

of the four universities of *Scotland*, and the *King's Inns Library* at *Dublin*, shall be and the same is hereby repealed.

Compensation
to be made to
the said li-
braries out of
consolidated
fund.

II. And be it further enacted, that it shall be lawful for the Lord High Treasurer or for the Commissioners of his Majesty's Treasury, or any three or more of them, from time to time to issue and pay out of the consolidated fund of the united kingdom of *Great Britain* and *Ireland*, to the person or persons or body politic or corporate, proprietors or managers of each of the aforesaid libraries, such an annual sum as may be equal in value to and a compensation for the loss which any such library may sustain by reason of the said act being repealed, so far as relates to such library; such annual compensation to be ascertained and determined according to the value of the books which may have been actually received by each such library, in such manner as the commissioners of his Majesty's treasury or any three or more of them shall direct, upon an average of the three years ending the thirtieth day of *June* one thousand eight hundred and thirty-six.

Application
of the com-
pensation.

III. And be it further enacted, that the person or persons or body politic or corporate, proprietors or managers of the library for the use whereof any such book would have been delivered, shall and they are hereby required to apply the annual compensation hereby authorized to be made in the purchase of books of literature, science, and the arts, for the use of and to be kept and preserved in such library; provided always, that it shall not be lawful for the said lord high treasurer or commissioners of his Majesty's treasury to direct the issue of any sum of money for such annual compensation until sufficient proof shall have been adduced before him or them of the application of the money last issued to the purpose aforesaid.

No. XXXI.

1 & 2 Vict. c. 59.

An Act for securing to Authors, in certain Cases, the Benefit of International Copyright.

Whereas it is desirable to afford protection within her Majesty's dominions to the authors of books first published in foreign countries, and their assigns, in cases where protection shall be afforded in such foreign countries to the authors of books first published in her Majesty's dominions, and their assigns; 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 it shall be lawful for her Majesty, by any order of her Majesty in council, to direct that the authors of books which shall, after a future time to be specified in such order in council, be published in any foreign country to be specified in such order in council, and their executors, administrators, and assigns, shall have the sole liberty of printing and reprinting such books within the united kingdom of *Great Britain and Ireland*, and every other part of the *British* dominions, for such term as her Majesty shall by such order in council direct, not exceeding the term which authors being *British* subjects are now by law entitled to in respect of books first published within the united kingdom; provided that no such author or his assigns shall be entitled to the benefit of this act unless, within a time to be in that behalf prescribed by such order in council, the title to the copy of every such book, and the name and place of abode of the author thereof, and the time and place of the first publication thereof in such foreign country, shall be entered in the register book of the Company of Stationers in *London*; and unless, within a time to be also prescribed by such order in council, one printed copy of the whole of such book and of every volume thereof, upon the best paper upon which the largest number or impression of such book shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the warehouse-keeper of the Company of Stationers at the hall of the said Company.

Her Majesty, by order in council, may direct that authors of books first published in foreign countries, and their assigns, shall have a copyright in such books within her Majesty's dominions.

Title of book to be entered at Stationers' Hall, and one copy delivered to the warehouse-keeper.

In case of books published anonymously, the name of publisher to be sufficient.

Wrongful first publication may be amended by Court of Chancery.

Register book to be kept at Stationers' Hall, and to be open to inspection.

Certificate by warehouse-keeper.

II. Provided always, and be it enacted, that if a book be published anonymously it shall be sufficient to insert in the entry thereof in such register book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry is made either on behalf of the author or on behalf of such first publisher, as the case may require.

III. And be it enacted, that every such entry shall be *prima facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, the author or his first publisher may apply by petition or on motion to the Court of Chancery to order such entry to be amended; but no such order shall be made unless it be proved to the satisfaction of the said Court, first with respect to a wrongful publication in a country to which the author or first publisher does not belong, and in regard to which there does not subsist with this country any treaty of international copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a treaty of international copyright, that a Court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher.

IV. And be it enacted, that such register book shall at all times be kept at the hall of the said Company, and for every such entry the sum of two shillings, and no more, shall be paid, and the same register book may at all seasonable and convenient times be inspected by any person on payment of the sum of one shilling, and no more, to the warehouse-keeper of the said Company of Stationers; and such warehouse-keeper shall, when and as often as thereto required, give a certificate under his hand of every or any such entry and delivery, and of the time of making the same respectively, and for every such certificate the sum of one shilling shall be paid; and such certificate, upon proof of the handwriting of the person signing the same, and that such person was in fact the warehouse-keeper of the said Company, shall without further proof be admitted in all Courts

as evidence of such entry and delivery, and of the time of making the same respectively.

V. And be it enacted, that the said warehouse-keeper shall receive at the Hall of the said Company every book or volume so to be delivered as aforesaid, and within one calendar month after receiving such book or volume shall deposit the same in the library of the *British Museum*.

Warehouse-keeper to deposit books in the *British Museum*.

VI. Provided always, and be it enacted, that it shall not be requisite to deliver to the warehouse-keeper of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations; and in case any edition after the first of any book so delivered as aforesaid shall contain any addition or alteration, it shall not be requisite to deliver any printed copies thereof, if one printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be, within a time in that behalf to be prescribed by any such order in council as aforesaid, deliver to the warehouse-keeper of the said Company of Stationers.

Second or subsequent editions.

VII. And be it enacted, that the respective terms to be specified by such orders in council respectively for the continuance of the privilege to be granted to the authors of books to be first published in foreign countries, and their respective assigns, may be different for books first published in different foreign countries, and that the times to be prescribed for the entry of the titles to the copies of such books, and the delivery to the said warehouse-keeper of the aforesaid copy, may be different for different foreign countries and for different classes of books.

Orders in council may specify different periods for different foreign countries, &c.

VIII. And be it enacted, that if any bookseller or printer, or other person whatsoever, in any part of the United Kingdom of *Great Britain and Ireland*, or in any other part of the *British dominions*, shall, within the term to be limited by any such order in council, print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any book to which such order in council shall extend, without the consent of the author or other proprietor of the copyright of and in such book first had and obtained in writing, or, knowing the same to be so printed, reprinted, or imported for sale without such consent

Booksellers, &c. who shall print, &c. any book to which order in council may extend, without consent of proprietor, liable to penalties.

of such author or other proprietor, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his possession for sale, any such book without such consent first had and obtained as aforesaid, then every such offender shall be liable to a special action on the case, at the suit of the author or other proprietor of the copyright of and in such book so unlawfully printed, reprinted, imported, or published or exposed to sale, or being in the possession of such offender for sale as aforesaid, contrary to the true intent and meaning of this act ; and every such author or other proprietor shall and may, by and in such special action on the case to be so brought against such offender in any court of record in that part of the said United Kingdom or of the *British* dominions in which the offence shall be committed, recover such damages as the jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess, together with double costs of suit, in which action no privilege or protection shall be allowed : and every such offender shall also forfeit such book, and every sheet being part of such book, and shall upon order of any court of record in which any action at law or suit in equity shall be commenced or prosecuted by such author or other proprietor, to be made on motion or petition to the said court, deliver the same to the author or other proprietor of the copyright of such book, or to his attorney or agent to be thereto lawfully authorized, and he shall forthwith damask or make waste paper of the same ; and every such offender shall also forfeit the sum of three pence for every sheet thereof, either printed or printing, or published or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to her Majesty and the other moiety thereof to any person who shall sue for the same in any such court of record by action of debt, bill, plaint, or information, in which no privilege or protection shall be allowed : provided always, that in *Scotland* such offender shall be liable to an action of damages in the court of session in *Scotland*, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there, and in any such action where damages shall be awarded double costs of suit or expenses of process shall be allowed.

IX. Provided always, and be it enacted, that no such order in council shall have any effect unless it shall be therein stated, as the ground for issuing the same, that due protection for the benefit of the authors of printed books first published in the dominions of her Majesty and their assigns has been secured by the foreign power in whose dominions the books to which such order in council shall relate shall be first published.

No order in council to have any effect unless it states that reciprocal protection is secured.

X. And be it enacted, that it shall be lawful for her Majesty, by an order in council, from time to time to revoke or alter any order in council previously made under the authority of this act, but nevertheless without prejudice to any rights acquired previously to such revocation or alteration.

Orders in council may be revoked.

XI. And be it enacted, that every order in council to be made under the authority of this act shall, as soon as may be after the making thereof by her Majesty in council, be published in the *London Gazette*, and from the time of such publication shall have the same effect as if every part thereof were included in this act.

Orders in council to be published in *Gazette*, and to have same effect as this act.

XII. And be it enacted, that a copy of every order of her Majesty in council made under this act shall be laid before both Houses of Parliament within six weeks after issuing the same if Parliament be then sitting, and if not, then within six weeks after the commencement of the then next session of parliament.

Orders in council to be laid before Parliament.

XIII. Provided always, and be it enacted, that nothing in this act contained shall be construed to prevent the printing, publication, or sale of any translation of any book, the author whereof and his assigns may be entitled to the benefit of this act.

Translations of books first published abroad.

XIV. And be it enacted, that the author of any book to be after the passing of this act first published out of her Majesty's dominions, or his assigns, shall have no copyright therein within her Majesty's dominions otherwise than such (if any) as he may become entitled to under this act.

Foreign authors not entitled to copyright, except under this act.

XV. Provided nevertheless, and be it enacted, that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this act shall be brought, sued, and commenced within twelve months next after such offence committed, and not afterwards.

Limitation of actions.

XVI. And be it enacted, that in the construction of this act the word "book" shall be construed to include "volume," "pamphlet," "sheet of letterpress," "sheet of music," "map,"

Interpretation clause.

“chart,” or “play;” and the words “printing” and “re-printing” shall include engraving and any other method of multiplying copies; and the expression “her Majesty” shall include the heirs and successors of her Majesty; and the expressions “order of her Majesty in council” and “order in council” shall respectively mean order of her Majesty, acting by and with the advice of her Majesty’s most Honorable Privy Council: and in describing any persons or things any word importing the plural number shall mean also one person or thing, and any word importing the singular number shall include several persons or things, and any word importing the masculine shall include also the feminine gender; unless in any of such cases there shall be something in the subject or context repugnant to such construction.



No. XXXI.

2 Vict. c. 13. (a)

An Act for extending the Copyright of Designs for Calico Printing to Designs for printing other woven Fabrics.

27 Geo. 3,
c. 38.

34 Geo. 3,
c. 23.

Whereas by an act passed in the twenty-seventh year of the reign of his late Majesty King *George the Third*, intituled *An Act for the Encouragement of the Arts of designing and printing Linens, Calicoes, and Muslins by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited time*; and by another act made in the thirty-fourth year of the same reign, for amending and making perpetual the said act, it was enacted, that every person who should invent, design, and print, or cause to be invented, designed, and printed, and become the proprietor of any new and original pattern or patterns for printing linens, cottons, calicoes, or muslins, should have the sole right and liberty of printing and re-printing the same for the term of three months: and whereas it is expedient to extend the said acts to *Ireland*; and whereas since the passing of the last-recited act there have been invented other fabrics of

(a) There is a bill before Parliament (January 1840) extending the time limited by this act to twelve months.

a similar nature to which the said copyright doth not extend ; 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 this act shall come into operation on the passing thereof.

Commence-
ment of act.

II. And be it enacted, that the said recited acts and this act shall extend to *Ireland*, as well as to *England* and *Scotland*.

Acts extended
to Ireland.

III. And be it enacted, that the provisions of the said recited acts shall extend to the following woven fabrics published after the passing of this act ; (that is to say,)

Description of
fabrics to which
the recited
acts shall
extend.

To fabrics composed of wool, silk, or hair :

To mixed fabrics, composed of any two or more of the following materials ; (that is to say,) linen, cotton, wool, silk, or hair.

IV. And with regard to any fabrics to which the recited acts and this act extend which shall be published after the passing of this act, be it enacted, that the recited acts and this act shall be construed as one act.

Recited acts
and this act to
be construed
as one act.

V. And be it enacted, that if any offence either against the recited acts or against this act be committed in *Ireland*, the party aggrieved shall have the same remedies in the supreme courts of law in *Dublin*, which in the like case the same party would have in *England*.

Remedy for
offences com-
mitted.

No. XXXII.

2 Vict. c. 17.

An Act to secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited time.

Whereas it is expedient that provisions should be made for securing the exclusive benefit of designs for articles of manufacture to the authors and proprietors thereof for a limited time ; 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 Parlia-

Duration of
copyright.

ment assembled, and by the authority of the same, that every proprietor of a new and original design made for any of the following purposes, and not published before the first day of *July*, one thousand eight hundred and thirty-nine, shall have the sole right to use the same for any such purpose during the term of twelve calendar months, to be computed from the time of the same being registered according to this act; and the following are the purposes referred to :

First.—for the pattern or print, to be either worked into or worked on, or printed on or painted on, any article of manufacture, being a tissue or textile fabric, except lace, and also except linens, cottons, calicoes, muslins, and any other article within the meaning of the acts mentioned in the schedule hereto annexed :

Second.—For the modelling, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament, on any article of manufacture, not being a tissue or textile fabric :

Third.—For the shape or configuration of any article of manufacture, except lace, and also except linens, cottons, calicoes, muslins, and any other article within the meaning of the acts mentioned in the schedule hereto annexed :

Proviso for
designs for
modelling, &c.

