereof be it ordained, established and enacted by the authority of this present Parliament, that all and every person or persons, bodies politick or corporate, which lawfully shall or may claim by force of any patent or patents made sithence the said fourth day of February, or hereafter to be made by the King's Majesty, his heirs or successors, Kings of this realm, or by any of them; and all other that now have or hereafter shall happen to have any good or lawful estate, right, title, rent, profit, interest or possession, of, in, to, or out of any honours, manors, lands, tenements, hereditaments or offices, or of other things to any of the premises appertaining or belonging, or to any part, parcel or member of them or any of them, by, from or under any such patentee or patentees, or any of them, or by, from or under the heirs, successors or assigns, of them or any of them, or by, from or under the estate of any others which had, have or hereafter shall have the estate, title or interest of any such patentee or patentees, or by any other means under the date of such letters patents, shall and may at all times hereafter, in any of the King's Courts, his heirs or successors, and elsewhere, by virtue of this present Act, make and convey unto himself title by way of declaration, plaint, avowry, title, bar, or otherwise as well against the King's Highness, his heirs and successors, and every of them, as against any other person or persons unto the said honours, castles, manors, lands, tenements, offices and other the premises, or any part or parcel of the same, unto them or any their predecessors or ancestors, or others whose estate they have in the same, by, from or under the said patentees or any of them, or the heirs, ancestors or assigns of any of them, or otherwise under the date of the said letters patents comprised and contained in any exemplification or constat thereof made or to be made, by the showing forth of the said exemplification or constat of the Roll, or of so much thereof as shall serve for the matter in variance, under the Great Seal of England: And the same exemplification or constat of the said enrolment so as is aforesaid pleaded and showed, shall be of like and the same force and effect, to all intents and constructions in the law, as the said first letters patents were and should be of, if the same were or should be pleaded or showed.

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13 ELIZ. c. 6. [A. D. 1570].

*An Act that the Exemplification or Constat of Letters Patents shall be as good and available as the Letters Patents themselves.*

A supply of the statute of 3 & 4 Edw. VI. c. 4.

“For the avoiding of all such doubts, questions and ambiguities as heretofore have risen and been moved, and of such as hereafter might rise and be moved, in and upon the statute made in the Parliament begun and holden at Westminster, the fourth day of November, in the third year of the reign of our late Sovereign Lord King Edward the Sixth, intituled ‘An Act concerning Grants and Gifts made by Patentees out



of Letters Patents, and for a due and full Supply of all such Wants as may be thought to be therein (f).”

2. Be it enacted and declared by the authority of this present Parliament, that all and every patentee and patentees, their heirs, successors, executors and assigns, and all and every other person and persons having by or from them or any of them, or under their title, any estate or interest of, in, or to any lands, tenements, or hereditaments, or any other thing whatsoever (g), to such patentee or patentees heretofore granted, by any letters patents either of the most famous Princes King Henry the Eighth, King Edward the Sixth, Queen Mary, King Philip and Queen Mary, or by any of them, or by the Queen's most excellent Majesty that now is, at any time sithence (h) the fourth day of February, in the twenty-seventh year of the reign of the said late King Henry the Eighth, or else by the Queen's Majesty that now is, her heirs or successors at any time hereafter to be granted, shall and may at all times hereafter in any of the Queen's Highness's Courts, her heirs and successors, or elsewhere by the authority of this present Act, make and convey, and be allowed and suffered to make and convey to and for him, them, and every of themselves, such claim or title by way of declaration, plaint, avowry, bar, replication, or other pleading whatsoever, as well against the Queen's Highness, her heirs and successors, and every of them, as against all and every other person and persons whatsoever for or concerning the lands, tenements, hereditaments, or other things whatsoever specified or contained in any such letters patents, or of, for, or concerning any part or parcel thereof, by showing forth an *exemplification* or *constat* (i) under the Great Seal of England, of the enrolment of the same letters patents (k), or of so much thereof as shall and may serve to or for such title, claim or matter, (the same letters patents then being and remaining in force, not lawfully surrendered nor cancelled)(l), for or concerning so much and such part and parcel of such lands, tenements, hereditaments or other thing whereunto such title or claim shall be made, as if the same letters patents self were pleaded and showed forth; any law, usage or other thing whatsoever to the contrary notwithstanding.

An exemplification of letters patent to be of the same force as the letters patent themselves.

(f) See *Sir T. Wroth's case*, Dyer, 167, a, pl. 13.

(g) These words are sufficient to extend the statute to patents for inventions, see *Page's case*, 5 Co. R. 53, and Carth. 138; Co. Lit. 225, b.

(h) The Act does not extend to any patent made before this day, Palin. 62.

(i) See the difference between an *exemplification* and a *constat*, 5 Co. R. 53, b, 54, a.

(k) The *exemplification* or *constat* is of the enrolment, not of the patent, Co. Lit. 225, b.

(l) It seems that an *exemplification* or *constat* may be granted at any time before a *vacat* is entered; but not after a *vacat* has been entered on the roll, Dyer, 167, a, pl. 13, n; 3 Leon. 165. It seems, however, that a third party, as an alienee, will not be prejudiced by a surrender made to the Crown by the patentee, and that the alienee will be entitled to a *constat* or *exemplification*, notwithstanding the entry of a *vacat* upon the roll. See the *Master and the Chaplain of the Savoy case*, 3 Leon. 165; and Bro. Abr. tit. pat. pl. 97.

31 ELIZ. c. 5, n. 5. [A. D. 1589].

*Limiting the time within which Penal Actions may be commenced (m).*

Within what times suits upon penal statutes shall be pursued.

6. And be it further enacted by the authority aforesaid, that all actions, suits, bills, indictments or informations, which after twenty days next after the end of this session of Parliament shall be had, brought, sued or exhibited, for any forfeiture upon any statute penal (n) made or to be made, whereby the forfeiture is or shall be limited to the Queen, her heirs or successors only, shall be had, brought, sued or exhibited within two years next after the offence committed or to be committed against such Act penal, and not after two years. And that all actions, suits, bills or informations which after the said twenty days shall be had, brought, sued or commenced for any forfeiture upon any penal statute made or to be made, (except the statute of tillage,) the benefit and suit whereof is or shall be by the said statute limited to the Queen, her heirs or successors, and to any other which shall prosecute in that behalf, shall be had, brought, sued or commenced by any person that may lawfully pursue for the same as aforesaid, within one year next after the offence committed or to be committed against the said statute. And in default of such pursuit, that then the same shall be had, sued, exhibited or brought for the Queen's Majesty, her heirs or successors, at any time within two years after that year ended. And if any action, suit, bill, indictment or information for any offence against any penal statute made or to be made, (except the statute of tillage,) shall be brought after the time in that behalf before limited, that then the same shall be void and of none effect, any Act or statute made to the contrary notwithstanding.

21 JAC. I. c. 3. [A. D. 1623].

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

All monopolies, &c. shall be void.

“Forasmuch as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God one thousand six hundred and ten, publish in print to the whole realm, and to all posterity, that all grants of monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm: And whereas your Majesty was further graciously pleased expressly to command, that no suitor should presume to move your Majesty for matters

(m) See respecting this enactment, 2 Hawk. P. Cr. c. 26, ss. 40—50.

(n) Vide *ante*, pp. 367 and 372.



of that nature; yet nevertheless upon *misinformations* and *untrue pre-  
tences of public good*, many such grants have been unduly obtained, and  
unlawfully put in execution, to the great grievance and inconvenience of  
your Majesty's subjects, contrary to the laws of this your realm, and con-  
trary to your Majesty's most royal and blessed intention, so published as  
aforesaid:" For avoiding whereof, and preventing of the like in time to  
come, may it please your excellent Majesty, at the humble suit of the  
Lords Spiritual and Temporal, and the Commons, in this present Parlia-  
ment assembled, That it may be declared and enacted: and be it declared  
and enacted by authority of this present Parliament, THAT all monop-  
lies, and all commissions, grants, licences, charters, and letters patents  
heretofore made or granted, or hereafter to be made or granted, to any  
person or persons, bodies politic or corporate whatsoever, of or for the  
sole buying, selling, making, working, or using of any thing within this  
realm, or the dominion of *Wales*, or of any other monopolies, OR of  
power, liberty, or faculty, to dispense with any others, OR to give licence  
or toleration to do, use, or exercise any thing against the tenor or purport  
of any law or statute: OR to give or make any warrant for any such dis-  
pensation, licence, or toleration to be had or made; OR to agree or com-  
pound with any others for any penalty or forfeitures limited by any  
statute; OR of any grant or promise of the benefit, profit, or commodity  
of any forfeiture, penalty, or sum of money, that is or shall be due by any  
statute, before judgment thereupon had: AND all proclamations, inhibi-  
tions, restraints, warrants of assistance, and all other matters and things  
whatsoever, any way tending to the instituting, erecting, strengthening,  
furthering, or countenancing of the same or any of them; *are altogether  
contrary to the laws of this realm, and so are and shall be utterly void and  
of none effect, and in no wise to be put in ure or execution.*

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

3. And be it further enacted by the authority aforesaid, That all per- *All persons dis-*  
son and persons, bodies politic and corporate whatsoever, which now are *abled to use*  
or hereafter shall be, shall stand and be disabled and incapable to have, *monopolies, &c.*  
use, exercise, or put in ure any monopoly, or any such commission, grant,  
licence, charter, letters patents, proclamation, inhibition, restraint, war-  
rant of assistance, or other matter or thing tending as aforesaid, or any  
liberty, power, or faculty, grounded or pretended to be grounded upon  
them, or any of them.

4. And be it further enacted by the authority aforesaid, That if any *The party*  
person or persons at any time after the end of forty days next after the *grieved by pre-*  
end of this present session of Parliament, shall be hindered, grieved, dis- *text of a mono-*  
turbed, or disquieted, or his or their goods or chattels any way seized, *poly, &c. shall*  
recover treble

damages and  
double costs.

attached, distrained, taken, carried away or detained, by occasion or pretext of any monopoly, or of any such commission, grant, licence, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises; that then and in every such case, the same person and persons shall and may have his and their remedy for the same at the common law, by any action or actions to be grounded upon this statute; the same action and actions to be heard and determined in the Courts of King's Bench, Common Pleas, and Exchequer, or in any of them, against him or them by whom he or they shall be so hindered, grieved, disturbed, or disquieted, or against him or them by whom his or their goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained; wherein all and every such person and persons which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained, shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed, or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away, or detained, and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid, prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than one imparlance: And if any person or persons shall, after notice given, that the action depending is grounded upon this statute, cause or procure any action at the common law, grounded upon this statute, to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of or upon any such judgment to be stayed or delayed by colour or means of any order, warrant, power, or authority, save only by writ of error or attain; that then the said person and persons so offending shall incur and sustain the pains, penalties and forfeitures, ordained and provided by the Statute of Provision and *Præmunire* made in the sixteenth year of the reign of King Richard the Second.

He that delay-  
eth an action  
grounded upon  
this statute in-  
curs a *præmu-  
nire*.

16 Rich. II. c.5.

Letters patents  
to use new  
manufactures,  
saved.

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



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

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

Exception of future letters patent.

7. Provided also, and it is hereby further intended, declared, and enacted by authority aforesaid, That this Act or any thing therein contained shall not in any wise extend, or be prejudicial to any grant or privilege, power, or authority whatsoever heretofore made, granted, allowed, or confirmed by any Act of Parliament now in force, so long as the same shall so continue in force.

8. Provided also, That this Act shall not extend to any warrant or privy seal, made or directed, or to be made or directed by his Majesty, his heirs or successors, to the justices of the Courts of the King's Bench or Common Pleas, and barons of the Exchequer, justices of assize, justices of oyer and terminer and gaol delivery, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute, depending in suit and question before them, or any of them respectively, after plea pleaded by the party defendant.

Warrants granted to justices saved.

9. Provided also, and it is hereby further intended, declared and enacted, That this Act or any thing therein contained shall not in any wise extend or be prejudicial unto the city of London, or to any city, borough, or town corporate within this realm, for or concerning any grants, charters, or letters patents, to them or any of them made or granted, or for or concerning any custom or customs used by or within them or any of them; or unto any corporations, companies or fellowships of any art, trade, occupation or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade of merchandize; but that the same charters, customs, corporations, companies, fellowships and societies, and their liberties, privileges, powers, and immunities, shall be and continue of such force and effect as they were before the making of this Act, and of none other; any thing before in this Act contained to the contrary in any wise notwithstanding.

Charters granted to corporations, saved.