Provided always that every proprietor of a new and original design made for the modelling, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament on any article of manufacture, being of any metal or mixed metals, shall have the sole right to use the same during the term of three years, to be computed from the time of the same being registered according to this act; but no person shall be entitled to the benefit of this act unless the design have before publication been registered according to this act, and unless such person be registered according to this act as the proprietor of the design, and unless after publication of the design every article of manufacture published by him, on which such design is used, have thereon the name of the first registered proprietor, and the number of the design in the register, and the date of the registration thereof: and the author of every such new and original design shall be considered the proprietor, unless he have executed the work on behalf of another person for a valuable consideration, in which case such person shall be considered the proprietor, and shall

Conditions of
copyright.

Proprietor
explained.

be entitled to be registered in the place of the author; and every person purchasing for a valuable consideration a new and original design, or the exclusive or the partial right to use the same for any one or more of the above-mentioned purposes, in relation to any one or more articles of manufacture, shall be considered as the proprietor of the design for all or any one or more of such purposes as the case happens to be.

II. And be it enacted, that every person purchasing a new and original design may enter his title in the register hereby provided; and any writing purporting to be a transfer of such design, and signed by the proprietor thereof, shall operate as an effectual transfer; and the registrar shall, on request, and the production of such writing, insert the name of the new proprietor in the register; and the following may be the form of such transfer, and of such request to the registrar;

Transfer of
copyright and
register thereof.

Form of Transfer and Authority to register.

‘ I, *A. B.*, author [or proprietor] of design number
‘ having transferred my right thereto [or if such transfer be
‘ *partial*] so far as regards the making of [describe the
‘ *articles of manufacture with respect to which the right is trans-*
‘ *ferred*] to *B. C.* of do hereby authorize you to insert
‘ his name on the register of designs accordingly.’

Form of Request to register.

‘ I, *B. C.*, the person mentioned in the above transfer, do re-
‘ quest you to register my name and property in the said
‘ design, according to the terms of such transfer.’

III. And be it enacted, that during the existence of such exclusive or partial right no person shall either do or cause to be done any of the following acts in regard to a registered design, without the license or consent in writing of the registered proprietor thereof; (that is to say.)

For preventing
piracy.

No person shall use for the purposes aforesaid, or any of them, or print or work or copy, such registered design, or any original part thereof, on any article of manufacture, for sale:

No person shall publish, or sell or expose to sale or barter, or in any other manner dispose of for profit, any article whereon, such registered design or any original part thereof has been used, knowing that the proprietor of such design has not given his consent to the use thereof upon such article:

No person shall adopt any such registered design on any article of manufacture for sale, either wholly or partially, by making any addition to any original part thereof, or by making any subtraction from any original part thereof :

Penalty.

And if any person commit any such act he shall for every offence forfeit a sum not less than five pounds and not exceeding thirty pounds, to the proprietor of the design in respect of which such offence has been committed.

Recovery of penalties for piracy.

IV. And be it enacted, that the party injured by any such act may recover such penalty as follows :

In *England*, either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides ; and if the party injured proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture or in the design to which such summary proceeding relates may issue a summons requiring such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof ; and every such summons shall be served on the party offending, either in person or at his usual place of abode ; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending or upon the oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds, as aforesaid, for each offence, as to such justices doth seem fit ; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender wherever the same happen to be in *England* ; and the justices before whom the party has

been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city, or borough in *England* where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels, on demand:

In *Scotland*, either before the court of session, or by summary proceeding as aforesaid before any two or more justices of the peace of the county or place where the offence was committed:

In *Ireland*, either by action in a superior court of law at *Dublin*, or by civil bill in the civil bill court of the county or place where the offence was committed:

And no action or other proceeding for any offence under this act shall be brought after the expiration of six calendar months from the commission of the offence; and in such action or other proceeding every plaintiff or prosecutor shall recover his full costs of suit, or of such other proceeding.

V. For the purpose of registering designs for articles of manufacture, in order to obtain the protection of this act, be it enacted, that the lords of the committee of privy council for the consideration of all matters of trade and plantations may appoint a person to be a registrar of designs for articles of manufacture, and if the lords of the said committee see fit, a deputy registrar, clerks, and other necessary officers and servants; and such registrar and deputy registrar shall hold their offices during the pleasure of the lords of the said committee; and the commissioners of the treasury may from time to time fix the salary or remuneration of such registrar, deputy registrar, clerks, officers, and servants; and, subject to the provisions of this act, the lords of the said committee may make rules for regulating the execution of the duties of the office of the said registrar; and such registrar shall have a seal of office.

Registrar, &c.
of designs to
be appointed.

VI. And be it enacted, that the said registrar shall not register any design unless he be furnished with three copies or drawings of such design, accompanied with the name and place of abode of the proprietor thereof; and the registrar shall register all such copies from time to time successively as they are received by him for that purpose, and on every such copy he shall affix a number corresponding to such succession, and

Registrar's
duties.

he shall retain two copies, one of which he shall file in his office, and the other he shall hold at the disposition of the lords of the said committee, and the remaining copy he shall return to the person by whom the same has been forwarded to him; and in order to give ready access to the copies of designs so registered, he shall keep a classified index of such copies of designs.

Certificate of registration of design.

VII. And be it enacted, that upon any original design so registered, and upon every copy thereof received for the purpose of being registered, or for the purpose of such registration being certified thereon, the register shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor; and such certificate made on every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall, in the absence of evidence to the contrary, be sufficient proof, as follows:

Of the design, and of the name of the proprietor therein mentioned, having been duly registered: and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design, and

Of the provisions of this act, and of any rule under which the certificate appears to be made, having been complied with:

And any such writing purporting to be such certificate shall (in the absence of evidence to the contrary) be received in evidence without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar.

Fees of registration, and application thereof.

VIII. And be it enacted, That the commissioners of the treasury shall from time to time fix the fees to be paid for the services to be performed by the registrar, and such fees shall be applied to defray the expenses of the said office, and the salaries or other remuneration of the said registrar, and of any other person employed under him, with the sanction of the commissioners of the treasury, in the execution of this Act, and the balance shall be carried to the consolidated fund of the United Kingdom, and be paid accordingly into the receipt of her Majesty's Exchequer at *Westminster*; and the commis-

sioners of the treasury may regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for.

IX. And be it enacted, that if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the commissioners of the treasury, he shall for every such offence forfeit fifty pounds to any person suing for the same, by action of debt in the Court of Exchequer at *Westminster*, and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the lords of the treasury see fit. Penalty for extortion.

X. And for the purpose of facilitating the use of the provisions of this act in regard to the registration of designs, be it enacted, That all letters and packets transmitted by post, either to or from the office of registrar of designs, relating solely to the business of such office, shall be exempt from postage; and that in respect of such letters and packets the provisions of an act passed in the first year of her present Majesty's reign, intituled *An Act for regulating the sending and receiving of letters and packets by the post free from the duty of postage*, relating to the general regulation of the official privilege of franking, and to the transmission to the post-office of unprivileged letters, and the penalties and provisions mentioned in an act passed in the first year of the reign of her present Majesty, intituled *An act for consolidating the laws relative to offences against the post-office of the United Kingdom, and for regulating the judicial administration of the post-office laws, and for explaining certain terms and expressions employed in those laws*, shall, so far as the same may be applicable, apply to the office of the registrar of designs, and the franking officer thereof. Letters, &c. to and from the office of registrar of designs exempt from postage.
1 Vict. c. 35.
1 Vict. c. 36.

XI. And for the interpretation of this act, be it enacted, That the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows; (that is to say,) the expression "Commissioners of the Treasury" shall mean the Lord High Treasurer for the time being, or the Commissioners of her Majesty's Treasury for the time being, or any three or more of them; and the expression "article of manufacture" shall include any article of the kind herein referred to, whether it be made by hand or by Interpretation clause.

machinery, or by both of those means ; and the singular number shall include the plural as well as the singular number ; and the masculine gender shall include the feminine gender as well as the masculine gender.

Commence-
ment of act.

XII. And be it enacted, That this act shall come into operation on the passing thereof, as to the office and the appointment of the registrar hereby authorized, and on the first day of *July* one thousand eight hundred and thirty-nine, as to the other parts of the act.

SCHEDULE.

<i>Date of Acts.</i>	<i>Title.</i>
27 Geo. 3, c. 38. (1787.)	An act for the encouragement of the arts of designing and printing linens, cottons, calicoes, and muslins, by vesting the properties thereof in the designers, printers, and proprietors for a limited time.
29 Geo. 3, c. 19. (1789.)	An act for continuing an act for the encouragement of the arts of designing and printing linens, cottons, calicoes, and muslins, by vesting the properties thereof in the designers, printers, and proprietors for a limited time.
34 Geo. 3, c. 23. (1794.)	An act for amending and making perpetual an act for the encouragement of the arts of designing and printing linens, cottons, calicoes, and muslins, by vesting the properties thereof in the designers, printers, and proprietors for a limited time.
2 Vict. (1839.)	An act passed during the present session of Parliament, " for extending the copy-right of designs for calico printing to designs for printing other woven fabrics."

ADDENDA,

Licenses to use Patent, p. 225. *Protheroe and Another v. May and Another*, MSS., 8th August, 1839. His Honor the Vice-Chancellor sent the following questions to the Court of Exchequer for their opinion, who answered every one of them in the *negative*.

1st. Has the grant of the said first mentioned exclusive license to the said *Protheroe* and *Guppy* invalidated the letters patent of itself, without reference to the subsequent facts?

2nd. Has the assignment to and vesting of the said first mentioned license in the said partnership of more than twelve persons invalidated the letters patent of itself, and without reference to the other facts stated?

3rd. Has the grant of the said twelve last mentioned exclusive licenses, or of any, and which of them, invalidated the said letters patent?

4th. If all the grantees of all the licenses were to coalesce and become jointly interested in such licenses, would the letters patent be thereby invalidated?

5th. Would the letters patent have been invalidated if the districts covered by the licenses had included the whole of England, Wales, and Berwick-upon-Tweed, and the Colonies?

Bill in Chancery, p. 252. *Westhead v. Keene*, 1 Bevan's Rep. 287. A bill filed by a patentee to restrain the piracy of his patent, and for an account, did not distinctly state the specification, or explain the nature of the invention for which the patent right was claimed; but it alleged that the specification was duly enrolled, and that the drawings and description in the specification could not be set out in the bill, and it charged that the plaintiff was the inventor, and that the invention was new: the Court (not without some doubt) held, on the authority of *Kay v. Marshall*, that the bill was not demurrable.

Injunction, p. 253. *Bacon v. Spottiswoode*, *Bacon v. Jones*, 1 Bevan's Rep. 382. Where a bill is filed by a patentee for

an injunction to restrain an alleged infringement of his patent, the plaintiff is not precluded from asking for an injunction at the hearing, by the fact of his not having applied for it on an interlocutory motion; but the not moving for the injunction imposes on the plaintiff, in such a case, the obligation of making out a clear and unexceptionable title at the hearing: and if he fails in that, and has not previously obtained an injunction, he will not be allowed to use the facts proved in the cause, as evidence of a *prima facie* case, giving him a right to further time, for the purpose of enabling him to establish more satisfactorily his legal title.

A patentee brought the cause to a hearing without having previously moved for an injunction, and the Court being of opinion that on the evidence then produced an injunction would not have been granted, on an interlocutory application, refused to retain the bill, to give the patentee an opportunity of establishing his right at law, but dismissed it with costs.

Upon the motion of Sir Robert Peel, Bart., the following returns were made to parliament on 2nd March, 1840.

1. Petitioners to the Judicial Committee under the 2nd sect. of 5 & 6 Wm. 4, c. 83.

C. L. Stanislas, Baron Heurteloup.

J. Wells, Ass. of W. Gibbons and T. Westrup.

2. Petitioners to the Judicial Committee under the 4th section of 5 & 6 Wm. 4, c. 83, for a prolongation of the term of letters patent. Those marked thus* had the term extended.

S. Hall.

*Orpheus, commonly called
Pierre Erard.

*R. B. Bate.

C. Macintosh.

*E. S. Swaine.

*W. Southworth and Others.

J. Tulloch.

*H. Shuttleworth and Others.

*L. W. Wright.

*D. Stafford.

W. R. Vigors and Others.

J. G. Bodmer.

*J. Russell.

*G. A. Kollman.

*J. Kay.

*R. Roberts.

*B. Downton.

A Supplement

TO THE SECOND EDITION

OF A

PRACTICAL TREATISE

ON

The Law

OF

PATENTS FOR INVENTIONS

AND OF

COPYRIGHT.

A Supplement
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PRACTICAL TREATISE
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The Law
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PATENTS FOR INVENTIONS
AND OF
COPYRIGHT:

ILLUSTRATED BY
NOTES OF THE PRINCIPAL CASES;
WITH AN ABSTRACT OF THE
LAWS IN FOREIGN COUNTRIES.

BY
RICHARD GODSON M.A.-Q.C.-M.P.

LONDON:
WILLIAM BENNING & CO., LAW BOOKSELLERS,
(LATE SAUNDERS AND BENNING,)
43, FLEET STREET.

1844.

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LONDON:
PRINTED BY RAYNER AND HODGES,
109, Fetter Lane, Fleet Street.

TO
THE RIGHT HONORABLE
LORD BROUGHAM AND VAUX,

TO WHOM
THE TREATISE WAS DEDICATED.