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

10. Provided also, and be it enacted, That this Act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before mentioned, shall not extend to any letters patents or grants of privilege heretofore made, or hereafter to be made, of, for, or concerning printing, nor to any commission, grant or letters patents, heretofore made, or hereafter to be made, of, for, or concerning the digging, making, or compounding of saltpetre or gunpowder, or the casting or making of ordnance, or shot for ordnance, nor to any grant or letters patents heretofore made, or hereafter to be made, of any office or offices heretofore erected, made or ordained, and now in being, and put in execution, other than such offices as have been decreed by any his Majesty's proclamation or proclamations: but that all and every the same grants, commissions, and letters patents, and all other matters and things tending to the maintaining, strengthening, and furtherance of the same, or any of them, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

This Act shall not extend to commissions for alum mines.

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

12. [Nor to the liberties of Newcastle-upon-Tyne, nor to licences of keeping taverns.]

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

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

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21 JAC. I. C. 4. S. 4, [A. D. 1623.]

*Giving the Defendant in a Penal Action the Privilege of pleading the General Issue, and giving the Special Matter in Issue.*

The defendant in an information upon a penal statute may plead the general issue.

4. And be it also enacted by the authority aforesaid, That if any information, suit, or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of any penal law either by or on the behalf of the King or by any other, or on the behalf of the King and any other, it shall be lawful for such defendants to plead the general issue that they are not guilty, or that



they owe nothing (a), and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been a good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit, or action, and the said matters shall be then as available to him or them to all intents and purposes as if he or they had sufficiently pleaded, set forth, or alleged the same matter in bar or discharge of such information, suit or action.

STATUTE 5 & 6 WILL. IV. c. 62.

*An Act to repeal an Act of the present Session of Parliament, intituled "An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of Voluntary and Extra-judicial Oaths and Affidavits," and to make other Provisions for the Abolition of unnecessary Oaths.*

[Royal Assent, 9th September, 1835.]

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

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

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

Declaration to be in the form prescribed in the schedule.

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

Person making a false declaration guilty of a misdemeanour.

(o) The plea must have the words, "By statute," written in the margin; vide *ante*, p. 371.

Commence-  
ment of Act.

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

*Schedule referred to by the foregoing Act.*

Form of decla-  
ration.

“ I A. R. do solemnly and sincerely declare that \_\_\_\_\_ and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the year of the reign of his present Majesty, intituled ‘ An Act, ’ ” (*here insert the title of this Act.*)

STATUTE 5 & 6 WILL. IV. C. 83.

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

[Royal Assent, 10th September, 1835.]

“ Whereas it is expedient to make certain additions to and alterations in the present law touching letters patent for inventions, as well for the better protecting of patentees in the rights intended to be secured by such letters patent, as for the more ample benefit of the public from the same:” be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That any person who, as grantee, assignee, or otherwise, hath obtained or who shall hereafter obtain letters patent, for the sole making, exercising, vending, or using of any invention, may, if he think fit, enter with the clerk of the patents of England, Scotland, or Ireland, respectively, as the case may be (having first obtained the leave of his Majesty’s Attorney-general or Solicitor-general in case of an English patent, of the Lord Advocate or Solicitor-general of Scotland in the case of a Scotch patent, or of his Majesty’s Attorney-general or Solicitor-general for Ireland in the case of an Irish patent, certified by his fiat and signature), a disclaimer of any part of either the title of the invention or of the specification, stating the reason for such disclaimer, or may, with such leave as aforesaid, enter a memorandum of any alteration in the said title or specification (not being such disclaimer or such alteration as shall extend the exclusive right granted by the said letters patent); and such disclaimer or memorandum of alteration being filed by the said clerk of the patents, and enrolled with the specification, shall be deemed and taken to be part of such letters patent or such specification in all Courts whatever: provided always, that any person may enter a caveat, in like manner as caveats are now used to be entered, against such disclaimer or alteration; which caveat being so entered shall give the party entering the same a right to have notice of the application being heard by the Attorney-general, or Solicitor-general, or Lord Advocate, respectively: provided also, that no such disclaimer or alteration shall be receivable in evidence in any action or suit (save and except in any proceeding by *scire facias*) pending at the time when such disclaimer or alteration was enrolled, but

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

Caveat may be entered as heretofore.



in every such action or suit the original title and specification ~~alone~~ shall be given in evidence, and deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: provided also, that it shall be lawful for the Attorney-general, or Solicitor-general, or Lord Advocate, before granting such fiat, to require the party applying for the same to advertise his disclaimer or alteration in such manner as to such Attorney-general, or Solicitor-general, or Lord Advocate, shall seem right, and shall, if he so require such advertisement, certify in his fiat that the same has been duly made.

Disclaimer not to affect actions pending at the time.

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

2. And be it enacted, That if in any suit or action it shall be proved, or specially found by the verdict of a jury, that any person who shall have obtained letters patent for any invention or supposed invention was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same, or some part thereof, before the date of such letters patent, or if such patentee or his assigns shall discover that some other person had, unknown to such patentee, invented or used the same, or some part thereof, before the date of such letters patent, it shall and may be lawful for such patentee or his assigns to petition his Majesty in Council to confirm the said letters patent, or to grant new letters patent, the matter of which petition shall be heard before the Judicial Committee of the Privy Council: and such committee, upon examining the said matter, and being satisfied that such patentee believed himself to be the first and original inventor, and being satisfied that such invention or part thereof had not been publicly and generally used before the date of such first letters patent, may report to his Majesty their opinion that the prayer of such petition ought to be complied with; whereupon his Majesty may, if he think fit, grant such prayer, and the said letters patent shall be available in law and equity to give to such petitioner the sole right of using, making, and vending such invention as against all persons whatsoever, any law, usage, or custom to the contrary notwithstanding: provided that any person opposing such petition shall be entitled to be heard before the said Judicial Committee: provided also that any person, party to any former suit or action touching such first letters patent, shall be entitled to have notice of such petition before presenting the same.

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

3. And be it enacted, That if any action at law or any suit in equity for an account shall be brought in respect of any alleged infringement of such letters patent heretofore or hereafter granted, or any *scire facias* to repeal such letters patent; and if a verdict shall pass for the patentee or his assigns, or if a final decree or decretal order shall be made for him or them upon the merits of the suit, it shall be lawful for the judge before whom such action shall be tried to certify on the record, or the judge who shall make such decree or order to give a certificate under his hand, that the validity of the patent came in question before him, which record or certificate being given in evidence in any other suit or action whatever touching such patent, if a verdict shall pass, or decree or decretal order be made, in favour of such patentee or his assigns, he or they shall re-

If in any action or suit a verdict or decree shall pass for the patentee, the Judge may grant a certificate, which being given in evidence in any other suit, shall entitle the patentee, upon a verdict in his

favour, to receive treble costs.

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

Amended by 2 & 3 Vict. c.67.

ceive treble costs in such suit or action, to be taxed at three times the taxed costs, unless the judge making such second or other decree or order, or trying such second or other action, shall certify that he ought not to have such treble costs.

4. And be it further enacted, That if any person who now hath, or shall hereafter obtain any letters patent as aforesaid, shall advertise in the *London Gazette* three times, and in three London papers, and three times in some country paper, published in the town where or near to which he carried on any manufacture of any thing made according to his specification, or near to or in which he resides, in case he carried on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to apply to his Majesty in Council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in Council to that effect, it shall be lawful for any person to enter a caveat at the Council Office; and if his Majesty shall refer the consideration of such petition to the Judicial Committee of the Privy Council, and notice shall first be by him given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses; whereupon, and upon hearing and inquiring of the whole matter, the Judicial Committee may report to his Majesty that a further extension of the term in the said letters patent should be granted, not exceeding seven years; and his Majesty is hereby authorised and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary in anywise notwithstanding: provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent.

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

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

As to costs in actions for infringing letters patent.

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



which shall be certified by the judge before whom the same shall be had, and the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections, as well as the counts in the declaration, and without regard to the general result of the trial.

7. And be it enacted, That if any person shall write, paint or print, or mould, cast, or carve, or engrave or stamp, upon any thing made, used, or sold by him, for the sole making or selling of which he hath not, or shall not have, obtained letters patent; the name, or any imitation of the name, of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without leave in writing of such patentee or his assigns: or if any person shall upon such thing, not having been purchased from the patentee, or some person who purchased it from or under such patentee, or not having had the license or consent in writing of such patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word "Patent," the words "Letters Patent," or the words "By the King's Patent," or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp, mark, or other device of the patentee: or shall in any other manner imitate or counterfeit the stamp, or mark, or other device of the patentee: he shall for every such offence be liable to a penalty of fifty pounds, to be recovered by action of debt, bill, plaint, process, or information, in any of his Majesty's Courts of Record at Westminster or in Ireland, or in the Court of Session in Scotland, one half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same: provided always, that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "Patent" upon any thing made, for the sole making or vending of which a patent before obtained shall have expired.

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

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STATUTE 2 & 3 VICT. c. 67.

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

[Royal Assent, 24th August, 1839.]

"Whereas by an Act passed in the fifth and sixth years of the reign of his Majesty, King William the Fourth, intituled 'An Act to amend the Law touching Letters Patent for Inventions,' it is amongst other things enacted, that if any person having obtained any letters patent as therein mentioned, shall give notice as thereby required of his intention to apply to his Majesty in Council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in Council to that effect, it shall be lawful for any person to enter a caveat at the Coun-

Recital of stat. 5 & 6 Will. IV. c. 83, s. 4.

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

Repeals so much of recited Act as requires petition to be prosecuted with effect before expiration of the term of the patent.

Term may be extended although it has expired before the hearing, if petitioner has not committed any default.

2. And be it further enacted, That it shall be lawful for the Judicial Committee of the Privy Council in all cases where it shall appear to them that any application for an extension of the term granted by any letters patent, the petition for which extension shall have been referred to them for their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the petitioner to entertain such application, and to report thereon as by the said recited Act provided, notwithstanding the term originally granted in such letters patent may have expired before the hearing of such application; and it shall be lawful for her Majesty, if she shall think fit, on the report of the said Judicial Committee recommending an extension of the term of such letters patent to grant such exten-



tion, or to grant new letters patent for the invention or inventions specified in such original letters patent for a term not exceeding seven years after the expiration of the term mentioned in the said original letters patent: Provided always, that no such extension or new letters patent shall be granted if a petition for the same shall not have been presented as by the said recited Act directed, before the expiration of the term sought to be extended, nor in case of petitions presented after the thirtieth day of November, one thousand eight hundred and thirty-nine, unless such petition shall be presented six calendar months at the least before the expiration of such term, nor in any case unless sufficient reason shall be shown to the satisfaction of the said Judicial Committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

After Nov. 30, 1839, petitions to be presented six calendar months before expiration of term.

3. And be it further enacted, That this Act may be altered, amended, or repealed by any Act to be passed in the present Session.

STATUTE 3 & 4 VICT. c. 24, §§. 1 and 2.

*An Act to repeal Part of an Act of the Forty-third Year of the Reign of Queen Elizabeth, intituled "An Act to avoid trifling and frivolous Suits in Law in her Majesty's Courts in Westminster," and of an Act of the twenty-second and twenty-third Year of the Reign of King Charles the Second, intituled "An Act for laying Impositions on Proceedings at Law, and to make further Provisions in lieu thereof."*

[Royal Assent, 3rd July, 1840.]

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

Recites statutes 43 Eliz. c. 6, and 22 & 23 Car. II. c. 9.

Recited Act in part repealed.

2. And be it enacted, That if the plaintiff in any action of trespass or of trespass on the case brought or to be brought in any of her Majesty's Courts at Westminster, or in the Court of Common Pleas at Lancaster, or

Plaintiff not to recover costs in any action of

trespass or trespass on the case if he recovers less than 40s. damages, unless the Judge certifies, &c.

in the Court of Common Pleas at Durham, shall recover by the verdict of a jury less damages than forty shillings, such plaintiff shall not be entitled to recover or obtain from the defendant in respect of such verdict any costs whatever, whether it shall be given upon any issue or issues tried or judgment shall have passed by default, unless the judge or presiding officer before whom such verdict shall be obtained, shall immediately afterwards certify on the back of the record, or on the writ of trial, or writ of inquiry, that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in respect of which the action was brought was wilful and malicious.

3. [*This section does not relate to the subject of this work.*]

STATUTE 5 & 6 VICT. c. 97, ss. 2 & 6.

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

[Royal Assent, 10th August, 1842.]

“Whereas divers Acts of Parliament, public, local and personal, contain enactments or provisions relating to the recovery of double, treble or other costs in certain cases, and to the pleading of the general issue, and the giving any special matter in evidence at any trial to be had for any matter done in pursuance of or under the authority of the said Acts, and to the giving of notice of action before any action shall be commenced:” And whereas it is expedient that the law should be altered in such respects; Be it therefore enacted, &c.

[*This section repeals the provisions in local and personal Acts giving double and treble costs.*]

Acts giving double or treble costs repealed. Parties to recover full indemnity as to all costs.

Sect. 2.—And be it enacted, That so much of any clause, enactment or provision in any public Act or Acts not local or personal, whereby it is enacted or provided that either double or treble costs, or any other than the usual costs between party and party, shall or may be recovered, shall be and the same are hereby repealed: Provided always, that instead of such costs, the party or parties heretofore entitled under such last-mentioned Acts to such double, treble or other costs, shall receive such full and reasonable indemnity as to all costs, charges and expences incurred in and about any action, suit or other legal proceeding, as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

Sects. 3, 4 and 5.—[*These sections do not relate to the subject of this work.*]

Not to affect actions brought

Sect. 6.—Provided always and be it enacted, That nothing herein contained shall extend or be construed to extend to any action, bill, plaint



or information, or any legal proceeding of any kind whatsoever commenced before the passing of this Act, but such proceedings may be thereupon had and taken in all respects as if this Act had not passed.

STATUTE 6 & 7 VICT. c. 85.

*An Act for improving the Law of Evidence.*

[Royal Assent, 22 August, 1843.]

“Whereas the enquiry after truth in courts of justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in criminal and in civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced, and on the truth of their testimony:”

Now therefore be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That no person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence either in person or by deposition, according to the practice of the Court on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or proceeding, civil or criminal, in any Court, or before any judge, jury, sheriff, coroner, magistrate, officer, or person having, by law or by consent of parties, authority to hear, receive and examine evidence; but that every person so offered, may and shall be admitted to give evidence on oath, or solemn affirmation, in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or injury, or of the suit, action or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence: Provided that this Act shall not render competent any party to any suit, action or proceeding individually named in the record, or any lessor of the plaintiff or tenant of premises, sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively; Provided also, that this Act shall not repeal any provision in a certain Act passed in the session of Parliament holden in the seventh year of the reign of his late Majesty, and in the first year of the reign of her present Majesty, intituled “*An Act for the Amendment of the laws with respect to Wills:*” Provided that in Courts of Equity, any defendant to any cause pending in any such Court, may be examined as a witness on the behalf of the plaintiff, or of any co-defendant in any such cause,

No witness to be excluded from giving evidence by incapacity from crime or interest.

Party to a suit, &c. not to be competent.

Not to repeal any provision in 7 Will. IV. and 1 Vict. c. 26.

In Court of Equity defendant may be examined on

behalf of the plaintiff or a co-defendant, &c.

saving just exceptions; and that any interest which such defendant so to be examined may have in the matters, or any of the matters in question, in the cause, shall not be deemed a just exception to the testimony of such defendant, but shall only be considered as affecting, or tending to affect, the credit of such defendant as a witness.

Not necessary to state that jurors had made affirmation.

2. And be it enacted, That wherever in any legal proceedings whatsoever legal proceedings may be set out, it shall not be necessary to specify that any particular persons who acted as jurors had made affirmation instead of oath, but it may be stated that they served as jurymen in the same manner as if no Act had passed for enabling persons to serve as jurymen without oath.

Not to affect previous suits.

3. And be it enacted, That nothing in this Act shall apply to, or affect any suit, action, or proceeding brought or commenced before the passing of this Act.

Not to extend to Scotland.

4. And be it enacted, That nothing in this Act shall extend to Scotland.

7 & 8 VICT. c. 69, ss. 2, 3, 4, 5, 6, 7 & 8.

*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.*

[Royal Assent, 6th August, 1844.]

"Whereas the Act passed in the fourth year of the reign of his late Majesty, intituled 'An Act for the better Administration of Justice in his Majesty's Privy Council,' hath been found beneficial to the due administration of justice: And whereas another Act passed in the sixth year of the said reign, intituled 'An Act to amend the Law touching Letters Patent for Inventions' hath been also found of great benefit to inventors and to the public: And whereas the Justice of the said Acts, and the authority of the said Acts, hath been found to be of great benefit to the public: And whereas it is expedient to amend the said Acts, and to extend their jurisdiction and powers: And whereas by the laws now in force in certain of her Majesty's colonies and possessions abroad, no appeals can be brought to her Majesty in Council for the reversal of the judgments, sentences, decrees, and orders of any courts of justice within such colonies, save only of the courts of error or courts of appeal within the same, and it is expedient that her Majesty in Council should be authorised to provide for the admission of appeals from other courts of justice within such colonies or possessions:" Be it therefore enacted, &c.

[The first section does not relate to the subject of this work.]

If extension of a patent term

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



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

may be granted for 14 years in certain cases.

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

Less term than prayed may be granted.

4. "And whereas doubts have arisen touching the power given by the said recited Act of the sixth year of the reign of his late Majesty in cases where the patentees have wholly or in part assigned their right;" be it enacted, That it shall be lawful for her Majesty, on the report of the Judicial Committee of the Privy Council, that an extension of the term of such patent is authorized by the said Act, to grant an extension of the term of such patent for any period not exceeding seven years, in like manner, and subject to the same rules as the extension, for a term not exceeding seven years is now granted under the powers of the said Act of the sixth year of the reign of his late Majesty.

Extensions of patent terms may be granted to assignees.

And be it enacted, That if any person to whom the term of such patent shall be so extended, shall, before the expiration of the term so extended, have assigned the same to any other person, he shall, before the expiration of the term so extended, cause a disclaimer and memorandum of such alteration to be entered and filed in the High Court of Chancery, under the powers of the said recited Act, and such disclaimer and memorandum of such alteration having been so entered and filed as in the said recited Act mentioned shall be valid and effectual in favour of any person or persons in whom the rights under the said letters patent may then be or thereafter become legally vested; and no objection shall be made in any proceeding whatsoever, on the ground that the party making such

for  
hath been assigned  
been assigned, to  
under the powers of the said recited Act, and such disclaimer and memo-  
randum of such alteration having been so entered and filed as in the said  
recited Act mentioned shall be valid and effectual in favour of any person  
or persons in whom the rights under the said letters patent may then be  
or thereafter become legally vested; and no objection shall be made in  
any proceeding whatsoever, on the ground that the party making such

disclaimer or memorandum of such alteration had not sufficient authority in that behalf.

Disclaimers and memorandums of alteration by assignees before passing of Act to be valid.

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

New patents granted under 5 & 6 Vict. c. 83, s. 4, to assignees before passing of Act to be valid.

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

Not to affect existing *scire facias*, or suit in equity.

Judicial Committee may appoint a clerk to take formal proofs.

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

(p) The remainder of this statute is inapplicable to the subject of the present work.



## SECTION II.

*Rules of Practice relating to Letters Patents for Inventions.*

1. *Rules and Practice before the Attorney and Solicitor-general respecting Disclaimers and Memorandums of Alteration.*
2. *Rules of Practice in Privy Council respecting the Confirmation and Prolongation of Patents for Inventions.*



1. *Rules of Practice before the Attorney and Solicitor-general respecting Disclaimers and Memorandums of Alteration.*

The following Rules of Practice before the Attorney and Solicitor-general upon Petitions for leave to enter Disclaimers and Memorandums of Alteration were made shortly after the passing of the 5 & 6 Will. IV. c. 83.

UNTIL further directions are given the following is to be the mode of proceeding by a party in order to obtain leave to enter a disclaimer or alteration of any part, either of the title of his invention or of the specification pursuant to the statute 5 & 6 Will. IV. c. 83, s. 1.

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

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

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

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

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

2. *Rules of Practice in the Judicial Committee of the Privy Council respecting the Confirmation and Prolongation of Patents for Inventions.*

Rules to be observed in Proceedings before the Judicial Committee of the Privy Council under the Act of the 5 & 6 Will. IV. c. 83, intituled "An Act to amend the Law touching Letters Patent for Inventions."

[Issued 18th November, 1835.]

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

2. A party intending to apply by petition under section 4 of the said Act, shall, in the advertisements directed to be published by the said section, give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the *London Gazette*), and that on or before such day caveats must be entered; and any person intending to enter a caveat shall enter the same at the Council Office on or before such day so named in the said advertisements; and, having entered such caveat, shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

3. Petitions under sections 2 and 4 of the said Act shall be presented within one week from the insertion of the last of the advertisements required to be published in the *London Gazette*.

4. All petitions must be accompanied with affidavits of advertisements having been inserted according to the provisions of section 4 of the said Act, and the first and second of these rules: and the matters in such



affidavits may be disputed by the parties opposing upon the hearing of the petitions.

5. All persons entering caveats under section 4 of the said Act, and all parties to any former suit or action touching letters patent in respect of which petitions shall have been presented under section 2 of the said Act, and all persons lodging notices of opposition under the first of these rules, shall respectively be entitled to be served with copies of petitions presented under the said sections, and no application to fix a time for hearing shall be made without affidavits of such service.

6. All parties served with petitions, shall lodge at the Council Office, within a fortnight after such service, notice of the grounds of their objections to the granting of the prayers of such petitions.

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

8. The Master of the High Court of Chancery, or other officer to whom it may be referred to tax the costs incurred in the matter of any petition presented under the said Act, shall allow or disallow in his discretion all payments made to persons of science or skill examined as witnesses to matters of opinion chiefly.

*To these have been added the following Rules issued on the  
21st December, 1835.*

Any party applying for an extension of a patent under section 4 of the said Act, must lodge at the Council Office four printed or written copies of his specification for the use of the Judicial Committee.

If such specification shall have been printed in some publication, lodging four copies of the publication containing the same, will be sufficient.

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

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

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

## SECTION III.

## TABLES OF FEES AND STAMPS.

## I. FEES PAYABLE BY PERSONS SOLICITING PATENTS FOR INVENTIONS.

	Ordinary Fees.			Extra Fees.		
	£	s.	d.	£	s.	d.
<i>At the Attorney or Solicitor-general's Chambers.</i>						
For entering a caveat (at each chambers)	0	5	0			
<i>At the Public Office.</i>						
For taking a declaration . . . . .	0	1	6			
<i>At the Home Office.</i>						
For reference of a petition by the Secretary of State to the Attorney or Solicitor-general . . . . .	2	2	6			
<i>At the Attorney or Solicitor-general's Chambers.</i>						
For a summons for a hearing upon an opposed petition . . . . .	0	5	0			
For a hearing upon an application for a report upon an opposed petition . . . . .	3	5	0			
For a report in favour of petitioner . . . . .	4	4	0			
<i>At the Home Office.</i>						
For the Queen's warrant to the Attorney or Solicitor-general to prepare a bill for a patent . . . . .	7	13	6			
If the patent is to be granted to more than one person, for each additional name . . . . .				1	7	6
If the patent is to extend to the Channel Islands and Colonies, or any of them . . . . .				1	7	6
<i>At the Patent Bill Office.</i>						
For preparing a bill and docket and procuring the Attorney or Solicitor-general's signature, and for two transcripts of the bill and stamps, and stamping the Queen's warrant . . . . .	15	16	0			



	Ordinary Fees.	Extra Fees.
	£ s. d.	£ s. d.
If the patent is to be granted to more than one person, then for each additional name . . . . .		1 7 6
If the patent is to extend to the Channel Islands and Colonies, or any of them . . . . .		0 2 6
<i>At the Secretary of State's Office.</i>		
For procuring the sign manual to a bill . . . . .	7 13 6	
If the patent is to be granted to more than one person, then for each additional name . . . . .		1 7 6
If the patent is to extend to the Channel Islands and Colonies, or any of them . . . . .		1 7 6
<i>At the Signet Office.</i>		
For signing, sealing, and passing a bill . . . . .	4 7 0	
If the patent is to be granted to more than one person, then for each additional name . . . . .		5 18 6
If the patent is to extend to the Channel Islands and Colonies, or any of them . . . . .		0 13 6
For expedition to pass the bill the same day the Queen's bill is brought into the office . . . . .		1 11 6
<i>At the Privy Seal Office.</i>		
For signing, sealing, and passing a bill . . . . .	4 2 0	
If the patent is to be granted to more than one person, then for each additional name . . . . .		5 18 6
If the patent is to extend to the Channel Islands and Colonies, or any of them . . . . .		0 13 6
For a private seal . . . . .		2 0 0
For expedition . . . . .		1 11 6
<i>At the Patent Office.</i>		
For preparing the recepti and docket, engrossing, sealing, and enrolling the patent and entering the docket, stamps and box . . . . .	48 17 0	

	Ordinary Fees.	Extra Fees.
	£ s. d.	£ s. d.
If the patent is to be granted to more than one person, then for each additional name . . . . .		2 13 4
<hr/>		
<b>II. FEES PAYABLE BY PERSONS OPPOSING THE GRANT OF PATENTS FOR INVENTIONS.</b>		
<i>At the Attorney or Solicitor-general's Chambers.</i>		
For entering a caveat (at each chambers)	0 5 0	
For hearing an opposition at the report . . . . .	3 5 0	
<i>At the Patent Bill Office.</i>		
For entering a caveat . . . . .	1 1 0	
For hearing an opposition to the bill . . . . .	3 5 0	
<i>If the opposing party succeeds he must repay the petitioner the following fees.</i>		
For the report . . . . .		4 4 0
For the Queen's warrant . . . . .		7 13 6
<i>Or so much more as the fees for the warrant amount to.</i>		
For the summons for the hearing . . . . .		0 5 0
For the hearing the petitioner in support of his petition . . . . .		3 5 0
For engrossing the bill . . . . .		1 1 0
For agency fees . . . . .		2 2 0
<i>If the opposing party does not succeed he must repay the petitioner the following fees only.</i>		
For the summons for the hearing . . . . .		0 5 0
For the hearing the petitioner in support of his petition . . . . .		3 5 0
<i>At the Patent Office.</i>		
For entering a caveat . . . . .	0 10 0	
<hr/>		
<b>III. FEES PAYABLE RESPECTING SPECIFICATIONS, ENROLMENTS, OFFICE COPIES, &amp;c.</b>		
<i>At the Public Office.</i>		
For taking the acknowledgment of a specification . . . . .		0 6 0



Ordinary Fees.  
£ s. d.