THIS SUPPLEMENT

IS,
WITH MOST SINCERE THANKS,

FOR HIS APPROBATION OF THAT WORK
AND FOR HIS KINDNESS TO THE AUTHOR,

RESPECTFULLY
INSCRIBED.

PREFACE.

SINCE the publication of the *Second* Edition of The Practical Treatise, on the Law of Patents for Inventions and of Copyright, in 1840, many decisions have been pronounced in the Courts of Law and Equity, and in the Judicial Committee of the Privy Council, the Author therefore felt constrained either to publish a *Third* Edition or to make a Supplement. He preferred the latter course, because the purchasers of the Second Edition would thus have the law, as administered at the present time, at a small price : and for those, who were not possessed of the original Book, the Treatise and Supplement (if bound together) would make a complete Work.

The same plan was much approved of, when *two* successive Supplements were added to the First Edition.

The laws, respecting COPYRIGHT in *Books*, and *Musical Works*, and in *Designs* for articles of manufacture, and regulating our literary intercourse with foreign countries, have been much improved since the last Edition, by acts of Parliament, for which the public owe great thanks,

as to Copyright, to Mr. SERJEANT TALFOURD, as to Designs, to Mr. EMERSON TENNANT, M.P., and as to International Protection, to The Right Honorable W. E. GLADSTONE. The Author of this Supplement enjoyed the great pleasure of lending his assistance to the enactment of those measures.

As the new decisions must, in a Supplement, be referred, to the paragraphs in the Treatise, in the different divisions, it is impossible to prevent the appearance of patch-work ; and thus, for any inelegance in the structure of the sentences, the Author must be excused. In the part on Copyright, the Acts of Parliament have been set forth and explained in the briefest manner, because they are given at full length in the Appendix.

The *Table of Contents* and the *Index* of the Treatise are reprinted, with references to the pages of the Supplement : so as to serve, as well for a Table of Contents and an Index of the Supplement, as also of the Work, when the Treatise and Supplement are bound together into one Book.

Inner Temple,

June, 1844.

SUPPLEMENT
TO
PATENTS AND COPYRIGHT.

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SUPPLEMENT

TO PATENTS FOR INVENTIONS.

CHAP. I.

INTRODUCTION (a).

IF the reader of this *Supplement* place the *Second Edition* of The Practical Treatise before him, he will clearly see the application of the new authorities now cited : it was imagined that the object of this publication being to explain the law in its present state in a concise and intelligent manner, that result would be most readily accomplished by—A Supplement to each Chapter.

The section of Chap. 5, which treats of the proceedings before the Privy Council, will be found to be much enriched by judgments delivered by *Lord Brougham*. The benefits conferred on patentees and their families by the labours of the Lords of the Judicial Committee of Her Majesty's Privy Council are very great, and call for the warm thanks of all scientific men.

An unusual number of patents have, since the publication of the Second Edition, been called in question in the Courts of Common Law, and many decisions have been made on the practice, pleadings, and evidence required in such cases, which, being collected in the proper

(a) See p. 17 of The Practical Treatise, 2nd Edition.

place, will be found to be very useful. They have rendered the Chapter on the Remedies for an Infringement of a Patent much more complete than it formerly appeared.

The particular attention of patentees is drawn to the case of *Brown v. Annandale* (a).

The learned Judges of the several Courts in Law and Equity have continued to pursue the wise course adopted only of late years, of giving every reasonable advantage to the meritorious inventor, as the Supplement to the Chapters respecting *the subject* of a Patent, and the correctness of *the specification* will clearly demonstrate.

CHAP. II.

OF THE INVENTOR (b).

No case raising the question—who is the first inventor? has occurred.

It is necessary to caution parties that the practice of taking out patents in the name of a British subject residing in England, because another British subject has communicated an invention to him by letter, has been carried to the extreme of the law, and that it is doubtful whether some patents so taken out could bear the test of a trial in a court of justice.

(a) See a report of that case by Charles Shearman, gent., of Gray's Inn.

(b) See p. 26 of *The Practical Treatise*, 2nd Edition.

CHAP. III.

OF A NEW MANUFACTURE, OR THE SUBJECT OF A
PATENT (*a*).

A LONG experience has not suggested a better analysis of the different things which may be the subject of letters patent for inventions than that already given in the treatise.

The manufacture must be new (b).—It is essential to the validity of a Scotch patent, that the invention or improvement for which it is granted should be new in England as well as in Scotland.

Accordingly, evidence of the use of an invention in England previous to the date of a patent for it in Scotland is admissible, and is sufficient to make the patent void, as appeared in *Brown v. Annandale (c)*, which was a case that came to the House of Lords on an appeal from the Courts in Scotland.

The question in that case originated in an application by the appellant to the Court of Session for an interdict or injunction against the use, by the respondents, of a certain apparatus or machinery in the manufacture of paper at their works at Polton, in the county of Mid-Lothian. The appellant's averment was, that he had invented certain improvements in the machinery for making paper, for which he had obtained letters patent; that the machinery so invented by him had not been known to or practised by others before the date of the

(*a*) See p. 35 of The Practical Treatise, 2nd Edition.

(*b*) Id. p. 40.

(*c*) 8 Clark & F. 437. The same rule applies to England, if the invention has been used either in Scotland or Ireland.

letters patent; and that the respondent, without his license or consent, had used and were continuing to use his said invention, or part thereof, to his serious injury and damage.

The respondents in their answers stated that the machinery employed by them was purchased by them of John Evans, paper manufacturer, of Birmingham, who obtained a patent for it in 1839; and that it was substantially different from that described in the appellant's specification; and even if it could be supposed that their machinery was the same with the machinery so described by the appellant, that his patent was invalid on several grounds; but more particularly, because his alleged invention or improvement were *not new*, having been known and publicly used both in England and in Scotland prior to the date of the patent (*a*).

Sir *F. Pollock*, the *Attorney General*, with *Andrews*, q. c. appeared for the appellants, and *Fitzroy Kelly*, q. c. with *Godson*, q. c. for the respondents. It is unnecessary to set forth the arguments. The respondents relied upon the case of *Roebuck v. Stirling* (*b*).

The *Lord Chancellor Lyndhurst* said,—The words of the proviso are decisive, if they are justified by the

(*a*) 8 Clark & F.'s Rep. 437.

(*b*) Decided in the House of Lords in 1774, reported in 5 Brown's Sup. to Dic. of Decisions, 522. See also Lord Haile's Col. of Decisions, vol. 1, p. 566. The Lord Chancellor Lyndhurst, in the course of the arguments, said—"Mr. Attorney General has stated that several opinions have been taken upon this subject in England. When the case came before one judge, he decided it in the way in which we think he ought to have decided it. Then it afterwards went before the full Court, and they were unanimous in their judgment, corresponding with the previous decision of this House. And with respect to the previous decision of this House, we have searched the Journals, and we find that the Lord Chancellor was present, and not only the Lord Chancellor, but Lord Mansfield also.

statute. They are the same, I suppose, in English and Irish patents. Those words in the appellant's patent are: "Proviso semper, &c. dictam inventionem quoad publicum ejus, in illa parte regni nostri uniti, Scotia vocata, usum et exercitum non esse novam inventionem, vel a dicto Jacobo Brown ut prædicatur non esse inventam." The Crown can only grant a patent for what is new. The question is, where new? You have evidence of the construction of the act of James I. in a long course of usage, in the form of the proviso. It is a restrictive proviso, less than the act authorizes, if we hold that the act is to be so construed. It would be a monstrous thing if an invention, having full publicity in one part of the United Kingdom, could be made the subject of a patent in another part of it. There is a difficulty in applying the words *hæc regna* in the recital in the patent, to Scotland only. *Roebuck v. Stirling* is in point: as far as I am concerned, I feel myself bound by the decision of the House in that case: you cannot aver against the record as in the Journals.

Lord Brougham.—The case of *Roebuck v. Stirling* appears to me perfectly to decide this case. The Court of Session had dismissed the suit, because it appeared that the process in question was known to and practised by different persons in England. This House adjudged that the interlocutors complained of be affirmed "for other reasons, as well as the reasons specified therein." That implies that they concurred in the reasons thus given on the face of the interlocutor. What other reasons there may have been for the affirmance may be a question, but that reason was put forward by the Court below as the ground of its decision; and being so put forward, was, at all events, one of the reasons for the affirmance of the judgment, with other reasons not stated

by the House. I should have so decided without that precedent if it had been *res integra*.

Lord Campbell.—There is an express decision applying in its terms to the present case just as much as if other reasons had not been introduced into the judgment of the House. That being an express decision upon the point in question, unless it is shown that the House was under some great mistake at the time, it must be considered as binding. I entirely concur in the decision: I think it is perfectly right, and if it had been *res integra*, I should have so decided; but especially after that decision, I perfectly concur in the affirmance of the judgment of the Court below. My opinion is that the law was quite correctly laid down by this House in 1774.

The Manufacture must not have been used (a).—It is necessary to keep in mind the words of the statute of James, in which it is enacted that the manufacture must be such—“which *others*, at the time of making such letters patent and grants shall not use.” Those words have received a definite explanation by the Court in *Carpenter v. Smith*, (b) where they held that the “public use and exercise” of an invention which prevents it from being considered a novelty, is a use in public, so as to come to the knowledge of *others* than the inventor, as contradistinguished from the use of it by himself in private; and it does not mean a use by the public generally. Therefore where an improved lock, for which the plaintiff had a patent, had previously been used by an individual on a gate adjoining a public

(a) See p. 40 of *The Practical Treatise*, 2d Ed.

(b) 9 Meeson & Welsby's Rep. 300.

road, for several years ; and several dozens of a similar lock had been made at Birmingham from a pattern received from America and sent abroad, it was held that that use constituted such a “ public use and exercise ” of the invention as to avoid the patent. In his judgment *Baron Alderson* observed, the case of *Lewis v. Marling* went to the very extreme point of the law. And *Lord Abinger* said—I was counsel in the cases of *Lewis v. Marling* and *Jones v. Pearce*, and I recollect that those cases proceeded on the ground of the former machines being in truth mere experiments which altogether failed.

This view of the law was confirmed in the House of Lords (a), when allusion was made to the cases of *Jones v. Pearce*, *Cornish v. Keene*, and *Carpenter v. Smith*, and the rule clearly established that the prior use of a thing invalidates a patent although that use may not take place at or about the time of taking out the patent. But their Lordships left undecided, whether the use of an invention which had been formerly used and abandoned many years ago, and the whole thing had been lost sight of, would invalidate a patent taken out for it.

The question of a prior use of an article was further illustrated in the case of *Kay v. Marshall* (b). A patent had been obtained for new and improved machinery for preparing and spinning flax, hemp, and other fibrous substances by power. The improvement as to the spinning, consisted in placing the retaining and drawing rollers nearer to each other (at the distance of

(a) The Househill Company, appellants v. Neilson and others, respondents, Webster's cases, 673. See the judgment of Lord Campbell, id. p. 716.

(b) 5 Bing. N. C. 592, and also 1 Beavan, 535, and in the House of Lords, 8 Clark & F.'s Rep. 245.

two and a half inches) than they had been ever used before in flax spinning; the shortening of the reach being rendered practicable by the maceration of the flax in the new machinery for preparing it. But spinning machines, varying in the distance of the reach according to the length of the fibre of the substance to be spun, had been in use before the patent was obtained. The House of Lords held that the part of the machinery for spinning was not a new invention, and that the patent was not valid in point of law.

Also that the House will not permit parties on appeal to raise objections which they did not raise in the Court below.

To Page 46, add Morgan v. Seaward is reported in 2 Meeson & W. Rep. 544.

*Experiments (a).—*That experiments may be made until the invention is complete, without interfering with the validity of a patent, is clearly deducible from the case of *The Househill Coal and Iron Company*, appellants v. *Neilson and others*, respondents in the House of Lords (b).

To Page 56. In the note of the case of *Walker v. Congreve*, Eq. July, 1816. The argument of Mr. *Leach* then at the Bar is given as if it were a judgment by him when Vice-Chancellor, which is an error.

*As to a Method or Process (c).—*In the treatise many arguments (d) were urged to prove that it is doubtful whether a mere method of making a thing, or a process,

(a) See p. 52 of The Practical Treatise, 2d Ed.

(b) Webster's Cases, p. 673.

(c) Page 84 of The Practical Treatise, 2d Ed.

(d) Id. from p. 84 to p. 91.

or a manner of operating, can be the subject of a patent. That doubt has been strengthened by the case of *Gibson v. Brand* (a), in which cause the patent was entitled “A new and improved process or manufacture of Silk, and Silk in combination with certain other Fibrous Substances,” where the pleadings (the second and third issues) raised the question, whether the alleged invention was a new thing invented. The jury found specially—that the invention was not new, but an improved process, and not a new combination. The Court held that, upon those issues, the verdict should be entered for the defendant, and the Chief Justice *Tindal* said, “According to the plain meaning of these words, the jury appear to have found that there was no novelty in the plaintiff’s alleged invention; that it contained no new combination, but that it was only an improvement in an old process; and the question is, whether, if this finding be supported by the evidence, the issue is found for the plaintiffs or the defendant; and it appears to me that it is found for the defendant, and that the verdict ought to be so entered accordingly.