*At the Rolls Chapel Office.*

For enrolling a specification (a), per folio of 90 words . . . . .	0	0	6
For a search and inspection . . . . .	0	1	0
For a copy of a patent or specification, (besides drawing and stamps,) per folio . . . . .	0	0	6
For authenticating any copy, per folio . . . . .	0	0	6

*At the Petty Bag Office.*

For enrolling a specification (a), for every skin of the enrolment (containing about 9 folios,) and for any portion of a skin more than half a skin . . . . .	0	10	6
And for any portion of a skin not more than half a skin . . . . .	0	5	3
For a search . . . . .	0	1	0
For an inspection . . . . .	0	2	6
For an office copy of a patent or specification, (besides the stamps, 2d. per sheet for paper, 3s. 4d. certificate, and the search and inspection fee,) per folio of 90 words . . . . .	0	0	8

*At the Enrolment Office.*

For enrolling a specification (a), for every membrane or skin of the enrolment (containing about 10 folios) . . . . .	0	10	0
And for any portion of a membrane less than the whole, for every 5 lines . . . . .	0	0	6
For a search and inspection . . . . .	0	1	0
For an office copy of a patent or specification, (besides the stamps, 2d. per sheet for the paper, 2s. for the certificate, and 1s. the search,) per folio of 90 words . . . . .	0	0	8

IV. FEES PAYABLE RESPECTING DISCLAIMERS AND MEMORANDUMS OF ALTERATION.

*At the Attorney or Solicitor-general's Chambers.*

For appointment and summons for hearing . . . . .	0	5	0
For hearing a party or counsel in support of a petition . . . . .	3	5	0
For a fiat . . . . .	4	4	0
For entering a caveat, by a party opposing (at each chambers) . . . . .	0	5	0
For hearing opposition . . . . .	3	5	0

(a) There is no duty particularly charged by the Stamp Act upon disclaimers or memorandums of alteration; but as the statute 5 & 6 Will. IV. c. 83, s. 1, enacts that a disclaimer or memo-

randum of alteration shall be deemed to be part of the specification, it has been customary to impress those instruments with a stamp duty of 1l., and a progressive duty of 1l., as here stated.

Ordinary Fees.  
£ s. d.

*At the Enrolment Office.*

For enrolling a disclaimer or alteration

(The same fees as for enrolling a specification).

*At the Patent Office.*

For filing . . . . . 0 1 0

For entering, *per folio* of 90 words . . . . . 0 0 10

If the length does not exceed 27 folios, the fee is . . . . . 0 9 0

*Drawings are charged extra unless furnished to the office.*

V. STAMP DUTIES PAYABLE UPON DOCUMENTS AND PROCEEDINGS  
RESPECTING PATENTS FOR INVENTIONS.

Queen's warrant . . . . . 1 10 0

Queen's bill . . . . . 1 10 0

Signet bill . . . . . 1 10 0

Privy Seal bill . . . . . 1 10 0

Docket at Great Seal . . . . . 0 2 0

Patent . . . . . 30 0 0

Specification . . . . . 5 0 0

If the specification contains 2,160 words, or upwards, then for every entire quantity of 1,080 words above the first 1,080 words, a further progressive duty . . . . . 1 0 0

Disclaimer, or memorandum of alteration (a) . . . . . 1 0 0

If the disclaimer contains 2,160 words, or upwards, then for every entire quantity of 1,080 words above the first 1,080 words, a further progressive duty of . . . . . 1 0 0

(a) *Vide ante*, p. 615.



## CHAPTER II.

## FORMS AND ENTRIES.

- SEC. I.—*Forms of Proceedings respecting the Obtaining and Opposing of Patents and the Specification of Patent Inventions.*
- II.—*Forms of Proceedings respecting Disclaimers or Alterations under 5 & 6 Will. IV. c. 83, s. 1.*
- III.—*Forms of Proceedings for Obtaining Confirmations or Prolongation of Patents.*
- IV.—*Forms of Entries and Proceedings in Actions for Infringements of Patents.*
- V.—*Forms of Proceedings in Suits in Chancery to restrain Infringements of Patents.*
- VI.—*Forms of Entries and Proceedings in qui tam Actions for Penalties under 5 & 6 Will. IV. c. 83, s. 7.*
- VII.—*Forms of Entries and Proceedings in Actions of Scire Facias for Cancelling and Repealing Letters Patents.*
- VIII.—*Forms of Assignments of Patents and Licences to use Patent Inventions.*

## SECTION I.

*Forms of Proceedings respecting the Obtaining and Opposing of Patents, and the Specification of Patent Inventions.*

CAVEAT against the grant of letters patent under the Great Seal to (No. 1.) any person or persons for [Here describe the nature of the invention General caveat in general terms (b), as for instance, "improvements in power looms;" "im- against a provements in lace machinery;"] without notice to me the undersigned patent at the [Here insert the name and address of the party entering the caveat, as (c) Attorney or William Newton, of Chancery Lane, in the county of Middlesex, Civil Solicitor- Engineer.] Dated this [tenth] day of [December,] 1845. general's (a).

(Signed) [WM. NEWTON.]

(a) See the Practice, ante, p. 504.

(b) Vide ante, p. 506, respecting the description of the invention.

(c) The correct address to which notices may be sent by post must be inserted, vide ante, p. 507.

[2, King's Bench Walk, Temple,  
1st October, 1845.]

(No. 2.)  
Notice of an  
application for  
a patent (d).

SIR,

I beg to inform you that [*James Johnson, of High Wycombe, in the county of Bucks,*] is applying for letters patent for an invention of [*an improved mode of sizing Paper*] (e). Should you consider that the grant of such a patent will interfere with your caveat, you may enter an opposition at the Chambers of the Attorney [*or Solicitor*] General here. And if no opposition is entered within seven days from the date hereof, the patent will be allowed to proceed.

I am, Sir, your obedient Servant,  
[W. G. BOWYER] (f).

(No. 3.)  
Petition by an  
actual inventor  
for a patent (g).

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

The humble Petition of [*James Gowland, of Leathersellers Buildings, in the city of London, Chronometer Maker.*]

Sheweth,

That your petitioner [*"after much labour, study, application, trouble, and expense," any of these words may be inserted if thought desirable*] (h), hath invented [*"certain improvements in Chronometers and Time-keepers"*] (i), which invention he believes will be of great public utility.

That he is the true and first inventor thereof, and that the said invention hath not been practised or used by any person or persons whomsoever within this realm, to the best of your petitioner's knowledge and belief.

Your petitioner therefore humbly prays that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, your Majesty's royal letters patent under the Great Seal of your Majesty's United Kingdom of Great Britain and Ireland, for the sole use, benefit, and advantage of his said invention, within that part of your Majesty's said United Kingdom of Great Britain and Ireland, called England, your dominion of Wales, and town of Berwick-upon-Tweed, [and (k) also in your Majesty's Islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all your Majesty's Colonies and Plantations abroad,] for

(d) See the Practice, *ante*, pp. 508 and 512.

(e) The title must be inserted here as it is stated in the petition.

(f) The signature of the Attorney or Solicitor-general's chief clerk.

(g) See the Practice respecting the petition, *ante*, pp. 509, 510.

(h) Such words as these are frequently inserted in petitions; but it is always better to omit them, for the

insertion of them when true produces no beneficial effect, and if there be any thing incorrect in the suggestions made to the Crown, the patent will be void.

(i) Respecting the choice of a title, vide *ante*, p. 508.

(k) These words are to be inserted when it is desired that the patent should extend to the Channel Islands and Colonies.



the term of fourteen years pursuant to the statutes in that case made and provided.

And your petitioner will ever pray, &c.

(Signed) [JAMES GOWLAND.]

LONDON, 10th October, 1844.

(No. 4.)

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

The humble Petition of [Moses Poole, of Old Square, Lincoln's Inn, in the county of Middlesex, C. E. Patent Agent.]

Petition for a patent for an imported invention (l).

Sheweth,

That in consequence of a communication from a foreigner residing abroad, he is in possession of an invention of [*improvements in the construction of Locomotive Engines,*] which invention he believes will be of great public utility.

That the said invention is new within this realm (m), and hath not been practised or used therein by any person or persons whomsoever, to the best of your petitioner's knowledge and belief.

Your petitioner therefore humbly prays that your Majesty, &c. (*the prayer is the same as in the last form, referring to the invention as, "the said invention," instead of "his said invention."*)

I, [John Coope Hadden, of No. Woburn Place, Russell Square, in the county of Middlesex, Civil Engineer,] do solemnly and sincerely declare that (o) [*"after much, or great labour, study, application, trouble, and expense," insert such (if any) of these words as may be contained in the petition,*] I have invented [*"improvements in the mode of manufacturing Papier Maché,"*] which invention I believe will be of great public utility. That I am the true and first inventor thereof, and that the said invention hath not been practised or used by any person or persons whomsoever within this realm, to the best of my knowledge and belief. And I further declare (p) that it is my intention to apply for letters patent for granting me the sole use of the said invention in Scotland and Ireland respectively, and I make this declaration conscientiously, believing the same to be true, and by virtue of the provisions of an Act made and passed in the Session of Parliament held in the fifth and sixth years of the reign

(No. 5.)

Solemn declaration in support of a petition by an actual inventor for a patent (n).

(l) See the notes to the last Form.

511.

(m) This is now the proper Form of Allegation, for the invention must be new not only in the particular parts of the kingdom to which the patent is to extend, but throughout the whole of the United Kingdom; see *Brown v. Annandale*, 1 Webs. R. 433, cited *ante*, pp. 63 and 468.

(o) This declaration must be framed in accordance with the petition, the allegations of which it is to verify; vide *ante*, p. 511.

(p) This allegation is inserted for the purpose of procuring the patentee a longer time to specify his invention; but it must, of course, be omitted if the inventor does not apply for such patents.

(n) See the Practice, *ante*, pp. 510,

of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

(Signed)

[J. C. HADDEN.]

'Taken and declared at the Public Office, Southampton Buildings, in the county of Middlesex, this [*first*] day of [*October,*] one thousand eight hundred and forty [*three.*]

Before me,

(Signed) [WM. BROUGHAM] (*q*).

(No. 6.)  
Solemn declaration in support of a petition for an imported invention.

I, [*Alexander Prince, of No. 14, Lincoln's Inn Fields, in the county of Middlesex, Patent Agent,*] do solemnly declare that (*r*) in consequence of a communication from a foreigner residing abroad, I am in possession of an invention of [*an improved Wheel for railway carriages,*] which invention I believe will be of great public utility. That the said invention is new in this realm (*s*), and hath not been practised or used therein by any person or persons whomsoever to the best of my knowledge and belief. And I further declare that it is my intention, &c. (*conclude as in the last form.*)

Whitehall, [10 September, 1845.]

(No. 7.)  
Reference of a petition to the Attorney or Solicitor-general (*t*).

Her Majesty is pleased to refer this petition to Mr. Attorney or Solicitor-general to consider thereof and to report his opinion what may be properly done therein: wherefore her Majesty will declare her further pleasure.

(Signed)

[J. R. G. GRAHAM] (*u*).

(No. 8.)  
Note of an opposition at the report (*x*).

The application of [*William Burlinson, of Sunderland, in the county of Durham, Engineer,*] for a patent for an alleged invention of [*improvements in the construction of Steam Engines,*] is opposed by [*John Thompson, of*

(*q*) The declaration, if made in town, must be made before a Master in ordinary; if in the country, it may be made before a Master extraordinary.

(*r*) This declaration must also be framed strictly in conformity with the petition it is to support.

(*s*) This is now the proper Form; vide *ante*, p. 619, n. (*m*).

(*t*) This reference ought to be writ-

ten under or upon the petition before it is taken to the office of the Secretary of State, the date only being left blank; vide *ante*, pp. 511, 512.

(*u*) The reference must be signed by one of the principal Secretaries of State, and it is always signed by the Secretary for the Home Department.

(*x*) See the Practice, *ante*, p. 513.



*Southwark, in the county of Surrey, Engineer.] Dated this [seventh] day of [May,] 1845.*

(Signed) [JOHN THOMPSON.]

or

[William Henry Rymer, Chancery Lane,  
Solicitor for the said John Thompson.]

To the Attorney [or Solicitor] General's clerk.

*Attorney [or Solicitor] General's Chambers,  
[No. 2, King's Bench Walk, Temple.]*

(No. 9.)

Summons to attend a hearing upon an opposition to the report.

To [MESSRS. NEWTON AND SONS] (y).

Her Majesty having referred to me the petition of [*Alfred Vincent Newton, of No. 66, Chancery Lane, in the county of Middlesex, Patent Agent,*] (z), praying letters patent for an invention of [*an improved mode of refining Sugar*] (a), I appoint [*Tuesday*] the [*22d*] day of [*July instant*] at [*Seven*] o'clock in the [*Evening,*] at my Chambers in the Temple to consider thereof: of which let all parties concerned have notice (b).

Opposed by [*Messrs. Poole and Carpmael, of 4, Old Square, Lincoln's Inn, Patent Agents, and Mr. Alexander Prince, of No. 44, Lincoln's Inn Fields, Patent Agent,*] (b).

Dated the [*eleventh*] day of [*July*] 1845.

By order of the Attorney [or Solicitor] General,

(Signed) [WM. GEORGE BOWER] (c).

The Attorney [or Solicitor] General expects to be immediately informed if the opposing parties do not intend to appear.

In the matter of the petition of [*James Gowland,*] for letter patent for an invention of [*"improvements in Time Keepers."*]

I, [*Richard Wandless, of, &c.*] clerk to Robertson, of Agent [or Solicitor] for the above named [*James Gowland,*] do solemnly and sincerely declare that I did on the [*first*] day of [*October,*] now instant, [*personally*] serve [*Edward Newton, of No. 66, Chancery Lane, in the county of Middlesex, Patent Agent,*] with a true copy of the summons hereunto annexed (e); [*or if the service was not personal, then omit the word "personally," and insert the following words, "by leaving the same copy at the office of the said Edward Newton, in Chancery Lane aforesaid, with his clerk there;" or, if the service was through the medium of the post office, "by sending the same copy, by post, addressed to the*

(No. 10.)  
Summons to attend a hearing upon an opposition to a patent at the report (d).

(y) The name of the petitioner's solicitor or agent is stated here.

(z) The name and description of the petitioner is to be inserted here.

(a) The title of the invention is to be inserted in this place.

(b) Here is to be inserted the correct name and address of every person who has entered an opposition against

the petition; and the petitioner must serve each of them with a copy of the summons.

(c) The signature of the chief clerk of the Attorney or Solicitor-general.

(d) See the Practice, ante, p. 513, n. (z).

(e) The summons must be annexed to the declaration.

said E. N., at No. 66, Chancery Lane aforesaid,] and that the same copy, so addressed, was put into the post office before [five] of the clock of the said [first] day of [October] instant (f)," and I make this declaration (g) conscientiously, believing the same to be true, and by virtue, &c. [conclude as in the form No. 5, ante, pp. 619, 620.]

(Signed) ["R. WANDLEBS."]

Taken and declared at the Public Office, Southampton Buildings, in the county of Middlesex, this [tenth] day of [October,] one thousand eight hundred and forty [five.]

Before me,

(Signed) A. H. LYNCH (h).

(No. 11.)

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

Attorney or  
Solicitor-gene-  
ral's report  
upon a petition  
for a patent (i).

May it please your Majesty.

In humble obedience to your Majesty's commands signified to me by the Right Honourable Sir James Robert George Graham, Bart., one of your Majesty's principal Secretaries of State, referring to me the annexed petition of [James Gowland, of Leathersellers Buildings, in the city of London, Chronometer Maker,] to consider thereof and report my opinion what may be properly done therein, which petition sets forth that the petitioner, (the allegations of the petition are here set forth.) The petitioner therefore humbly prays that your Majesty, (the prayer of the petition is here to be stated.) And I humbly beg leave to certify unto your Majesty, that in support of the allegations contained in the said petition, the solemn declaration of the said petitioner hath been laid before me, whereby he solemnly declares that [here is to be stated the several allegations contained in the declaration.] Upon consideration of all which, and as it is entirely at the hazard of the petitioner, whether the said invention is new or will have the desired success, and as it may be reasonable for your Majesty to encourage all arts and inventions which may be for the public good, I am humbly of opinion that your Majesty may, by your royal letters patent under the Great Seal of your United Kingdom, grant to the petitioner, his executors, administrators, and assigns, the sole use, benefit, and advantage of his said invention within England, Wales, and the town of Berwick upon Tweed, [and also in the islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all your Majesty's colonies and plantations abroad,] for the term of fourteen years, pursuant to the statute in that case made and provided, if your Majesty shall be graciously pleased so to do with the usual proviso, requiring the petitioner within the space

(f) The copy summons ought to be put into the post office early enough to be delivered the same night, in order to make it a good service as of that day.

(g) The above form may be easily altered so as to be applicable to a case

in which the summons is served upon two or more persons.

(h) The declaration must be made before a Master (ordinary or extraordinary) in Chancery.

(i) See the Practice, ante, p. 517.



of (k) [six] calendar months, to be computed from the date of such letters patent, to cause a particular description of the nature of his said invention, and in what manner the same is to be performed by writing under his hand and seal, to be enrolled in your High Court of Chancery, otherwise the said letters patent to be void.

All which is submitted to your royal wisdom,

(Signed) [FREDERICK THESIGER] (l).

“VICTORIA R.” (n).

Whereas [James Gowland, of Leathersellers Buildings, in the parish of Allhallows in the Wall, within the city of London, Watch and Chronometer Maker,] hath by his petition humbly represented unto us that he hath (o) invented [“a certain improvement or certain improvements in the mechanism of Time-keepers,”] which the petitioner conceives will be of great public utility, that he is the true and first inventor thereof, and that the same hath not been practised or used before in this kingdom by any other person or persons to the best of his knowledge and belief, the petitioner therefore most humbly prays that we will be graciously pleased to grant unto him, his executors, administrators, and assigns, our royal letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland, for the sole use, benefit, and advantage of his said invention within that part of our said United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed, [and also in our islands of Jersey, Guernsey, Alderney, Sark, and Man, and all our colonies and plantations abroad,] for the term of fourteen years, pursuant to the statute in that case made and provided. (No. 12.) Queen's warrant for preparing the bill (m).

We being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request. Our will and pleasure therefore is, that you prepare a bill for our royal signature, to pass our Great Seal of our United Kingdom of Great Britain and Ireland, containing our grant unto him the said [James Gowland,] his executors, administrators, and assigns, of the sole use, benefit, and advantage of his said invention, within that part of Great Britain called England, our dominion of Wales, and town of Berwick upon Tweed, [and also in our islands of Jersey, Guernsey, Alderney, Sark, and Man, and all our colonies and plantations abroad,] for the term of fourteen years, pursuant to the statute in that case made and provided: Provided that the petitioner does within the

(k) Vide *ante*, p. 517, respecting the time which will be recommended to be allowed for specifying the invention.

(l) The report must be signed by the Attorney or Solicitor-general.

(m) See the Practice, *ante*, p. 518.

(n) Her Majesty always signs the

warrant in this place.

(o) If the patent is to be for an imported invention, the form is varied accordingly. See the Form of a Petition for an Imported Invention, No. 4, *ante*, p. 619.

space of [*six*] calendar months, to be computed from the date of our said intended grant, cause a particular description of the nature of his said invention, and in what manner the same is to be performed, by writing, under his hand and seal to be enrolled in our High Court of Chancery, otherwise our said intended letters patent to be void: and you are to insert in the said bill all such clauses, prohibitions, and provisoes as are usual and necessary in grants of the like nature and as you shall judge requisite; and for so doing this shall be your warrant. Given at our Court at St. James's, the [*first*] day of [*October,*] 1845, in the [*ninth*] year of our reign.

By her Majesty's command,

(Signed) [J. R. G. GRAHAM] (*p*).

To our Attorney or Solicitor-general.

(No. 13.)  
Caveat at the  
Patent Bill  
Office (*q*).

Caveat against a bill being signed for her Majesty's letters patent to [*Moses Poole, of No. 4, Old Square, Lincoln's Inn, in the county of Middlesex, Patent Agent,*] for an alleged invention of [*improvements in the manufacture of Carpets,*] without notice to [*J. C. Robertson and Company, of No. 166, Fleet Street, London, Patent Agents.*] Dated this [*te-th*] day of [*October,*] 1845.

(Signed) [J. C. ROBERTSON AND CO.]

(No. 14.)  
Notice of bill  
for a patent  
having been  
received for  
signature (*r*).

Attorney [*or Solicitor*] General's Chambers,  
[2, Fig Tree Court, Temple, 1 October, 1845.]

SIR,

I beg to inform you that the bill of [*Andrew Pritchard, of No. 162, Fleet Street, London,*] for letters patent for an invention of [*improvements in Telescopes,*] is now in this office, and that any opposition upon your caveat of the [*twenty-fourth*] day of [*August last,*] must be entered here within three days from the date hereof, otherwise the bill will be signed.

Your obedient Servant,

(Signed) [T. SHANKS] (*s*).

To Mr. Moses Poole (*t*).

(No. 15.)  
Note of oppo-  
sition at the  
bill (*u*).

The application of [*William Edward Newton, of Chancery Lane, in the county of Middlesex, Patent Agent,*] for a bill for a patent for an alleged invention of [*improvements in Lace Machines,*] is opposed by [*Edward*

(*p*) The warrant must here be countersigned by one of the principal Secretaries of State; and it is usually signed by the Secretary for the Home Department. Vide *ante*, p. 519.

(*q*) See the Practice, *ante*, pp. 519, 520.

(*r*) Vide *ante*, p. 522.

(*s*) The signature of the Attorney

or Solicitor-general's clerk.

(*t*) Clerk in the Patent Bill Office. The clerk sends a similar notice to every person who has entered a caveat. Vide *ante*, p. 522.

(*u*) This note is to be left at the Patent Bill Office for entering an opposition at the bill. See the Practice, *ante*, p. 524.



*Ranson, of Loughborough, in the county of Leicester, Lace Manufacturer.]*  
 Dated this [twelfth] day of [October,] 1845.

(Signed) [EDWARD RANSON,]

OR

[NEWTON & SON, Chancery Lane,  
 Agents for the said Edward Ranson.]

In the matter of the application of [J. C. Robertson,] for a (No. 16.)  
 bill for letters patent for an alleged invention of ["improvements in the manufacture of Leather."] Declaration of the service of a summons to attend hearing.

I, [William Tomlinson, of the borough of Sunderland, in the county of Durham,] clerk to [Robert Smart, of the same place, Gentleman,] solicitor [or agent] for the above named [J. C. Robertson,] do solemnly and sincerely declare that, &c. [The form is the same as that given, ante, p. 621, No. 10.]

(Signed) [WM. TOMLINSON.]

'Taken and declared at [the borough of Sunderland, in the county of Durham,] this [tenth] day of [October,] one thousand eight hundred and forty five,

Before me,

A. J. MOORE,

A Master Extraordinary in Chancery.

VICTORIA R. (y.)

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To all to whom these presents shall come greeting. Whereas [James Gowland, of Leathersellers Buildings, London Wall, in the city of London, Chronometer Maker,] hath by his petition, &c. (Here the body of the intended patent is set forth at full length, after which is added,) In witness, &c. Witness, &c. (z).

Examined, [T. WILDE] (a).

MAY IT PLEASE YOUR MOST EXCELLENT MAJESTY.

This contains your Majesty's grant unto [James Gowland, of Leathersellers Buildings, London Wall, in the city of London,] of the sole use, benefit, and advantage of his invention of [improvements in Chronometers and Time Keepers,] to hold to him, his executors, administrators, and assigns, within England, Wales, and the town of Berwick upon Tweed, [and also in the islands of Jersey, Guernsey, Alderney, Sark, and Man,] (No. 18.) Docket (b).

(x) Vide ante, p. 520, 521.

(y) The sign manual of her Majesty.

(z) When the patent itself is prepared, the conclusion is added in words at length with the dates, as in the

form given, post.

(a) The bill is here signed by the Attorney or Solicitor-general.