In order to ascertain this point let us see what it is the patent is taken out for, and what the specification declares to be the nature of the discovery. The invention is said to be “a new or improved process or manufacture of silk, and silk in combination with certain other fibrous substances,” and the nature of the invention is said to consist in eight different branches or parts of the process of spinning the silk. It appears, therefore, that the patent is taken out strictly and entirely for a process.

It is not necessary on this occasion to go into the

(a) 4 M. & G. 179.

question, whether or not a patent can be supported for a process only. If the specification were properly prepared, it *probably* might be considered a fit subject for a patent.

Now looking at the specification in this case, it appears to me that the patent cannot be supported in law, because the plaintiffs have *claimed more* than they are in fact entitled to. One cannot read the description of the invention, and the purposes for which it is intended, without understanding it to be a *claim of an improvement of certain machinery* to produce a certain desired effect.

I confess I feel it impossible to apply all this language otherwise than to a substantive claim to an invention of a new machine, or a new combination of the parts of an old machine: the jury, however, have, by their special finding, negatived both; and unless we could see from the evidence that they were decidedly wrong, the matter must rest there. I think, upon the finding of the jury, there is sufficient to entitle the defendant to have the verdict entered for him on both the second and third issues; and, upon the evidence, I see no reason to be dissatisfied with that finding."

Mr. *Justice Cresswell* said: "The patent right claimed in this case is undoubtedly of rather a singular character. It is not a claim in respect of any article produced—it is not a claim for any machine for the production of an article—it is not a claim for any particular ingredient—but it is a claim for a mere process.

There are dicta, but there is no distinct decision to be found in the books, that the omission of part of a previously known process may be the subject of a patent (a),

(a) See *Russell v. Cowley*, 1 C., M. & R. 864.

that is a point to which I shall be prepared to give my consideration when it arises, but it is not the present case.

I do not consider it necessary to go into the evidence in this case; no fault is found with the verdict, but each party claims to have the verdict entered for them upon the special finding of the jury. Now they have found that the subject of the patent is not a new invention, and that it is not a new combination, but that it is an improved process. Then the question is, have the plaintiffs claimed a new invention, or a new combination? For if they have, the jury have found that there was neither. The specification states that the subject of the patent is an "invention of a new and improved process or manufacture of silk, and silk in combination with certain other fibrous substances;" and the patentees then declare that the nature of their said invention consists in eight parts or heads, which are then set forth. And if there could be any doubt as to the intention of the patentees to claim all the eight parts, such doubt would be removed by the concluding passage of the specification, where they say, "We restrict our claims to the eight several heads of invention mentioned in the early part of this specification, all of which we believe to be new, and of great public utility."

Then, does it appear that the patentees claim any novelty of mechanism? I think it clear that they do. I have considerable doubt whether, under the sixth head mentioned in the specification, they mean to claim the throstle-machine on the principle of the long *ratch* as an invention, or merely the improved use of it; and if there were any question on the ambiguity of the specification, I should be disposed to think this difficult for the plain-

tiffs to get over. Under the seventh head the plaintiffs clearly claim certain improvements in the throstle-machine as their own ; but the jury have said there was no new invention, and this is equally fatal to the plaintiffs, whether they claim a part only of the machine or the whole of it, as a new invention. If they mean to claim a new combination, the jury have found there was none.

But I think it clear that the plaintiffs intended to claim a novelty of mechanism. It is immaterial, therefore, to inquire what may be meant by the term, “ improved process,” for whatever it may mean, it does not relieve the plaintiffs from the difficulty they labour under of having claimed a new invention, which claim, in fact, is distinctly found against them.”

The question—what is a new method?—was very fully answered in the case of *Crane v. Price* (a). In 1829 Neilson obtained a patent for the use of a hot air blast in furnaces. In 1837 Crane took out a patent for “ an improvement in the manufacture of iron,” which consisted in “ the application of anthracite or stone coal, combined with a hot air blast in the smelting of iron.” The hot air blast was used by Crane under a license from Neilson. The use of it with anthracite was new, and the iron produced in consequence was greater in yield, cheaper in cost, and better in quality than that produced by the ordinary method ; and the Court held that such combination was a “ a new manufacture.”

The judgment of the Court of Common Pleas carries the doctrine to a farther limit than any other decision that has yet been made.

(a) 4 M. & G. 580.

The Lord Chief Justice *Tindal* said, “ it was contended that the verdict ought to be entered for the defendants on the issues joined on the record ; but as the main question between the parties turns on the third issue, which involves the question whether the invention of the plaintiff is a manufacture within the intent and meaning of the statute of James, that is, whether it is or is not the subject matter of a patent, and as the determination of this issue in favour of the one party or the other will render the decision as to the other issues simple and free from difficulty, we will apply ourselves, in the first instance, to that question.

Now, in order to determine whether the improvement described in the patent is or is not a manufacture within the statute, we must, in the first place, ascertain precisely what is the invention claimed by the plaintiff ; and then, by the application of some principles admitted and acknowledged to govern the law relating to patents, and by the authority of decided cases, determine the question in dispute between the parties.

The plaintiff describes the subject of his invention to be, the application of anthracite or stone coal, combined with hot air blast in the smelting or manufacture of iron from iron stone, mine, or ore, and states distinctly and unequivocally at the end of his specification that he does not claim the using of a hot air blast separately as his invention when uncombined with the application of anthracite or stone coal ; nor does he claim the application of anthracite or stone coal when uncombined with the use of hot air blast ; but that what he claims for his invention is, the application of anthracite or

stone coal, and culm combined with the using of hot air blast in the smelting and manufacture of iron from iron stone, mine, or ore. And the question therefore becomes this, whether, admitting the use of the hot air blast to have been known before, in the manufacture of iron with bituminous coal, and the use of anthracite or stone coal to have been known before in the manufacture of iron with the cold blast, but that the combination of the two together, (the hot air blast and the anthracite), was not known before in the manufacture of iron, such combination can be the subject of a patent. We are of opinion, that if the result produced by such a combination is either a new article, or a better article, or a cheaper article to the public, than that produced before by the old method, such combination is an invention or a manufacture intended by the statute, and may well become the subject of a patent.

Such an assumed state of facts fall clearly within the principle exemplified by *Abbott, C. J.*, in *The King v. Wheeler (a)*, where he is determining what is and what is not the subject of a patent, viz. "It may *perhaps* extend to a new process to be carried on by known implements or elements, acting upon known substances, and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner, or of a better or a more useful kind." And it falls also within the doctrine laid down by Lord *Eldon* in *Hill v. Thompson (b)*, viz., "There may be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of

(a) 2 B. & Ald. 350.

(b) 3 Meriv 629.

applying such materials ; but, in order to its being effectual, the specification must clearly express that it is in respect of such new combination or application."

There are numerous instances of patents which have been granted where the invention consisted in no more than the use of things already known, the acting with them in a manner already known, the producing effects already known, but producing those effects so as to be more economically or beneficially enjoyed by the public. It will be sufficient to refer to a few instances, in some of which the patents have failed on other grounds, but in none on the objection that the invention itself was not the subject of a patent. We would instance Hall's patent (*a*) for applying the flame of gas to singe off the superfluous fibres of lace, where the flame of oil had been used before for that purpose ; Derosne's patent (*b*) in which the invention consisted in filtering the syrup of sugar through a filter, to act with animal charcoal and charcoal from bituminous substances where charcoal had been used before for the filtering of almost every liquid except the syrup of sugar ; Hill's patent (*c*) above referred to, for improvements in the smelting and working of iron : there the invention consisted only in the use and application of the slags or cinders thrown off by the operation of smelting, which had been previously considered useless for the production of good and serviceable metal, by the admixture of mine rubbish. Again, Daniel's patent (*d*) was taken out for improvements in dressing woollen cloth, where the invention consisted

(*a*) Webster's Ca. 97.

(*b*) Derosne v. Fairie, Webster's Ca. 152.

(*c*) 3 Meriv. 629.

(*d*) Rex v. Daniel. Godson on Patents, 274.

in immersing a roll of cloth, manufactured in the usual manner, in hot water.

The only questions, therefore, to be considered with respect to the evidence are, was the iron produced by the combination of the hot air blast and the anthracite a better or cheaper article than was before produced from the combination of the hot air blast, and bituminous coal? And was the combination described in the specification new, as to the public use thereof in England? And upon the first point, upon looking at the evidence in the cause, we think that there is no doubt that in the result of the combination of the hot air blast with the anthracite or stone coal, the yield of the furnace was more, the nature, properties, and quality of the iron were better and the expense of making the iron was less, than under the former process, by means of the combination of the hot air blast with the bituminous coal. It is to be observed, that no evidence was produced on the part of the defendants to meet that given by the plaintiff on these points, and that it was a necessary consequence, from the proof in the cause, that from the substitution of the anthracite, in whole or in part, in the stead and place of bituminous coal, the manufacture of iron should be conducted at a less expense.

It was objected, in the course of the argument, that the quantity or degree of invention was so small that it could not become the subject of a patent—that the person who had procured a license to use the hot air blast under Neilson's patent, had a full right to subject to that blast, coal of any nature whatever, whether bituminous or stone coal. But we think, if it were necessary to consider the labour, pains and expense encountered by the plaintiff in bringing his discovery to perfection, that

there is evidence in this cause that the expense was considerable and the experiments numerous; but in point of law the labour of thought or experiment and the expenditure of money are not the essential grounds of consideration upon which the question whether the invention is or is not the subject matter of a patent, ought to depend, for if the invention be new and useful to the public, it is not material whether it is the result of long experiments and profound research, or whether of some sudden and lucky thought, or of mere accidental discovery. The case of *Monopolies* (a) states the law to be "that where a man by his own charge or industry, or by his own wit or invention brings a new trade into the realm, or any engine tending to the furtherance of a trade, that never was used before, and that for the good of the realm, the king may grant him a monopoly patent for a reasonable time." And if the combination now under consideration be, as we think it is, a manufacture within the statute of James the First, there was abundant evidence in the cause, that it had before the granting of the patent, been a great object or desideratum to smelt iron stone by the means of anthracite, and that it had not been done before; indeed no evidence was called on the part of the defendants to meet that which the plaintiff brought forward. These considerations, therefore, enable us to direct that the verdict shall be entered for the plaintiff upon the third issue,—that this was a manufacture, and a manufacture new as to the public use and exercise thereof, within England and Wales."

3. Patent for a method, but the subject is something

(a) *Darcy v. Allein*, 11 Co. Rep. 84; *Noy*, 178.

material (a).—So in *Neilson v. Harford (b)*, the Court held, also, that in that specification the plaintiff did not claim a patent for a mere principle, but for a mode of applying a well known principle; viz. the application of heated air, by means of a mechanical apparatus, to fires and furnaces.

CHAP. IV.

OF THE SPECIFICATION (c).

THE several cases which have been decided in the Courts respecting that important Instrument—The Specification—will be introduced under the appropriate heads of the analysis to be found in the Treatise.

The Title (d).—Another illustration, of the difference between the *title* of the patent and the claim made in the specification, occurs in the case of *Gibson v. Brand (e)*. The title of the patent was “a new and improved *process* or manufacture of silk, and silk in combination with certain other fibrous substances.” The claim, after a description of the machinery used, was made in these words, “We restrict our claims to the eight several heads of invention mentioned in the early part of this

(a) See p. 91, of The Practical Treatise.

(b) 8 Meeson & Welsby's Rep. 806.

(c) See p. 106 of The Practical Treatise, 2nd Edition.

(d) Id. p. 108 to p. 117.

(e) 4 Manning & Granger's Rep. 170. See ante, p. 10.

specification, all of which we believe to be new, and of great public utility." The jury found that—"The invention was not new, but was an improved process, and not a new combination." The Court held "That the patent was taken out strictly and entirely for a process, whilst the claim was for an improvement of certain machinery, or combination thereof, to produce a certain desired effect" (*a*), and they held the patent to be invalid.

But in another case (*b*) the Court overruled an objection to the title as not being supported by the claim in the specification. The title of the patent was, "An invention for the *improved application of air* to produce heat in fires, forges, and furnaces, where bellows or other blowing apparatus are required."

The thing done was thus described in the specification, "A blast, or other current of air, must be produced by bellows or other blowing apparatus in the ordinary way; to which mode of producing the blast, or current of air, this patent is not intended to extend. The blast, or current of air, so produced is to be passed from the bellows, or blowing apparatus, into an air vessel or receptacle made sufficiently strong to endure the blast, and from that vessel or receptacle by means of a tube, pipe, or aperture, into the fire, forge, or furnace."

Mr. *Baron Parke*, in delivering the judgment of the Court, said—"We think that the plaintiff does not merely claim a principle, but a machine embodying a principle, and a very valuable one," and the patent was supported: for the invention of applying fires, &c., to air heated in the manner therein stated might well be described as an "improved application of air."

(*a*) See p. 200 and 202 of *The Practical Treatise*, 2nd Ed.

(*b*) *Neilson & Others v. Harford & Others*, 8 M. & W. 806.

General Rules (a).—But there must not be an error in the statement: for then it will not be sufficient that a competent workman could correct it in practice.

If a specification (*b*) contain an untrue statement in a material circumstance, of such a nature that, if literally acted upon by a *competent workman*, it would mislead him, and cause the experiment to fail, the specification is therefore bad, and the patent invalidated, although the jury, on the trial of an action for the infringement of the patent, find that a competent workman, acquainted with the subject, would not be misled by the error, but would correct it in practice.