(b) This docket is to be written under the bill. See the Practice, ante, p. 522.

and in all your Majesty's colonies and plantations abroad,] for the term of fourteen years, pursuant to the statute in that case made and provided. Provided that he does within [six] calendar months from the date of the grant hereby intended, cause a particular description of the nature of his said invention and in what manner the same is to be performed by writing under his hand and seal, to be enrolled in your High Court of Chancery, otherwise your Majesty's said grant to be void. All such clauses, prohibitions, and provisos are therein inserted as are usual and necessary in grants of the like nature. And this bill is prepared.

By warrant under your Majesty's Sign Manual,  
Countersigned by SIR JAMES ROBERT GRAHAM (c).  
(Signed) [F. THESSIGER] (d).

BY THE QUEEN.

(No. 19.)  
Signet bill (e).

Right [trusty and right entirely beloved cousin and councillor (f)]. We greet you well. And will and command that under our Privy Seal (remaining in your custody,) you cause these our letters to be directed to our Chancellor of that part of our United Kingdom of Great Britain and Ireland called Great Britain, commanding him that under our Great Seal of our said United Kingdom (in his custody being,) he cause these our letters to be made forth patent in form following.

Victoria, by the grace of God, &c. [Here the body of the patent is set out at full length, precisely as in the Queen's bill, (No. 7.) with the conclusion of it abbreviated as before, thus,] In witness, &c. Witness, &c. [The bill then concludes as follows.] And these our letters shall be your sufficient warrant and discharge in this behalf. Given under our Signet at our Palace of Westminster, the [first] day of [October,] in the [ninth] year of our reign.

Examined [A. B.] (g).

Direction.

To (h) [our right trusty and right entirely beloved cousin and councillor, Walter, Duke of Buccleuch,] Keeper of our Privy Seal.

(No. 20.)  
Caveat at the  
Privy Seal  
office (i).

Caveat against affixing the Privy Seal to a bill for a patent to [Alexander Prince, of Lincoln's Inn Fields, in the county of Middlesex, C. E., Patent Agent,] for an alleged invention of [an improved mode of construct-

(c) The name of the Secretary of State, who countersigned the warrant.

(d) The Attorney or Solicitor-general must sign the docket as well as the bill. Vide *ante*, p. 522.

(e) See the Practice, *ante*, p. 526.

(f) This varies according to the rank and title of the Lord Privy Seal, to whom the direction is addressed. The above address is correct when the Lord Privy Seal is a duke and, (as he always

is) a privy councillor.

(g) The bill is to be signed by one of the clerks of the Signet or his deputy; vide *ante*, 527.

(h) This direction is written on the outside of the bill.

(i) Oppositions are rarely made at the Privy Seal; but this would be a proper form for enabling a party to oppose at that stage. See the Practice, *ante*, p. 528.



ing Piano-fortes,] without notice to [William Ranyard, of South Square, Gray's Inn, in the county of Middlesex, Gentleman.] Dated this [twentieth] day of [October,] 1845.

(Signed) [WM. RANYARD.]

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to our right trusty and well beloved cousin and councillor [John Singleton, Baron Lyndhurst, of Lyndhurst, in the county of Southampton,] our Chancellor of that part of our said United Kingdom called Great Britain, greeting. We will and command that under our Great Seal of our said United Kingdom remaining in your custody, you cause these our letters to be made forth patent in the following form. (No. 21.) Privy Seal bill (k).

Victoria, by the grace of God, &c. (The intended patent is here set forth at length as in the Queen's bill, ante, p. 626, (No. 7.), concluding with, "In witness, &c. Witness, &c." and underneath is written,)

Given under our Privy Seal at our Palace at Westminster, the [first] day of [November,] in the year of our Lord one thousand eight hundred and forty [five,] in the [ninth] year of our reign.

Examined, [R EDEN] (l).

(The Privy Seal Bill or writ of Privy Seal is then folded up and sealed with the Privy Seal, and a label is attached to it upon which is written a direction to the Lord Chancellor, as follows.)

To our right trusty and well beloved cousin and councillor [John Singleton, Baron Lyndhurst,] our Chancellor of that part of our United Kingdom of Great Britain and Ireland, called Great Britain. Label.

Caveat against affixing the Great Seal of the United Kingdom to letters patent for granting to [James Gowland, of Leathersellers Buildings, London Wall, in the city of London, Chronometer Maker,] the sole use, benefit, or advantage of an alleged invention of ["improvements in the construction of Chronometers,"] without notice to [William Henry Rymer, of Chancery Lane, in the county of Middlesex, Gentleman (n), Solicitor for Jacob Boaz, of Cornhill, in the city of London, Chronometer Maker.] (No. 22.) Caveat at the Great Seal (m).

Dated this [fourth] day of [November,] 1845.

(Signed) [W. H. RYMER.]

The application of [James Gowland, of Leathersellers Buildings, London Wall, in the city of London, Chronometer Maker,] for letters patent for an alleged invention of ["improvements in the construction of Time Keepers,"] (No. 23.) Note of an opposition at the Great Seal (o).

(k) See the Practice, ante, p. 528.

(l) The bill is to be signed by one of the clerks of the Privy Seal. Vide ante, 529.

(m) See the Practice, pp. 530, 531.

(n) None but solicitors can practice in Chancery. See the Practice, ante, p. 532.

(o) See the Practice, ante, p. 531.

is opposed by [Jacob Boas, of Cornhill, in the city of London, Chronometer Maker.] Dated this [sixth] day of [November,] 1845.

(Signed) [W. H. RYMER.]

[Chancery Lane,] Solicitor for the  
above named [Jacob Boas.]

To the Clerk of the letters patent.

(No. 24.)  
Recepi (p).

Received the [tenth] day of [November,] 1845.

(Signed) [LYNDHURST,] C. (q).

(No. 25.)  
Docket for a  
patent at the  
Patent Of-  
fice (r).

A grant unto [James Gowland, of Leathersellers Buildings, London Wall, in the city of London, Watch and Chronometer Maker,] for the sole use of his invention of ["improvements in Time Keepers,"] to hold to him, his executors, administrators, and assigns, within England, Wales, and the town of Berwick upon Tweed, [the islands of Guernsey, Jersey, Alderney, Sark, and Man, and in all her Majesty's colonies and plantations abroad,] for the term of fourteen years, pursuant to the statute in that case made and provided, with a clause to enrol a specification of the same within [six] calendar months from the date thereof.

Witness her Majesty at Westminster, the [tenth] day of [November,] 1845, in the [ninth] year of her reign.

By writ of Privy Seal,

(Signed) L. C. (s).

[EDMUNDS] (t).

(No. 26.)  
Letters  
patent (u).  
Recital.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To all to whom these presents shall come greeting. WHEREAS [James Gowland, of Leathersellers Buildings, London Wall, in the city of London, Watch and Chronometer Maker,] hath by his petition humbly represented unto us that (x) he hath invented ["a certain improvement or certain improvements in the mechanism of Time Keepers,"] which the petitioner conceives will be of great public utility, that he is the first and true inventor thereof, and that the same hath not been practised or used before in this kingdom.

(p) This *recepi* is always written in the margin of the Privy Seal Bill; see the Practice, *ante*, p. 537.

(q) The signature of the Lord Chancellor.

(r) See the Practice, *ante*, p. 538.

(s) Lord Chancellor's initials.

(t) Name of Clerk of the patents.

(u) Vide *ante*, Chap. IV. p. 36, respecting the Form and Construction of Letters Patent, and *ante*, Chap. XII. p. 538, respecting the Practice and Mode of Preparing a Patent, &c.

(x) If the patent be granted for an

imported invention, the recital states the representation in the petition thus, "that, in consequence of a communication from a foreigner residing abroad, he is in possession of an invention of 'Improvements in the Construction of Locks,' which the petitioner conceives will be of great public utility, and that the same is new within this realm, and hath not been practised or used therein by any person or persons whomsoever, to the best of his knowledge and belief; the petitioner, therefore," &c.



by any other person or persons to the best of his knowledge and belief, the petitioner therefore most humbly prayed that we would be graciously pleased to grant unto him, his executors, administrators, and assigns, our royal letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland, for the sole use, benefit, and advantage of his (y) said invention within that part of our United Kingdom of Great Britain and Ireland, called England, our dominion of Wales, and town of Berwick upon Tweed, [and also in our islands of Jersey, Guernsey, Alderney, Sark, and Man, and all our colonies and plantations abroad,] for the term of fourteen years, pursuant to the statute in that case made and provided, and we being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request. **KNOW YE THEREFORE,** that we of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents for us, our heirs, and successors, do give and grant unto the said [James Gowland,] his executors, administrators, and assigns, our *especial license, full power, sole privilege and authority*, that he the said [James Gowland,] his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy and deputies, servants or agents, or such others as he the said [James Gowland,] his executors, administrators, and assigns, shall at any time agree with and no others, from time to time, and at all times hereafter during the term of years herein expressed, shall and lawfully may make, use, exercise, and vend, his (z) said invention within that part of our United Kingdom of Great Britain and Ireland, called England, our dominion of Wales, and town of Berwick upon Tweed, [and also in our islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all our colonies and plantations abroad,] in such manner as to him the said [James Gowland,] his executors, administrators, and assigns, or any of them, shall in his or their discretions seem meet. And that he the said [James Gowland,] his executors, administrators, and assigns, shall and lawfully may have and enjoy the whole profit, benefit, and advantage from time to time coming, growing, accruing, and arising by reason of the said invention, for and during the term of years herein mentioned. **TO HAVE, HOLD,** exercise, and enjoy the said licenses, powers, privileges, and advantages herein before granted or mentioned to be granted unto the said [James Gowland,] his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years from the date of these presents next and immediately ensuing, and fully to be complete and ended according to the statute in such case made and provided. **AND** to the end that the said [James Gowland,] 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 herein before declared, we do

Recital in a patent for an imported invention.

Grant.

Sole privilege.

*Habendum* for 14 years.

Prohibition to all others.

(y) If invention has been imported it must be "*the said invention.*"

(z) Or if imported "*the said invention.*"

Command to justices, &c. not to molest the patentee.

Proviso, that if grant contrary to law, or invention not new, &c. patent may be revoked.

by these presents for us, our heirs, and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever, of what estate, quality, degree, name or condition soever they be, within the said part of our United Kingdom of Great Britain and Ireland, called England, our dominion of Wales and town of Berwick upon Tweed, [and also in our islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all our colonies and plantations abroad,] that neither they nor any of them at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly, do make use or put in practice the said invention, or any part of the same so attained by the said [James Gowland,] as aforesaid, nor in any wise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto or subtraction from the same, whereby to pretend himself or themselves, the inventor or inventors, deviser or devisers thereof, without the consent, license, or agreement of the said [James Gowland,] his executors, administrators, or assigns, in writing under his or their hands and seals first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command; and further he answerable to the said [James Gowland,] his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned. AND MOREOVER, we do by these presents for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, head-boroughs, and all other officers and ministers whatsoever of us, our heirs and successors for the time being, they or any of them do not nor shall at any time hereafter during the said term hereby granted, in any wise molest, trouble, or hinder the said [James Gowland,] his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the said invention or any thing relating thereto. PROVIDED ALWAYS, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall be made to appear to us, our heirs, or successors, or any six or more of our or their Privy Council, that this our grant is contrary to law, or prejudicial, or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof, in (a) that said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed, [and also in our islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all our colonies and plantations abroad aforesaid,] or not invented and found out (b) by the said [James Gowland] as aforesaid; then upon signification or declaration thereof to be made by us, our heirs, or successors under

(a) It ought to be "in this realm." See *Brown v. Annandale*, 1 Webs. R. 433, and *ante*, p. 63, 468.

(b) If the invention has been im-

ported, instead of "not invented and found out," the words "not introduced therein" are inserted; but they ought to be "not introduced into this realm."



our or their signet or Privy Seal, or by the Lords and others of our or their Privy Council, or any six or more of them under their hands, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, any thing herein before contained to the contrary thereof in anywise notwithstanding: PROVIDED ALSO, that these our letters patent or any thing herein contained, shall not extend or be construed to extend to give privilege unto the said [James Gowland,] his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever, which hath heretofore been invented or found out by any other of our subjects whatsoever, and publicly used or exercised in that said part of our United Kingdom of Great Britain and Ireland, called England, our dominion of Wales, and town of Berwick upon Tweed, [and also in our islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all our colonies and plantations abroad aforesaid,] unto whom our like letters patent or privileges have been already granted for the sole use, exercise, and benefit thereof; it being our will and pleasure that the said [James Gowland,] his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions by them invented and found out according to the true intent and meaning of the same respective letters patent and of these presents: PROVIDED LIKEWISE nevertheless, and these our letters patent are upon this express condition, that if at any time heretofore these our letters patent, or the liberties and privileges hereby by us granted, shall become vested in or in trust for more than the number of twelve persons, or their representatives at any one time as partners dividing or entitled to divide the benefits or profits obtained by reason of these our letters patent, (reckoning executors and administrators as and for the single person whom they represent as to such interest as they shall be entitled to in right of such their testator or intestate,) that then these our letters patent and all liberties and advantages whatsoever hereby granted shall utterly cease, determine, and become void, anything hereinbefore contained to the contrary in anywise notwithstanding: *Provided* that nothing herein contained shall prevent the granting of licenses in such manner and for such consideration as they may by law be granted: AND ALSO if the said [James Gowland] shall not particularly describe and ascertain the nature of his said invention (c), and in what manner the same is to be performed by an instrument in writing under his hand and seal, and cause the same to be enrolled in our High Court of Chancery within [six] calendar months next, and immediately after the date of these our letters patent: AND (d) ALSO if the said [James Gowland,] his executors, administrators, or assigns, shall not supply, or cause to be supplied for our service, all such

Patent not to give privilege to use any prior patent invention.

All patentees to use their inventions distinctly.

Proviso that if patent privilege becomes vested in more than twelve persons, patent to void.

Proviso not to prevent any granting of licences.

Proviso requiring specification of the invention.

Proviso requiring patentee to supply articles for the public service.

(c) Or if imported, "the said invention."

(d) It has recently become the prac-

tice to insert this reservation in favour of the public service in every patent, instead of that given *ante*, p. 71.

Grant that patent shall be good notwithstanding the not full description of invention, &c.

articles of the said invention as he or they shall be required to supply by the officers or commissioners administering the department of our service for the use of which the same shall be required, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the said officers or commissioners requiring the same, that then and in any of the said cases these our letters patent, and all liberties and advantages whatsoever hereby granted shall utterly cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. AND LASTLY, we do by these presents for us, our heirs, and successors, grant unto the said [James Gowland,] his executors, administrators, and assigns, that these our letters patent, or the enrolment, or exemplification thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favorable and beneficial sense for the best advantage of the said [James Gowland,] his executors, administrators, and assigns, as well in all our Courts of record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs, and successors, in that part of our said United Kingdom of Great Britain and Ireland, called England, our dominion of Wales, and town of Berwick upon Tweed, [and also in our islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all our colonies and plantations abroad aforesaid,] and amongst all and every the subjects of us, our heirs, and successors whatsoever and wheresoever, notwithstanding the not, full, and certain describing the nature or quality of the said invention, or of the materials thereunto conducing and belonging. IN WITNESS whereof we have caused these our letters to be made patent. WITNESS ourself at Westminster, this [tenth] day of [November,] in the ninth year of our reign.

By writ of Privy Seal,  
[EDMUNDS] (e).

(No. 27.)  
Enrolment of  
patent (g).

Patents (f) of the [ninth] year of the reign of Queen Victoria.  
Roll [twenty-four.]

["JAMES GOWLAND,] } "VICTORIA, by the grace of God, &c. To  
Invention." } all to whom these presents shall come greeting.  
Whereas, James Gowland, of, &c." [Here the whole of the patent is  
copied verbatim, except the conclusion, which is abbreviated thus.] "In  
witness, &c. witness, &c. the [tenth] day of [November.]"

"By writ of Privy Seal."

(No. 28.)  
Specification to  
be enrolled in

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [James Gowland, of Leathersellers Buildings, London Wall, in the city of London, Chronometer Maker,] send greeting. WHEREAS, her most

(e) The clerk of the patents.

vide ante, p. 540.

(f) This is indorsed on the Roll;

(g) See the Practice, ante, p. 539.



excellent Majesty, Queen Victoria, by her letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminister the [first] day of [January,] in the [eighth] year of her reign, did give and grant unto me the said [James Gowland,] my executors, administrators, and assigns, her especial license, full power, sole privilege, and authority, that I the said [James Gowland,] my executors, administrators, and assigns, and such others as I the said [James Gowland,] my executors, administrators, or assigns should at any time agree with, and no others from time to time and at all times thereafter during the term of years therein mentioned, should and lawfully might make, use, exercise, and vend within that part of the United Kingdom of Great Britain and Ireland, called England, her dominion of Wales, and town of Berwick upon Tweed, [and also in the islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all her colonies and plantations abroad,] my invention of ["improvements in the construction of Chronometers and other Time-keepers."] In which said letters patent there is contained a proviso requiring that I the said [James Gowland,] shall particularly describe and ascertain the nature of my said invention and in what manner the same is to be performed, by an instrument in writing under my hand and seal, to be enrolled in her said Majesty's High Court of Chancery within [six] calendar months next, and immediately after the date of the said in part recited letters patent, as reference being thereunto had will more fully and at large appear. NOW (i) KNOW YE, that in compliance with the said proviso, I the said [James Gowland,] do hereby declare the nature of my invention, and the manner in which the same is to be performed is particularly described and ascertained in and by this present instrument in writing as follows, (that is to say,) My said invention consists, &c. [Here describe the nature of the invention, &c. so as to comply with the terms of the proviso in the letters patent. If, however, drawings are necessary, the form should be varied, thus,] are particularly described and ascertained in and by this present instrument in writing, reference being had to the drawing [or, several drawings] hereunto annexed [or, in the margin of these presents,] and in which said drawing [or, several drawings,] similar parts are marked and referred to by similar letters or figures, (that is to say,) My said invention consists, &c. [Here describe the invention, referring to the drawings so as to explain the description.]

IN WITNESS whereof, I, the said [James Gowland,] have hereunto set my hand and seal the [first] day of [January,] in the year of our Lord one thousand eight hundred and forty [four.]

(Signed) (l) [JAMES GOWLAND,] L. S.

(k) Signed and sealed  
in the presence of  
John Jones.

(h) See the Practice, *ante*, p. 541.

(i) Vide *ante*, Chap. VII. p. 151, respecting the Form, Requisites and Construction of Specifications.

(k) The instrument must be both

signed and sealed, *vide ante*, pp. 151, 152.

(l) Although sometimes used, an attestation is not necessary.

(No. 20.)

*Acknowledgment before a Master in Chancery.*

Acknowledgment of specification before a Master in Chancery (m).

Taken and acknowledged by the within [or above] named [James Gowland,] at [the Public Office, Southampton Buildings, in the county of Middlesex,] this [second] day of [January,] in the year of our Lord one thousand eight hundred and forty [four,]

Before me,

(Signed)

[A. H. LYNCH] (n.)

(No. 30.)

Form of enrolment of a specification (o).

Making Cables, &c. }  
Improvements in }  
[Smith's] }  
Specification (p). }

TO ALL TO WHOM THESE PRESENTS SHALL COME. I, [Andrew Smith,] of [Princes Street, Leicester Square, in the county of Middlesex, Engineer,] send greeting, &c. [Here the whole of the specification is set out, including the signature and seal at the end, after which comes the following entry if the specification has been acknowledged.]

*Record of Acknowledgment.**Duckworth (q).*

AND BE IT REMEMBERED that on the [twentieth] day of [September,] in the [third] year of the reign of her Majesty, Queen Victoria, the said [Andrew Smith] came before our said Lady the Queen in her Chancery, and acknowledged the instrument aforesaid, and all and every thing contained and specified in form above written: AND the instrument aforesaid was stamped according to the tenor of the statute made in the fifty-fifth year of the reign of his late Majesty King George the Third.

Date of enrolment.

Enrolled the [twentieth] day of [September,] one thousand eight hundred and thirty [nine.]

(No. 31.)

Certificate of enrolment.

Enrolled in [the office of the Rolls Chapel, or the office of the Petty Bag,] in her Majesty's High Court of Chancery, the [first] day of [July,] in the year of our Lord one thousand eight hundred and forty [five,] being first duly stamped according to the tenor of the statute made for that purpose.

(Signed)

[A. B.]

(m) The acknowledgment must be before a Master in Chancery, when taken in town; but when taken in the country it may be taken before a Master Extraordinary.

(n) It is unusual for a Master to do more than sign his name; but a Master Extraordinary must add words, such as, "Master Extraordinary," in order

to show his power to take the acknowledgment.

(o) Vide *ante*, p. 544.

(p) The Form of this Marginal Abstract is not the same in all offices.

(q) This is the name of the Master before whom the acknowledgment was taken.



## SECTION II.

*Forms of Proceedings upon Obtaining Leave to Enter Disclaimers or Memorandums of Alteration under stat. 5 & 6 Will. IV. c. 83, s. 1.*

CAVEAT against any fiat or leave being granted to [William Newton, of Chancery Lane, in the county of Middlesex, Patent Agent,] to enter any disclaimer or memorandum of alteration of any part of the title or specification of an alleged invention intituled ["improvements in Printing Presses,"] which is comprised in letters patent granted to him, [or to Andrew Pritchard, of No. 162, Fleet Street, in the city of London,] dated the [first] day of [November,] in the [third] year of her present Majesty's reign, without notice, to [Messrs. Poole and Carpmael, Old Square, Lincoln's Inn, Patent Agents.] Dated this [first] day of [August,] 1845. (No. 1.)  
General caveat against any disclaimer or alteration (r).  
(Signed) [POOLE AND CARPMAEL.]

CAVEAT against the grant of a fiat to [Bryan Donkin, of the Paragon, New Kent Road, Civil Engineer, F.R.S.] for leave to enter any disclaimer [or memorandum of alteration, or disclaimer and memorandum of alteration] of [part of] the title and [part of] the specification of the invention intituled ["improvements in Railway Switches and Railway Carriage Wheels,"] comprised in letters granted to [the said Bryan Donkin, or to A. B. of, &c.] on the [first] day of [November,] in the [ninth] year of the reign of her present Majesty, without notice, to [Messrs. J. C. Robertson and Co. of No. 166, Fleet Street, London, Patent Agents.] Dated this [twenty-first] day of [December,] 1845. (No. 2.)  
Specific caveat against a particular disclaimer or alteration (s).  
(Signed) [J. C. ROBERTSON AND CO.]

To her Majesty's Attorney [or Solicitor] General. (No. 3.)

The petition of [James Gowland, of Leathersellers Buildings, in the city of London, Chronometer Maker.]  
Petition for leave to enter a disclaimer or memorandum of alteration (t).

SHEWETH,

THAT by letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the [first] day of [January,] in the [eighth] year of the reign of her present Majesty Queen Victoria, her said Majesty did grant unto your petitioner, [or unto John Thomas, of Preston, in the county of Lancaster, Watch and Clock Maker,] his executors, administrators, and assigns, the sole use, benefit, and advantage of his invention of [improvements in the construction of Chrono-

(r) See the Practice, ante, p. 551.

which has been advertised; yet the previous form may also be used, and will answer the purpose equally well.

(s) See the Practice, ante, p. 551. Although this form is proper to be adopted when it is intended merely to oppose some particular application,

(t) See the Practice, ante, p. 550.

meters,] to have, hold, exercise, and enjoy the same unto and by your petitioner [or unto the said *John Thomas*,] his executors, administrators, and assigns, within England, Wales, and the town of Berwick upon Tweed, [and also in the islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all her said Majesty's colonies and plantations abroad,] for the term of fourteen years.

AND WHEREAS your petitioner, [or the said *John Thomas*,] in pursuance of a proviso in the said letters patent contained, did by an instrument in writing under his hand and seal (commonly called a specification,) describe and ascertain the nature of his said invention and in what manner the same is to be performed, and did cause the same instrument to be enrolled in her Majesty's High Court of Chancery at Westminster, on the [first] day of [February,] in the year of our Lord, [1845] (u). [And whereas by indenture bearing date the [22d] day of [January, 1845,] and made, or expressed to be made between the said [John Thomas] of the one part, and of your petitioner of the other part, for the considerations therein expressed, the said letters patent and the invention, rights, privileges, profits, and premises therein comprised or thereby granted, were duly assigned unto your petitioner, his executors, administrators, and assigns.]

AND WHEREAS, since the date of the said letters patent and of the said enrolment of the said specification, your petitioner has discovered that part of the said invention as described in the said letters patent and specification was not on the day of the date of the said letters patent new as to the public knowledge, use, and exercise thereof, [or has discovered that your petitioner, or the said *John Thomas* was not the true and first inventor of a part of the said invention as described in the said letters patent and specification;—or,—has discovered that part of the said invention as described in the said letters patent and specification is of no use, benefit, or advantage to the public; or, is not a necessary or useful part of the said invention;—or,—has discovered that part of the said invention cannot be used or applied in the manner mentioned and described in the said letters patent and specification respectively; or has been informed that doubts are entertained whether the said specification sufficiently distinguishes between what was new and what was old,—or state such other circumstances as may have rendered a disclaimer or memorandum of alteration necessary or expedient.]