Terms Ambiguous (c).—Upon an issue as to the sufficiency of the specification of a patent for a fuse for discharging mines, &c., as embracing in its centre, in a continuous line throughout, a small quantity of gunpowder, “or *other* proper combustible matter, prepared in the usual pyrotechnical manner of firework for the discharge of ordnance;” the Court held (*d*) that the sufficiency of the specification was for the jury; that its language was not to be astutely construed in order to defeat the patent: but that it lay on the party infringing to make out his objection clearly; and it was not sufficient to sustain the objection, that no other material than gunpowder had ever been used for such purposes, no ambiguity being thereby occasioned, nor the difficulty hereafter of constructing the instrument increased, by the import of the

(*a*) See p. 118 of *The Practical Treatise*, 2nd Ed. *Neilson v. Harford*, 8 Meeson & W. Rep. 806.

(*b*) *Neilson v. Harford*, 8 Meeson & W. 806.

(*c*) See p. 120 of the *Practical Treatise*, 2nd Ed.

(*d*) *Beckford v. Skewes*, 1 Gale & D. 736.

terms used, that the patentee had ever used such other combustible material than gunpowder in the use of his invention.

In the specification of a patent, the title of which was "An invention for the improved application of air to produce heat in fires, forges, and furnaces, where bellows or other blowing apparatus are required," the mode of operation was described as follows:—"A blast or current of air must be produced by bellows or other blowing apparatus, and is to be passed from the bellows, &c., into an air vessel or receptacle, made sufficiently strong to endure the blast, and from that vessel or receptacle, by means of a tube, pipe, or aperture into the fire, &c. The vessel or receptacle must be air-tight or nearly so, except the apertures for the admission and emission of air, and at the commencement and during the continuance of the blast, must be kept artificially heated to a considerable temperature." After giving directions as to the materials and dimensions of the vessel, the specification proceeded to state, "The form or shape of the vessel or receptacle is immaterial to the effect, and may be adapted to the local circumstances or situation." In other parts of the specification the same language was used with reference to the ultimate beneficial effect upon the furnace, &c. The Court held, that such was the reasonable construction of the above clause also, and not that the form or shape of the vessel was immaterial to the effect of heating the air within it.

This doctrine (*a*) respecting necessary descriptions is illustrated by a late case (*b*), in which it was held that

(*a*) See page 128 of *The Practical Treatise*, 2nd Ed.

(*b*) *Macnamara v. Hulse and Others*, 1 Car. & M. 471.

if a patent be taken out for blocks for paving with “stone or any other suitable material,” it will include wood pavement, although no wood pavement was in actual use at the date of the patent, and although the inventor might not have had wood pavement in his contemplation.

Disclaimers (a).—The rules of practice, and the forms respecting them, will be found in the Appendix of the Practical Treatise. *(b)*

CHAP. V.

OF THE PRACTICE OF OBTAINING LETTERS PATENT FOR INVENTIONS.

THIS chapter is, in the Practical Treatise *(c)*, divided into three sections.

SECT. I.

THE METHOD OF TAKING OUT PATENTS FOR ENGLAND, SCOTLAND *(d)*, IRELAND AND THE COLONIES.

THE law under this section has continued unaltered,

(a) See page 165 of The Practical Treatise, 2nd Ed.

(b) Page 9.

(c) Page 168.

(d) In the case *Brown v. Annandale*, 8 Clark & F. p. 443, the laws respecting patents taken out in Scotland were thus observed upon.

but the power of the Master of the Rolls (*a*) to make any amendment after the patent is enrolled, has been explained.

When the specification has once been enrolled, the power of the Master of the Rolls to make amendments is very limited. He can order clerical errors to be rectified, but cannot alter any matter of substance. And therefore, where the letters patent for an invention and the enrolment contained the same error, it was held that the Master of the Rolls has no authority to order the enrolment to be amended until a corresponding amendment had been made in the letters patent, and they had been resealed.

The question thus arose. An application having been made to the Crown for the grant of a patent for an invention of machinery for covering fibrous substances, &c., and the Solicitor General having certified in favour of such grant, the invention was, by a mistake of the copying clerk in the Home Office, misdescribed in the Queen's warrant, by inserting the word "recovering" for the word "covering" and the error was adopted without being observed, in the Queen's bill, the privy seal bill, and the letters patent. After the letters patent had been enrolled, the error was discovered: and the patentee, having procured the Queen's warrant, the Queen's bill, and the privy seal to be duly amended by

Lord Campbell.—But it has been considered that the 6th Article of the Act of Union has made the law of Scotland the same as the law of England with respect to letters patent, and the rights under them.

Lord Brougham—Yes? English cases are cited in patent cases in the Courts of Scotland just as in England. *Turner v. Winter, Boulton v. Bull*, and all the leading cases are cited as law there as well as here.

(*a*) Page 177 of *The Practical Treatise*, 2nd Ed., note (*n*).

the proper officers of the Crown, presented a petition to the Master of the Rolls as keeper of the public records, praying that the enrolment might be made to accord with the privy seal as so amended. And the Master of the Rolls made an order accordingly. But upon an appeal to the Lord Chancellor by a party against whom the patentee had previously commenced an action, for the infringement of the patent, the Court held that the enrolment could on no account be allowed to represent what the letters patent did not contain; and the appeal petition was directed to stand over, with liberty to the patentee to make such application to the Lord Chancellor as he should be advised. An application was accordingly made for the amendment of the letters patent, but the Lord Chancellor refused to entertain it, unless upon the terms of the patentee's paying all the costs of the proceedings then pending against the party alleged to have infringed the patent, and undertaking not to commence any new proceedings for past infringements; which terms having been declined, a joint order was made by the Lord Chancellor and the Master of the Rolls, by which the previous order of the Master of the Rolls was discharged, and the enrolment, which had in the meantime been amended pursuant to that order, was directed to be restored to its original state (*a*).

But when under the 5 & 6 W. 4, c. 83 (*b*), a patentee had, by the authority of the Solicitor General, entered a memorandum of alteration of the enrolment of the specification, which it was alleged would thus extend the patent that infringed upon another patent granted

(*a*) In the matter of Nickel's Patent, 1 Turner & Phillips, 36, and 4 Beavan, 563.

(*b*) See The Practical Treatise, 2nd Ed., p. 165.

to the petitioner, the Master of the Rolls held that he had no jurisdiction to order such memorandum of alteration to be expunged (*a*).

Costs of caveat (b).—A party who had lodged an unsuccessful caveat against the granting of a patent was ordered to pay to the patentee the taxed costs occasioned by the caveat (*c*). It seems that such costs will be taxed upon the principle upon which costs in a cause are taxed as between party and party.

SECTION III.

PROCEEDINGS BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

THE rules, to be observed by the petitioner, when seeking for a confirmation of his patent, or for a prolongation of the time, are given in the Treatise (*d*), and cannot well be abridged. A doubt having arisen whether the advertisements should be put *three times* in the three London papers, it has been removed, and the advertisement appears only once in each of them. When the day mentioned in the advertisement for making the application to be heard is drawing near, a summons is issued by the clerk of the Privy Council to the petitioner, that he may apply on a day therein mentioned; which is either the day named in the advertisement, or some early day after it on which the Judicial Committee assemble. The petitioner's counsel makes a motion for a day to be fixed

(*a*) In re Sharp's patent ex parte Wordsworth, 3 Beavan's Rep. 245.

(*b*) See The Practical Treatise, p. 183.

(*c*) In the matter of Job Cutler's patent, 4 Myl. & C. 510.

(*d*) See p. 189 of The Practical Treatise, 2nd Edition. If the patentee has no residence nor factory in Britain, then the advertisements must be put in the newspapers of the places where the licences are used. Derosne's Patent enlarged, 20th May, 1844, MSS.

for hearing the petition. If no caveats have been entered there must be an interval of a week at least, but if caveats have been entered, then the petitioner must have sufficient time allowed, to enable him to give four weeks' notice to the persons who have entered the caveats.

After the day for hearing the petition has been fixed, a notice of it must be advertised in the *London Gazette* and in two London papers.

Since the publication in 1840 of the second edition of *The Practical Treatise* (a) many cases for the prolongation of the term of patents have been heard before the Privy Council. On several occasions the noble lords forming the Judicial Committee have stated the reasons for their decisions. The principles upon which judgments will in future be given may therefore now be pretty accurately ascertained.

1st. There must be great *merit* in the inventor : it will not be any objection that he has improved the subject : or that he is an importer, or alien residing abroad. (b)

2nd. There must be a great benefit conferred on the community : the grant is not a matter of course.

3rd. There must have been either an actual loss or very little profit made : but the expense and anxiety arising from litigation will be favourably considered.

4th. That the new patent will be granted to the assignee, or to the persons in whom the legal estate of the letters patent may be vested at the time of the application to the Privy Council (c).

(a) See p. 189, where there ought to have been a reference from the 2nd sub-division to p. 165 for the law respecting *disclaimers*, and to the Appendix, p. 9, for the rules of practice respecting them.

(b) Prolongation of Derosne's Patent, 20th May, 1844, MSS.

(c) Wright's Patent, Webster's cases, 561. But that power has been questioned ; *Russell v. Ledsam*, Exch. 1844.

5th. The time (*a*) of the extension will depend upon all the circumstances of the case, and if it be granted to an assignee, he may be put under terms to do justice to the patentee or his family.

These principles upon which prolongations are granted were nearly all explained by *Lord Brougham* in the case of *Whitehouse's* patent (*b*), who said,—“ Their Lordships having taken the whole of this matter into account, retain the opinion which they have had impressed upon their minds from the very beginning, that this is an invention of extraordinary merit, doing the greatest honour to the inventor, and conferring great benefit on the community ; founded in this eminent merit, being not merely the application of a known principle embodying it in new machinery and applying it to practical purposes but involving the discovery of a new, curious, and most important principle, and at the same time applying that principle to a most important purpose.

“ Their Lordships have on the same side of the question taken into account (which it is material to mention,) 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.

“ On the other hand, their Lordships have taken into mature consideration (which they always do in such cases,) the profit made by the patentee, Mr. Russell standing in the situation of the inventor. They find,

(*a*) A Bill (May, 1844,) has been brought into the House of Lords by Lord Brougham to give power to the Judicial Committee to extend the time to 14 years, upon a petition referred to them by Her Majesty on the address of either House of Parliament.

(*b*) *Id.* p. 477.

that it is not a case as in claims of other inventions of great ingenuity, and certainly of great public benefit, of actual loss in some, and of very scanty, if any, profit realised in others, but that a considerable profit has been realised, and upon the whole, no loss. It is to be observed that that profit is not perhaps very much greater, if at all greater, than the ordinary profits on stock to that amount, employed without the privileges and extra profits of a monopoly. It is proper to consider that one great item of deduction from those profits also involves great pain and anxiety and suffering to the party, namely, the litigation to which he has been subjected, and which is generally found to be in proportion to the merit and the usefulness of a patent, namely, the temptation to infringe it, and to set at nought the right of the patentee, both in the Court of Chancery, when he applies for protection by injunction, and afterwards in a Court of Law, when he comes to claim compensation for damages; the temptation being, as I have stated, in proportion to the benefit of, and the demand for the invention. That is an item which has to a considerable degree attracted the attention of their Lordships in this profit and loss account, which has been laid before them in the course of these transactions.

“Taking the whole of the matter into consideration, the merits of the patentee, the merits of Mr. Russell, and the loss that has been sustained in the litigation, and setting against those, on the other hand, the profits which have been made, their Lordships are of opinion that the term ought to be extended, and upon due execution being given to the undertaking (a) which has

(a) An assignment to Mr. Russell was put in, containing a clause securing to Mr. Whitehouse an annuity of 300*l.*; it was suggested by

just been given on behalf of the inventor, that the term ought to be extended for the period of six years." Thus the term of letters patent for improvements in manufacturing gas tubes, was extended by the Judicial Committee under the 5 & 6 Wm. 4, c. 83, for six years on the ground of the great merit and utility of the invention and the inadequate remuneration occasioned in a great measure by the expense incurred by litigation which the assignee of the patent had been involved in for the protection of his patent rights. And also, inasmuch a meritorious inventor, being a mechanic, had assigned his interest to his master; the Judicial Committee, under the circumstances, made it a condition to their recommendation to the Crown to prolong the term of the patent, that the assignee of the patent should secure to the inventor an annuity during the period of the extension (a).

In the case of Jones's patent (b), *Lord Brougham* gave judgment as follows:—"It is perfectly true as has been stated not only upon this but upon former occasions, that these applications are anything rather than matters of course. This is a very extraordinary jurisdiction which has been conferred on the Judicial Committee by

one of their Lordships, that as the extension of the term would occasion considerable profits the inventor should have a larger annuity secured to him. Upon that suggestion the annuity was increased to 500*l.* during the existence of the patent. The securing this annuity was further recited as part of the consideration of the grant of the new letters patent to Russell; and then there was among other provisos, a proviso that the said new letters should be void if the said Russell should not secure the annuity to Whitehouse so long as the said new letters patent should last.

(a) See *Re Russell in Whitehouse's Patent*, 2 Moore's P. C. Rep. 496.