WHEREFORE your petitioner is desirous in pursuance of the statute in such case made and provided, to enter a disclaimer of so much of the title of the said invention, and also so much of the said specification as relates to or comprises such part of the said invention as aforesaid, [or to enter a memorandum of alteration of the title of the said invention and

(u) If the petitioner is an assignee his title ought here to be stated. The recital contained within brackets above is proper in case of a simple assignment

from the patentee to the petitioner; but where the petitioner's title is more complicated the recital must be framed accordingly.



of the said specification, for the purpose of more accurately intituling, ascertaining, and describing the said invention and the nature thereof, and also the manner in which the same invention is to be performed.]

THAT the said disclaimer [or memorandum of alteration,] which your petitioner is so desirous to enter as aforesaid, is not such a disclaimer [or memorandum of alteration,] as will extend the exclusive right granted by the said letters patent;—and that your petitioner is desirous of entering with the clerk of the patents of England such disclaimer, [or a memorandum of such alteration] as hereinafter mentioned; (that is to say,)—YOUR PETITIONER is desirous of disclaiming the words [“and for other useful purposes,”] contained in the title of the said invention, and your petitioner is also desirous of disclaiming so much, &c. [or your petitioner is desirous by such a memorandum to alter the title of the said invention by intituling the same invention as “improvements in, &c.” instead of “an improved mode, &c.” *the parts to be disclaimed and the alterations to be made must be accurately set forth.*]

That a copy of the said specification and of the disclaimer [or memorandum of alteration,] which your petitioner is so desirous of entering as aforesaid, is hereunto annexed, [or is left herewith.]

Your petitioner therefore prays the leave of her Majesty's Attorney-general [or Solicitor-general,] to be certified by his fiat and signature, in pursuance of the statute in such case made and provided, to enter with the clerk of the patents of England a disclaimer, [or memorandum of alteration,] in the form or to the effect hereinbefore mentioned, and that your petitioner may have such further or other relief in the premises as to her Majesty's said Attorney-general [or Solicitor-general] shall seem meet.

(Signed)

[JAMES GOWLAND.]

LONDON, 31 October, 1845.

Notice is hereby given, that [John Coope Hadden, of Woburn Place, Russell Square, in the county of Middlesex, Civil Engineer,] to whom letters patent were granted on the [first] day of [February,] in the [eighth] year of the reign of her present Majesty, for [“improvements in the construction of Railway Carriage Wheels,”] [or if the petitioner is an assignee of the patent, assignee of letters patent granted to E. N. of, &c. on the [first] day of [February,] in, &c. as before,] has applied by petition to her Majesty's Attorney [or Solicitor] General, for the leave and fiat of the said Attorney [or Solicitor] General, to enter a disclaimer [and memorandum of alteration] for the purpose of disclaiming a certain part of the said title of the said invention as in the said petition mentioned, and also disclaiming certain parts of the specification of the said invention as in the said petition also mentioned, [in altering a certain

(No. 4.)

Notice of application for leave to enter a disclaimer or memorandum of alteration (x).

(x) See the Practice, *ante*, p. 551.

part of the title of the said invention in the said petition mentioned, and also altering certain parts of the specification of the said invention in the said petition also mentioned.] Dated this [tenth] day of [October,] 1846

(Signed) [WILLIAM RANYARD,]

South Square, Gray's Inn,

Solicitor for the above named petitioner

(No. 5.)  
Disclaimer or  
memorandum  
of alteration.

TO ALL TO WHOM these presents shall come, [I, James Gowland, of Leathersellers Buildings, London Wall, in the city of London, Chronometer Maker,] send greeting. Whereas, by letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the [first] day of [January,] in the [eighth] year of her present Majesty Queen Victoria, her said Majesty did grant unto me [or unto John Thomas, of Preston, in the county of Lancaster, Watch and Clock Maker,] my [or his] executors, administrators, and assigns, the sole use, benefit, and advantage of his invention of [improvements in the construction of Chronometers and other Time-keepers,] to have, hold, exercise, and enjoy the same unto and by me, [or unto the said John Thomas,] my [or his] executors, administrators, and assigns, within England, Wales, and the town of Berwick upon Tweed, [and also in the islands of Jersey, Guernsey, Alderney, Sark, and Man, and in all her Majesty's colonies and plantations abroad] for the term of fourteen years.

AND WHEREAS I, the said [James Gowland] [or the said John Thomas] in pursuance of a proviso in the said letters patent contained, did, by an instrument in writing, under my [or his] hand and seal, (commonly called a specification) describe and ascertain the nature of my [or his] said invention, and in what manner the same is to be performed; and did cause the same instrument to be enrolled in her Majesty's High Court of Chancery at Westminster, on the [first] day of [February,] in the year of our Lord 1845 (y). [And whereas by an indenture, bearing date the [twenty-second] day of [January, 1845,] and made or expressed to be made between the said [John Thomas,] of the one part, and me, the said [James Gowland,] of the other part, for the considerations therein expressed, the said letters patent and the invention, rights, privileges, profits and premises therein comprised, or thereby granted, were assigned unto me, the said [James Gowland,] my executors, administrators, and assigns.]

AND WHEREAS, since the date of the said letters patent and of the said enrolment of the said specification, I have discovered that part of the said invention as described in the said letters patent and specification was not on the day of the date of the said letters patent new as to the public

(y) If the disclaimer or memorandum of alteration is entered by an assignee his title must be stated shortly in this place. The Form of Recital given above will only be applicable to a case in which

there has been merely an assignment by the patentee to a purchaser. See also the Recitals contained in the Forms of Assignments and Licences in a subsequent part of this Appendix.



knowledge, use, and exercise thereof, [or have discovered that I, [or the said John Thomas] was not the true and first inventor of a part of the said invention, as described in the said letters patent and specification; or have discovered that part of the said invention, as described in the said letters patent and specification, is of no use, benefit, or advantage to the public, or is not a necessary or useful part of the said invention; or have discovered that part of the said invention cannot be used or applied in the manner mentioned and described in the said letters patent and specification respectively; or state such other circumstances as may have rendered a disclaimer or memorandum of alteration necessary or expedient.]

And whereas, in consequence of such discovery as last aforesaid, I am desirous, with the leave of her Majesty's Attorney-general [or Solicitor-general], to enter with the clerk of the patents in England, such disclaimer [or memorandum of alteration] as hereinafter contained or expressed.

NOW KNOW YE, THEREFORE, that I, the said [James Gowland,] Disclaimer of part, &c. by and with the leave of Sir [Frederick Thesiger,] Knight, her Majesty's Attorney-general [or Solicitor-general] do hereby disclaim [the words, "and other timekeepers" contained in the title of the said invention.] And I do hereby further disclaim [so much of the said specification as describes, &c.] (The several parts of the title and specification which are intended to be disclaimed must be carefully and accurately set out.)

NOW KNOW YE (or AND FURTHER KNOW YE) that I, the said Alteration. [James Gowland,] by and with the leave and consent of Sir [Frederick Thesiger,] Knight, her Majesty's Attorney-general [or Solicitor-general] do, by this present memorandum of alteration, by and with the like leave and consent, to be entered with the said clerk of the patents, declare, that I do hereby make such alteration in the title of the said invention; and also in the said specifications as hereinafter mentioned or expressed (that is to say), I do hereby alter the said title [Here state the alteration intended, as for example by intituling the said invention, "improvements in the escapements of Chronometers," instead of "improvements in the construction of Chronometers;" and I do further declare that the title of the said invention shall accordingly be "improvements in the escapements of Chronometers," instead of the said title so expressed or mentioned in the said letters patent and specification respectively.] And I do hereby alter the said specification, &c. [Here set forth all the intended alterations in the specification.] And I, the said [James Gowland,] do hereby state and declare that my reasons for making such disclaimer and alteration as aforesaid, are that, &c. [Here state reasons for making the disclaimer or alteration.] And I, the said [James Gowland,] do further declare, that the above written disclaimer and memorandum of alteration are not, or are either of them respectively, or any part thereof respectively, intended to extend the exclusive right granted by the said letters patent, and that these presents shall not extend the said exclusive right in any way whatsoever.

IN WITNESS whereof I, the said [James Gowland,] have hereunto set my hand and seal this [first] day of [August,] one thousand eight hundred and forty [five.]

[JAMES GOWLAND,] L. S.

(No. 6.)

*Fiat* for leave to enter a disclaimer or memorandum of alteration.

TO THE CLERK OF THE PATENTS OF ENGLAND.

THIS IS TO CERTIFY that the above [or within] named [Edward Newton,] has applied to me Sir [Frederick Thesiger,] Knight, Her Majesty's Attorney [or Solicitor] General, for leave to enter the above [or within] written disclaimer [and memorandum of alteration] of part of the title and specification (z) of a certain invention, for which letters patent under the Great Seal of Great Britain and Ireland were duly granted to him [or to A. B. of, &c.] bearing date at Westminster, the [sixteenth] day of [May,] in the [fifth] year of the reign of her present Majesty, and the specification of which invention was enrolled on the [sixteenth] day of [November,] in the year of our Lord [one thousand eight hundred and forty-two.]

And on considering the said application, \* [I directed the said [Edward Newton] to advertise his said disclaimer [and alteration] in the London Gazette, and in the Times, and Morning Chronicle newspapers, and in some newspaper published in the vicinity of the place where the said [Edward Newton] carries on manufacture according to the said invention. And such advertisements have been duly published accordingly, that is to say, in the said Gazette on the [tenth] day of [October] last, in the said Times and Morning Chronicle newspapers on the [eleventh] day of [October] last, and in the [Sunderland Herald,] being a newspaper published in the vicinity of the place where the said Edward Newton carries on his said manufacture, on the [fourteenth] day of October last (a).]

And no sufficient objection having been made to the said application, I have accordingly granted, and do hereby grant leave to the said Edward Newton to enter and file his said disclaimer and memorandum of alteration, pursuant to the statute passed in the Session of Parliament held in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to amend the Law touching Letters Patent for Inventions," and let the same be entered and filed accordingly. Dated this [twelfth] day of [November,] in the year of our Lord, [one thousand eight hundred and forty-five.]

(Signed)

[FREDERICK THESIGER.]

(z) If the alteration applies to the title or specification only, the *fiat* must be altered accordingly.

(a) When no advertisements have been published the clause from the \* to this place must be omitted.



SECTION III.

*Forms of Proceedings for obtaining Confirmations and Prolongations of Patent Privileges.*

NOTICE is hereby given, that [Bryan Donkin, of the Paragon, New Kent Road, Esquire, Civil Engineer,] intends to apply by petition under the second section of the statute 5 & 6 William the Fourth, chap. 83, to her Majesty in Council to confirm letters patent bearing date the [first] day of [November,] in the [ninth] year of her said Majesty's reign, by which her said Majesty granted to the said [Bryan Donkin,] [or to C. D. of, &c.] the sole use of an invention, entitled "An improvement, &c." [If the application is to be made by an assignee, here insert the words, and which said letters patent have been assigned unto the said B. D.] (No. 1.) Notice of application for the confirmation of a patent under stat. 5 & 6 Will. IV. c. 83, s. 2.

And notice is hereby further given, that the said [Bryan Donkin] intends to apply by counsel to the Judicial Committee of the Privy Council on the [first] day of [February] now next, or if the said Judicial Committee shall not sit on that day, at the then next sitting of the said Judicial Committee, for a time to be fixed for hearing the matter of his said petition, and that on or before the said [first] day of [February] next, notice must be given of any opposition intended to be made to the said petition, and any person intending to oppose the said application must lodge [a caveat] notice to that effect at the Council Office on or before that day.

Dated this [first] day of [January, 1846.]

[F. G. A.,]

Solicitor for the above named [Bryan Donkin.]

Notice is hereby given, that [Bryan Donkin, of, &c.] intends to apply, by petition, under the fourth section of the statute 5 & 6 William the Fourth, chap. 83, to her Majesty in Council, for a prolongation of his term of sole using and vending his [or an] invention of ["an improvement, &c."] granted to him [or to C. D. of, &c.] by letters patent bearing date the [third] day of [May,] in the [second] year of the reign of his late Majesty King William the Fourth. [If the application is to be made by an assignee, here insert the words, and which said letters patent have been assigned unto the said B. D.] (No. 2.) Notice for an application for the prolongation of a patent under 5 & 6 Will. IV. c. 83, s. 4.

And notice is hereby further given, that, &c. [conclude as in the last form.]

*In the Judicial Committee of the Privy Council.*

(No. 3.)

In the matter of the petition of [A. B. of, &c.] for the confirmation of letters patent granted to the said [A. B. or to C. D. of &c.] for an invention of ["a new method of, &c."] and bearing Notice of opposition to the