(b) *Webster's Cases*, p. 579.

the Legislature, and is to be exercised only on the most special grounds alleged and proved in reference to each case. Their Lordships are of opinion, that in this case the grounds are most decisive, and have been proved in a most satisfactory manner. From the nature of the invention, it appears to be hardly possible that, within the ordinary period of time, ten, twelve, or fourteen years, a remuneration could be expected. In this case it is clearly proved, not only that there was no remuneration, but that every year a very heavy loss has been sustained. Under these circumstances, their Lordships are of opinion, that unless they give the whole term of seven years, there is no reasonable chance of that loss being counteracted by the profit to the parties now in possession of the patent. Their Lordships are therefore of opinion, that in the circumstances of the case, and regard being had to the merits of the invention, and its usefulness to the public, the whole period of seven years' extension should be granted."

Respecting "further improvements," since the grant of the patent, *Lord Brougham* said, in *Galloway's case* (a), "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

(a) Webster's Cases, 727.

upon other grounds he has been 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 *Soames's case* (a), the merit of an importer as contrasted with an inventor was discussed. *Lord Campbell* said, "I should say, sitting here, if it 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."

In giving judgment in that case, *Lord Brougham* said,—“If this case were to be disposed of upon the ground which in arguing such cases has sometimes been assumed to be the fit one, that there must not only be merit and benefit to the public, and (which is essential) a want of sufficient remuneration in the course of using the patent, but that moreover the case is to be tried here as on a bill in Parliament introduced to prolong the patent; then, I apprehend, there can really be no doubt whatever that in this case no bill would ever have passed through the two Houses of Parliament; but 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

(a) *Webster's Cases*, 733.

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."

Again he said,—“Nevertheless, they have been spirited and active persons in this matter, and the public has gained something from their spirit and activity, and from what they have expended; and their Lordships, under these circumstances, are of opinion that they will do well in giving the benefit of a very moderate extension of this patent right, but that moderate it must be, in respect of the circumstances which I have already stated—the very small step which was made, and the proportionate small benefit which the public may be said to have gained.

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 gravi-

tation 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.

In Morgan's case (*a*) *Lord Brougham* said: "When applications are 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 have always been used to consider that by taking into their view, and favourably listening to the application of the assignee, they are, though not directly, yet mediately 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."

And further he said (*b*): "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

(*a*) Webster's cases, 737.

(*b*) *Id.* 738.

same time it cannot be said to be of very great merit—merit which could lead their Lordships to strain much in favour of the inventor.

“ Their Lordships upon the whole are of opinion that if they were to grant an extension of the term in this case, either with a view to the inventor himself, or to his assignees mediately towards him, they hardly could ever resist any future application that might be made. It is anything rather than a matter of course that an application of this sort should be granted. Formerly it was most difficult to obtain an extension of a patent; an Act of Parliament was very seldom, indeed, obtained by an inventor, great as his merits might be, and small as his gains might have been. It is by no means the course of their Lordships—as has been frequently said, and by myself lately in giving the judgment of the Court in a recent case—it is by no means their course to put themselves precisely in the situation of the Legislature, and never to grant an extension in a case where an Act of Parliament could not have been obtained. At the same time there are some limits to this: they are to look to a certain degree at the position in which they are placed, and to consider that they here represent the Legislature, and that they are invested with somewhat similar powers of discretion to those exercised formerly by the whole three branches of Parliament; and therefore they by no means intend to have it understood (as has been repeatedly said in these cases) that it is anything like a matter of course, that upon a case being produced of small merit, and proportionably small consequence, especially in the circumstances of its being the assignee that makes the application, that it is anything

like a matter of course that they shall grant the application ; and upon the whole their Lordships see no reason for granting this application for an extension."

The extension of a patent was granted pending a suit respecting the validity of the original letters patent (*a*). *Lord Brougham* observed, if the Judicial Committee could see that the patent upon the face of it was manifestly and grossly illegal, they would not advise her Majesty to grant an extension of it ; though such extension would not benefit the party obtaining it, if the patent in the first instance was invalid ; but that if they postponed giving their decision until the result of the suits then pending were known, the patent would in the meantime expire, and being of opinion, that upon the merits shown the patentee ought to have some extension, their Lordships would advise such for the period of three years (*b*).

The extension of a patent was granted to a foreigner who had no residence in Britain (*c*).

The *Solicitor General* and *Godson*, q. c., applied for an extension for the patent granted to *Derosne*, a Frenchman, residing at Paris. It was objected by *Waddington*, for the Crown, that the 5 & 6 Wm. 4, c. 83, had not provided for such cases, as he could not give the notices required to be published in the newspapers circulated where he resided or where he carried on his business. It appeared in evidence that the invention was carried

(*a*) *Re Kay's Patent*, 3 Moore, P. C. Rep. 24.

(*b*) The Patent was ultimately determined not to be valid on the ground that the invention was not new. See 1 Beavan, 535, and 8 C. & F. 245.

(*c*) *Derosne's Patent*, May, 1844.

on under licenses in London, Liverpool, Bristol, Hull, &c. Their Lordships decided, that notices in the newspapers of all those places were sufficient and granted the extension.

Practice respecting hearing of Counsel where several Parties enter Caveats.—Lord Brougham observed that the rule respecting the number of counsel entitled to be heard being the same there as in the House of Lords, viz. two only on either side, two counsel only would be heard to oppose the petition, unless the parties had independent and distinct grounds of opposition founded on separate and independent interests (*a*).

The extra costs of applying for the new patent will sometimes be ordered to be paid by the person opposing, if it appear that his opposition be frivolous or vexatious (*b*), and on the other hand, they will be given to an objector if he has been improperly compelled to come before the Privy Council to protect his rights (*c*).

Confirmation of Patents (d).—The Judicial Committee has seldom been called on to exercise their powers under the second section of 5 & 6 Wm. 4, c. 83, to confirm a patent: but they refused to confirm one where it appeared that the invention had been published many years before the patent in a well-known book, and had also been made the subject of a prior patent (*e*).

(*a*) In re Woodcroft's Patent, 3 Moore, P. C. Rep. 172.

(*b*) Re Downton, Webster's Cases, 565.

(*c*) Re Mackintosh, id. 739.

(*d*) See p. 190 of The Original Treatise, 2d Ed.

(*e*) Westrupp and Gibbin's Patent, Webster's Cases, 554.

The applications to the Privy Council for prolongation have been very numerous and generally successful (*a*).

(*a*) The following is a list of the principal patents brought before the Privy Council under 5 & 6 Wm. 4, c. 83, s. 2.

Heurdeloup's Patent. March, 1836 Confirmed.

Westrup and Gibbin's Patent. March, 1836 { Not confirmed, Petition dismissed with costs.

Under sect. 4.

Erard's Patent	-	1835	An extension for 7 years.
Bate's Patent	-	1836	Do. for
Swaine's Patent	-	1837	Do. for 7 years.
Southworth's Patent, ex parte Haworth, assignee	}	1837	Do. for 5 years.
Wright's Patent, ex parte Shuttleworth	}	1837	Do. for 5 years.
Macintosh's Patent	-	1837	{ Abandoned. Costs of opposition allowed.
Stafford's Patent	-	1838	An extension for 7 years.
Bodmer's Patent	-	1838	Do. for 7 years.
Whitehouse's Patent, ex parte Russell	}	1838	Do. for 6 years.
Kollman's Patent	-	1839	Do. for 7 years.
Roberts's Patent	-	1839	Do. for 7 years.
Wright's Patent	-	1839	An extension for 7 years.
Downton's Patent, adminis- tratrix	}	1839	{ Do. for 5 years. Extra costs to be paid by the opposition.
Kay's Patent	-	1839	Do. for 3 years.
Quarrill's Patent	-	1840	Refused.
Jones's Patent, ex parte Riddle and Piper	}	1840	An extension for 7 years.
Woodcroft's Patent	-	1841	Refused.
Simister's Patent	-	1842	Do.
Galloway's Patent to assignee	-	1843	An extension for 5 years.
Soames's Patent to assignees	-	1843	Do. for 3 years.
Morgan's Patent	-	1843	Refused.
Wright's Patent	-	1843	An extension for 7 years.
Derosne's Patent	-	1844	An extension for 6 years.

CHAP. VI.

OF THE CONSTRUCTION OF LETTERS PATENT (*a*).

THE construction of the specification of a patent belongs to the Court and not to the jury (*b*).

CHAP. VII.OF THE PROPERTY IN AN INVENTION (*c*).

The effect of an Assignment generally (*d*) has been stated and the consequence to the inventor, if his patent should afterwards be discovered to be invalid (*e*). But there are many cases in which it would be contrary to good faith to permit an assignee to set up the invalidity of the patent as an excuse for not performing a contract into which he had entered.

Thus, where Neilson had obtained a patent for the application of the principle of smelting iron by the use of heated air applied to furnaces, Baird obtained a license from him to use this process, on the payment

(*a*) See p. 202 of *The Practical Treatise*, 2d Ed.

(*b*) *Neilson v. Harford*, 8 M. & W. 806.

(*c*) See p. 211 of *The Practical Treatise*, 2d Ed.

(*d*) *Id.* 215.

(*e*) See *Chanter v. Leese*, 4 M. & W. 295, and 5 *id.* 698, which was principally decided on a point of pleading, post, 44; but the Court also held in an action by a patentee, on an agreement to recover a payment for the use of a patent right, the party might plead that it was not at the time of the grant, a new invention,

of one shilling per ton on the iron thus smelted. Disputes, and then litigation arose between them, and it was agreed, by an instrument in writing, dated 11th of November, 1833 (which recited the previous circumstances) that both parties should withdraw their law processes; and that,—“in consideration of the present payment of 400*l.* to be accepted by Neilson in full of one shilling per ton on the whole iron smelted from the erection of Baird’s works up to the 11th day of November current, and in consideration of the payment of one shilling per ton upon the whole iron which shall be smelted from the 11th of November current, till the expiring of the letters patent, by the use of heated air in any of the modes heretofore applied, or in any other mode falling under the said patent.” Neilson should grant to Baird a license, which, further on in the agreement, was described to relate to “the application or use of heated air in any of the modes heretofore practised at Baird’s works, or in any other mode falling under the description in the said patent, or in the specification thereof.” Afterwards, Neilson instituted a suit to compel Baird to perform this agreement, but he instituted a cross suit to suspend Neilson’s proceedings, on the ground, that the process of smelting by heated air, used at his works, did not fall within the patent. The House of Lords held, affirming the decree of the Court of Session, that, after this agreement, Baird could not set up such a defence to the claim of Neilson (*a*).

Licenses to use the Patent (b).—The question respect-

(*a*) Baird and others *v.* Neilson and others, 8 Clarke & F.’s Rep. 726.

(*b*) See p. 225 of The Practical Treatise, 2d Ed.

ing licenses has been fully discussed, and the extent to which they can be made, has been clearly settled.

The grant of an exclusive license to use a patent does not invalidate the patent itself, although the patent may be vested in twelve persons; and it is wholly immaterial to its validity, in what number of persons such a license is vested, whether exclusive or not. The license would not be invalid if the district covered by the license included the extent of the patent (a).

The circumstances of that case were thus stated in a case (b) sent to the Court of Exchequer. Before the month of July, 1839, and at the time of granting the license, the letters patent became and were vested in twelve several persons, partners, dividing or entitled in their own rights respectively, and not by representation, to divide the benefits or profits obtained by reason of the letters patent. On the 1st of July, 1839, the twelve patentees or persons in whom the letters patent were so vested, signed and executed an instrument in writing, whereby, after reciting that they had agreed with Samuel Guppy and Philip Protheroe to grant unto them an exclusive license for the use and exercise of the invention within the city of Bristol, and at such other place or places within thirty-five miles therefrom, as were described on the map with a compass, having Bristol for its centre, as they should think proper: *they had so granted it.* Under that license, Protheroe and Guppy used and exercised the patent invention within the city of Bristol and such other places within thirty-five miles thereof as they thought fit, and they assigned the license

(a) Protheroe v. May, 5 Meeson & W. 675.

(b) Id. 678.

and the benefit thereof to or in trust for a company or copartnership consisting of more than twelve persons who are now using and exercising the same, and have duly paid the rents made payable by virtue of the said license. And on the 2d of July, 1839, the twelve patentees or persons in whom the letters patent were so vested, gave and granted twelve other similar exclusive licenses to use and exercise the patent right and invention in twelve several districts other than the said city of Bristol, and places within thirty-five miles thereof, of which said twelve licenses eleven were granted severally to eleven individuals (that is to say, each to one distinct person), and the twelfth was granted to a certain partnership, consisting of thirteen persons.

The districts covered by the licenses are parts of England only—they do not comprise the whole of England.

The Court returned the following certificate (a).

“ We have heard this case argued by counsel, and considered the same, and are of opinion :—

“ *First*, That the grant of the first-mentioned exclusive license to the said Philip Protheroe and Samuel Guppy, did not invalidate the letters patent.

“ *Second*, That the assignment to and vesting of the said first-mentioned license in the said partnership of more than twelve persons, did not invalidate the letters patent.

“ *Third*, That the grant of the said twelve last-mentioned exclusive licenses, nor any of them, did not invalidate the said letters patent.

“ *Fourth*, That if all the grantees of all the licenses were to coalesce and become jointly interested in such

(a) *Protheroe v. May*, 5 M. & W. 687.

licenses, the letters patent would not be thereby invalidated.

“*Fifth*, That the letters patent would not be invalidated, if the districts covered by the licenses had included the whole of England, Wales, and Berwick-upon-Tweed.

“*Sixth*, That they would not have been so, if such districts had included the whole of England, Wales, Berwick-upon-Tweed, and the Colonies.”

CHAP. VIII.

OF THE INFRINGEMENT OF A PATENT, AND THE REMEDIES FOR THAT INJURY.

What amounts to an Infringement (a).—In an action on the case (*b*) for infringing a patent for a new and improved process or manufacture of silk, the infringement alleged in the declaration was, that the defendant had, directly and indirectly, made, used, and put in practice the said invention and counterfeited the same. The Court held, that the allegation was supported by proof that the defendant had ordered silk to be manufactured by certain parties by the plaintiff's process and had afterwards received and sold the same.

The case of *Manton v. Manton* (*c*) was confirmed by the case of *Gillett v. Wilby* (*d*), that the infringement

(*a*) See p. 230 of The Practical Treatise, 2d Ed.

(*b*) Gibson and another v. Brand, 4 Manning & G. 179.

(*c*) Practical Treatise, 2d Ed. p. 231.

(*d*) 9 Car. & P. 334.

may be of a part only of the invention; that was an action for the infringement of a patent for certain improvements in a cabriolet. The general issue, with other pleas as to want of novelty, was pleaded, and the Court held that although all the improvements claimed must be shewn to be new, yet it need not be proved that the defendant's cabriolet was an imitation of the whole of them, but an imitation of one was sufficient to maintain the action.

The remedy at Common Law—The Pleadings (a). — The proper parties to the suit will be those who have the interest in the patent.

By an agreement not under seal, between the plaintiff and A., B., and C. of the one part, and the defendant of the other part, reciting that the plaintiff had obtained a patent for an improvement in furnaces and was solely interested in another patent invention that the plaintiff and A. had obtained a patent for another invention, the plaintiff and B. for another, and the plaintiff and C. for another, it was agreed between the said parties that for the considerations therein mentioned, it should be lawful for the defendants exclusively to use, manufacture, and sell, any or all of the said patent inventions within certain limits, during the continuance of the several patents on certain terms; viz. that an office and warehouse should be prepared for the sale of articles connected with the inventions, and that books of account of the sale of each of the inventions should be kept there by the defendants and be open at all times to the inspec-

(a) See p. 237 of *The Practical Treatise*, 2d Ed. The patentee and assignee cannot join in an action, unless they have a joint interest, and it must so appear on the pleadings.

tion of the parties thereto of the first part; and the defendants should pay to the plaintiff 400*l.* a-year as a consideration for the license for the sale, &c. of all the aforesaid patents, and that such sum should be charged as a payment by the defendants in their books of account, that they should pay A. a certain rateable sum on all machines used, &c. on his patent principle, that they should also pay the plaintiff a moiety of the net profit to arise from all the said inventions (except those in which B. and C. were interested) to the plaintiff, and B. two-thirds of the net profits to arise from theirs, and it was agreed that either of the parties might determine the agreement at the end of five, seven, or ten years. In an action on that agreement by the plaintiff *alone*, to recover a half-yearly payment of the 400*l.*, the defendants set out the plaintiff's patent for the improvement in furnaces, and pleaded, that it was not at the time of the grant a new invention as to the public use thereof in England, whereby the grant was void, which the plaintiff, at the time of the making the agreement well knew. The Court held on error, that the declaration was bad on the ground of variance, inasmuch as it stated the agreement to be made between the plaintiff and the defendants, whereas there were other parties to it of the first part beside the plaintiff, from whom the consideration for the defendants' promise moved as well as from the plaintiff; and they intimated that the action ought to have been jointly brought by all the parties to the agreement of the first part (*a*).

Again in another case (*b*). Where, in a declaration

(*a*) *Chanter v. Leese*, 5 Meeson & Welsby, 698. See this case for judgment below in 4 M. & W. 295. See the same case, ante, p. 38, on another point. (*b*) *Galloway & Others v. Bleaden*, 1 M. & G. 247.

the defendant was described as the secretary of a public company, and a cause of action against the company was set forth, the Court, after verdict for the plaintiff, refused to allow an amendment in the declaration by inserting—that the company were trading under letters patent of Her Majesty, empowering them to sue and be sued in the name of one of the two public officers to be appointed by them for that purpose, and that the defendant was one of such officers duly appointed to sue and be sued for and on behalf of the company, and duly registered as such officer, pursuant to 7 Wm. 4, and 1 Vict. c. 73, except upon the terms of the plaintiffs' paying the costs of the motion, and of a motion in arrest of judgment, and of foregoing the costs of the trial.

The Venue (a).—Formerly the actions for infringement of patents were always brought in the county of Middlesex: but occasionally the venue was afterwards laid in London, and now it is not uncommon for the venue to be placed in the country by the usual consent of the parties under a judge's order.

Pleas, &c. (b).—In an action for an infringement of a patent, a plea that the invention is not a new manufacture within the 21 Jac. 1, c. 3, involves the question, not only whether the alleged patent is new, but also whether it is a manufacture within the meaning of the statute (c).

In an action for infringing the plaintiff's patent a plea

(a) See p. 238 of *The Practical Treatise*, 2nd Edition.

(b) See p. 236 of *The Practical Treatise*, 2nd Edition.

(c) *Walton v Bateman*, 3 M. & G. 773.

founded on the sixth clause of 21 Jac. 1, c. 3, that the said invention “*was not*” at the time of making the patent “a new manufacture within this realm within the true intent and meaning of the act” was held by the Court to be bad for *ambiguity* (a).

A plea in an action on the case (b) for infringing a patent set out the specification *in hæc verba*, and alleged that the plaintiffs did not inrol any instrument other than that set out, and that such instrument did not particularly describe the nature of the invention. The jury having found a verdict for the plaintiffs upon their traverse of this plea, the Court held that the judgment could not be arrested upon the ground of the specification being otherwise defective.

The Statement of Objections under 5 & 6 Wm. 4, c. 83 (c).—If the notice of objections delivered by a defendant with his pleas in an action for the infringement of a patent be not sufficiently specific, the plaintiff’s course is to apply to a judge at Chambers for an order for the delivery of a more specific notice; but if he omit to do so, he cannot object to the generality of the notice at the trial; the only question then is, whether the notice is sufficiently large to include the objections relied on by the defendant (d).

A particular of objections delivered by the defendant in an action for infringing a patent right, must be precise and definite. It is not sufficient to say that the improve-

(a) *Spilsbury and another v. Clough and another*, 2 Q. B. Rep. 466.

(b) *Gibson and another v. Brand*, 4 M. & G. 179.

(c) See page 239 of *The Practical Treatise*, 2nd Ed.

(d) *Neilson and others v. Harford and others*, 8 M. & W. 806.

ments, or some of them, have been used before; the defendant should point out which have been used. (a)

To a declaration for the infringement of a patent, the defendant pleaded, that the nature of the invention, and the manner in which it was performed, were not particularly described in the specification, and also that the invention was not new; and the objections delivered with the pleas under 5 & 6 Wm. 4, c. 83, s. 5, stated first, that the specification did not sufficiently describe the nature of the invention, and the manner in which it was to be performed; and secondly, that the invention was not new, and had been wholly or in part used and made public before the obtaining of the letters patent. The Court held, that the first of these objections was sufficient; but that the second was bad, and ought to have pointed out what portions of the alleged invention were previously in use (b).

As to the evidence.—It seems, that if an invention for which a patent is granted would, if put into practice, be useful, an action for the infringement of the patent may be maintained, although the plaintiff's invention has never been put into actual use, except by the defendant, when he infringed the patent (c). In that case which was an action for infringing a patent for blocks for pavement, the plaintiff claimed as his invention that his block was bevilled both inwards and outwards on the same side of the block, and it was alleged that

(a) *Fisher v. Dewick*, 4 Bing. New Cases, 706; 6 Scott, 587; 6 Dowl. Prac. Cases, 739.

(b) *Heath v. Unwin*, 10 M. & W. 684.

(c) *Macnamara v. Hulse*, 1 C. & M. 471. The objections must not go beyond the pleas.

the defendants' blocks were an imitation of the plaintiff's, for two of the defendants' blocks were equivalent to one of the plaintiff's, the Court held that it was for the jury to say whether the defendants' blocks were in effect the same as the plaintiff's, although no single block of the defendants' was bevilled both inwards and outwards on the same side.

To a declaration for the infringement of the plaintiff's patent "for certain improvements in cards for carding wool, cotton, &c., and for raising the pile of woollen and other cloths," the defendants, in their third plea, alleged that the invention was not new at the time of the granting of the patent; and the fourth plea, after setting out the plaintiff's specification in *hæc verba* (wherein it was stated that the improvement was applicable to sheet-cards and top cards) averred that such cards were ordinary cards at the time of the patent, and also that the plaintiff's invention was unfitted and useless for the purpose of such cards. Notices of objections, corresponding with the allegations in the pleas, were delivered in by the defendants, but none that pointed to the unfitness of the invention to form the subject of a patent (a).

At the trial, the judge in summing up left the points to the jury in the terms of the several issues, but gave no opinion as to the validity of the patent. He was then requested by the defendants' counsel to put two other questions to the jury, which were not distinctly raised by the issues, but he refused to do so. The Court held, first, that this refusal was proper. Secondly, that upon the issues (taking into consideration the notices of objections) the judge would not have been warranted in

(a) Walton v. Potter, 3 M. & G. 411.

giving any opinion as to the validity of the patent, in respect of the fitness of the invention to form the subject of a patent. Thirdly, that the statement of the specification in the fourth plea being merely matter of inducement, it could not be taken advantage of in arrest of judgment, upon the ground that the invention therein described was not the fit subject of a patent'(a).

Costs (b).—Under the statute of 3 & 4 Vict. c. 24, s. 2, if the damages recovered be under 40s., it is necessary for the judge to certify at the time of the trial, in order to give the plaintiff his costs in an action on a patent(c).

By the third section of 5 & 6 Wm. 4, c. 83, *treble costs* were, under certain circumstances, given to the plaintiff. By the 5 & 6 Vict. c. 97, s. 2, it is enacted, in all cases in which treble costs were given, that a full and reasonable indemnity as to all costs, charges and expenses incurred in and about any action, suit, or other legal proceeding, shall be awarded in lieu of such treble costs.

The Certificate of the Judge (d).—The certificate given by a Judge under the Act, 5 & 6 Wm. 4, c. 83, s. 5, should be, as to the determination of each objection, of which notice has been given, and not as to the issues. (e)

(a) Semble, that the proper way to have raised that question would have been to aver that the alleged invention, as set out in the specification, was not a new manufacture, within the meaning of 21 Jac. 1, c. 3.

(b) See p. 247 of *The Practical Treatise*, 2nd Ed.

(c) *Gillett v. Green*, 7 M. & W. 347.

(d) See p. 249 of *The Practical Treatise*, 2nd Ed.

(e) *Losh v. Hague*, 5 M. & W. 387.

It was also held, that the validity of the patent might be considered as having come in question under the plea—that the alleged improvements were not new—so as to entitle the plaintiff to a certificate to that effect under the statute (*a*).

As to Injunctions in Equity (b).—The following decisions have been made respecting Injunctions :—

Although a patent is of long standing, yet if from the nature of the alleged invention, or the conflicting evidence, as to its novelty or its validity, appears to be doubtful; or if the evidence of exclusive possession be not satisfactory, the Court will not grant an injunction until the title has been established at law. After the patentee had obtained a verdict in an action brought to try the validity of the patent, the Court refused to grant an injunction to restrain the infringement of the patent on the ground that a rule nisi for a new trial had been obtained, and was pending in the court of law, and that the legal title of the patentee was therefore still undecided (*c*).

In August 1835 (*d*), a patentee filed a bill to restrain an alleged infringement of his patent, and the defendant having by his answer denied the validity of the patent, and also the fact of the alleged infringement, the plaintiff made no interlocutory application for an injunction, but went into evidence in support of his case, and in May, 1839, brought the cause to a hearing. The Master of the Rolls, being of opinion that the plaintiff upon the evidence had not made out a case which would have

(*a*) *Gillett & Another v. Wilby*, 9 Carr. & P. 334.

(*b*) See p. 253 of *The Practical Treatise*, 2nd Ed.

(*c*) *Collard v. Allison*, 4 M. & C. 487.

(*d*) *Bacon v. Jones*, 4 M. & C. 433; and see same case, 1 Beavan, 382.

supported an injunction if applied for in the interlocutory stage, refused to give him an opportunity of establishing his title at law by retaining the bill, with liberty to bring an action, and dismissed the bill with costs; and the Lord Chancellor, on appeal, affirmed this decision.

Where the Court interferes by interlocutory injunction between parties at issue upon a legal right, it will accompany the injunction with a provision for putting the question immediately in a course of legal investigation (*a*).

Where an injunction has been granted, on an undertaking to try the right by action has been given, it must be brought and prosecuted promptly and diligently, or the Court will remove the injunction, unless the defendant has himself been supine in the cause (*b*).

The Decree.—For the practical difficulties in working out a decree, see *Crossley v. The Derby Gas Light Company* (*c*).

CHAP. IX.

OF LETTERS PATENT WHEN VOID, AND THE MANNER OF HAVING THEM CANCELLED.

What renders a Patent void (*d*).—In a late case it was attempted to raise the question that a patent was void

(*a*) *Harman v. Jones*, 1 Cr. & P. 299.

(*b*) *Beckford v. Skewes*, 4 Mynle & Cr. 498.

(*c*) 3 Mynle & C. 428.

(*d*) See p. 262 of *The Practical Treatise*, 2nd Edition.

because it created a monopoly, and was generally inconvenient, but it was not supported (a).

*Proceedings by Scire Facias to Repeal a Patent (b).—*These proceedings originate in the Petty Bag Office, but the writ is not granted as a matter of course (c), and the first step taken is to give instructions for the draft of the writ, which, having been settled by the counsel for the prosecution, is to be taken to the Attorney-General, who, thereupon grants his fiat, upon the prosecutor and two sureties entering into a bond of 1000*l.* conditioned to pay the defendant his costs, taxed as between attorney and client, if the verdict be given against the Crown.

*List of Objections (d).—*By the 5 & 6 Wm. 4, c. 83, the list of objections to be taken must be delivered by the prosecutor under a scire facias, as, by the defendant in an action for an infringement. Those objections must not go beyond the declaration (e).

In the case of a *scire facias* (f) to repeal a patent, the prosecutor having, while the record was in Chancery, filed notice of objections, under stat. 5 & 6 Wm. 4, c. 83, s. 5, namely, that other persons than the patentee had used the invention in England before the grant of the patent, the Court of Queen's Bench refused, on motion after the proceedings were before them, to order

(a) *Gillett v. Wilby*, 9 Carr. & P. 334.

(b) See p. 269 of *The Practical Treatise*, 2nd Edition.

(c) *The Queen v. Neilson*, Webster's Cases, 665.

(d) See p. 271 of *The Practical Treatise*, 2nd Ed.

(e) 1 Carr & M. 471. In an action, ante, p. 47.

(f) *The Queen v. Walton*, 2 Q. B. Rep. 969.

the delivery of a further particular stating the names and addresses of such persons.

Plea.—The expression—General Issue—in the Treatise has been misunderstood. It means that the allegations in the writ, if more than one, are met by general denials of the truth of each of them. The pleas, in fact, traverse severally each affirmation of the prosecutor (*a*), and are a series of general issues.

Costs of suit by scire facias.—Formerly no costs were paid, or received under a *scire facias*, but now a bond is entered into by the prosecutor to pay the costs of the defendant.

(*a*) See the Pleas in *Rex v. Arkwright*, printed case, p. 10.

SUPPLEMENT

TO COPYRIGHT.

CHAP. I.

OF COPYRIGHT IN GENERAL (*a*).

THE laws respecting the different kinds of copyright have undergone much alteration, and in every instance for the better, since the publication of the second edition of *The Practical Treatise*.

In the 5 & 6 Vict. c. 45, commonly called *Mr. Serjt. Talfourd's Copyright Act*, the term COPYRIGHT is defined to mean—the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the word is applied in that act.

The whole subject may now be divided as follows :

- I. The Copyright Amendment Act (*b*).
- II. The Dramatic Literary Property Act (*c*).
- III. The Engraving Copyright Acts (*d*).
- IV. The Sculpture Copyright Acts (*e*).
- V. The Designs Copyright Acts (*f*).
- VI. The International Copyright Acts (*g*).

(*a*) See p. 305 of *The Practical Treatise*, 2nd Ed.

(*b*) 5 & 6 Vict. c. 45, repealing 8 Anne, c. 19 ; 41 Geo. 3, c. 107, and 54 Geo. 3, c. 156.

(*c*) See 3 & 4 Wm. 4, c. 15, and sections 20, 21, and 22 of 5 & 6 Vict. c. 45.

(*d*) 8 Geo. 2, c. 13 ; 7 Geo. 3, c. 38 ; 17 Geo. 3, c. 57, and 6 & 7 Wm. 4, c. 59.

(*e*) 38 Geo. 3, c. 71, and 54 Geo. 3, c. 56.

(*f*) 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65.

(*g*) 7 Vict. c. 12, repealing 1 & 2 Vict. c. 59.

The alterations are so numerous that a comprehensive view of the law of copyright will best be taken in a tabular form, of the different *terms* of copyright as they now exist.

I. BOOKS (5 & 6 Vict. c. 45. including in that word MAPS, CHARTS, AND PLANS):	TERM OF COPYRIGHT.
Of which the copyright belongs to the Crown	PERPETUAL.
Of which the copyright is given or bequeathed to the Universities of Oxford or Cambridge, the colleges within them; to the four Universities in Scotland; to Trinity College, Dublin; or to the Colleges of Eton, Westminster, or Winchester	PERPETUAL, while printed at their own presses, if the term be not limited in the donation.
In manuscript	PERPETUAL.
Published after the passing of the 5 & 6 Vict. c. 45, the 1st July, 1842.	<i>If published in the author's lifetime,</i> THE AUTHOR'S LIFE AND 7 YEARS AFTER HIS DEATH; OR 42 YEARS FROM THE TIME OF FIRST PUBLICATION. <i>If published after the author's death,</i> 42 YEARS FROM THE TIME OF FIRST PUBLICATION.
Published before the passing of the 5 & 6 V. c. 45, the 1st July, 1842, and having at that time subsisting copyright; provided that that copyright belong to the author or his representative, or have been transferred in consideration of natural love and affection; or, in case of any other kind of transfer, there be an agreement between the author or his representative and the actual proprietor to accept the benefits given by the 5 & 6 Vict. c. 45.	Ditto.

Books :

Published before the passing of the 5 & 6 Vict. c. 45, the 1st July, 1842, and having at that time subsisting copyright; *in any other case than those above mentioned.*

Published by license of the Privy Council, pursuant to the 5 & 6 Vict. c. 45, s. 5.

Articles in Encyclopædias.

Articles in Reviews, and periodicals to be published therein.

II. DRAMATIC PIECES AND MUSICAL COMPOSITIONS, right to the representation or performance of :

While in manuscript.
When published.

III. ENGRAVINGS AND PRINTS.

IV. SCULPTURES, MODELS, OR CASTS.

V. DESIGNS :

1st. *For ornamenting,*
Articles in metal

wood
glass
earthenware

Paper Hangings

Carpets (floor and oil-cloths (a)).

(a) Added by 6 & 7 Vict. c. 65, s. 5.

TERM OF COPYRIGHT.

THE AUTHOR'S LIFE, OR 28 YEARS FROM THE TIME OF FIRST PUBLICATION.

ACCORDING TO THE CONDITIONS OF THE LICENSE.

If published in the author's lifetime, THE AUTHOR'S LIFE, AND 7 YEARS AFTER HIS DEATH ; OR 42 YEARS FROM THE TIME OF FIRST PUBLICATION. *If published after the author's death,* 42 YEARS FROM THE TIME OF FIRST PUBLICATION.

Ditto ; with this proviso, that after 28 years from the time of their first publication in the review or periodical, the author may publish them in a separate form.

PERPETUAL.

THE AUTHOR'S LIFE, AND 7 YEARS AFTER HIS DEATH ; OR 42 YEARS FROM THE TIME OF FIRST REPRESENTATION OR PERFORMANCE.

28 YEARS FROM THE TIME OF FIRST PUBLICATION.

14 YEARS FROM THE TIME OF FIRST PUBLICATION ; AND, TO THE AUTHOR, IF HE BE LIVING AT THE END OF THAT PERIOD, 14 YEARS MORE.

3 YEARS FROM THE TIME OF REGISTRATION.

3 YEARS ditto.

3 YEARS ditto.

3 YEARS ditto.

3 YEARS ditto.

3 YEARS ditto.

DESIGNS :	TERM OF COPYRIGHT.	
Shawls (patterns printed)	9 MONTHS	ditto.
Shawls (ditto not printed)	YEARS	ditto.
Yarn, thread, or warp, (printed)	9 MONTHS	ditto.
Woven fabrics, not furni- tures (patterns printed)	9 MONTHS	ditto.
Woven fabrics, furnitures (patterns printed)	3 YEARS	ditto.
Woven fabrics (patterns not printed)	12 MONTHS	ditto.
Lace and all other articles	12 MONTHS	ditto.
2nd. <i>For articles of utility,</i> <i>For the shape or configura-</i> <i>tion, &c.</i>	3 YEARS	ditto.
VI. INTERNATIONAL COPYRIGHT	For the same terms as above, (with the <i>exclusion</i> of designs) if the order in council so direct.	

CHAP. II.

OF THE DIFFERENT KINDS OF LITERARY PROPERTY— OF ORIGINAL COMPOSITIONS.

A Book (a) generally (b).—The word, BOOK, in the construction of the *Copyright Amendment Act (c)* is, by that act, defined to mean and include “every volume, part, or division of a volume, pamphlet, sheet of letter press, sheet of music, map, chart, or plan, separately published.”

Works in Manuscript (d).—The property in a work generally whilst it remains in manuscript has been discussed. There is an alteration with respect to Dramatic writings and Musical compositions whilst they remain in

(a) See p. 321 of The Practical Treatise, 2nd Edition.

(b) Id. 322.

(c) Sec. 2.

(d) See p. 325 of The Practical Treatise, 2nd Edition.

manuscript, which will be noticed hereafter under that division (*a*).

Lectures (b).—By the 5 & 6 Vict. c. 45, *Lectures* printed and published by the author or his assignee are protected by the same term of copyright as other literary productions. When lectures are orally delivered by their author they continue to be protected, and piratical publications of them are prevented, by the 5 & 6 Wm. 4, c. 65.

Of Foreign Publications and International Copyright (c).—Formerly an alien author was entitled to the protection of the copyright law as to books *originally published* in this country, although he were residing out of it (*d*): and so was the assignee of a foreign composer (*e*), but it did not extend to works designed and executed abroad, and only published in Great Britain (*f*).

But by the statute 7 Vict. c. 12, called *The International Copyright Act*, the Act of 1 Vict. c. 59 is repealed, and it is enacted in the second section, that Her Majesty by order in Council may, as respects all books, prints, articles of sculpture, and other works of art to be defined in such order, first published in any foreign country to be named in such order, that the authors, inventors, designers, engravers, and makers thereof

(*a*) Post, p. 61.

(*b*) See p. 327 of *The Practical Treatise*, 2nd Edition.

(*c*) See p. 332 of *The Practical Treatise*, 2nd Edition.

(*d*) *Bentley v. Foster*, 10 Sim. 329.

(*e*) *D'Almaine v. Boosey*, 1 Y. & C. 288, and see *Chapell v. Purday*, 4 Y. & Coll. 485.

(*f*) *Page v. Townsend*, 5 Sim. 395.

respectively and their respective executors, administrators and assigns shall have the privilege of copyright therein during such period, or respective periods as shall be defined in such order, under certain restrictions (*a*).

A similar right is granted as to Dramatic pieces and Musical compositions (*b*).

CHAP. III.

OF PARTICULAR WORKS ON GENERAL SUBJECTS.

An Encyclopædia (c).—By the eighteenth section of 5 & 6 Vict. c. 45, the proprietor of an Encyclopædia, who has employed and paid persons for composing parts of the work, has the copyright in such compositions to the full extent as authors under that act: but the original composers may after the interval of twenty-eight years publish any article separately, without the previous consent of the proprietor of the Encyclopædia.

CHAP. IV.

OF PERIODICAL PUBLICATIONS (*d*).

Of Reviews, Magazines, &c. (e).—All doubts, respecting a copyright in articles published in Reviews, Magazines, being vested in the publisher or proprietor of the work, have been removed by 5 & 6 Vict. c. 45 (*f*).

(*a*) See 7 Vict. c. 12, in Appendix.

(*b*) Id. s. 5.

(*c*) See p. 339 of The Practical Treatise, 2nd Edition.

(*d*) See p. 351 of The Practical Treatise, 2nd Edition.

(*e*) Id. 352.

(*f*) s. 18.

Newspapers (a).—The laws respecting Newspapers have only been changed as to the conduct which may be pursued respecting any *Libels* (b) which may be published in them. By the 6 & 7 Vict. c. 96, an *Apology* may be made and inserted in a subsequent Newspaper, and money may be paid into Court as amends.

CHAP. V.

OF MUSICAL AND DRAMATIC COMPOSITIONS (c).

THE Dramatic Copyright Act, 3 Wm. 4, c. 15, has been enlarged by *The Copyright Amendment Act* (d).

The effect of the two acts combined, appears to be (e)

1. The author or assignee of a dramatic piece or musical composition, unprinted and unpublished, has a sole and perpetual right to its performance.

2. The author or assignee of a dramatic piece or musical composition, printed and published within *ten* years before the passing of that act, has the sole right of performance for the author's life, and seven years after his death : and if that term expire before *forty-two*

(a) See p. 355 of The Practical Treatise, 2nd Edition.

(b) Id. 361.

(c) See p. 384 of The Practical Treatise, 2nd Ed. Chap. VI. is an error for Chap. V.

(d) 5 & 6 Wm. 4, c. 45, s. 20. As to double costs, see 5 & 6 Vict. c. 97.

(e) See The Law of Copyright, by Peter Burke, Esq. Barrister at Law, p. 42.

years from the time of the first performance, then for such forty-two years: in case of the author's death before publication, the right will endure for forty-two years from the time of the first performance.

The registration and assignment of a play are also regulated by 5 & 6 Vict. c. 45 (*a*).

Theatres or Playhouses (b).—Theatres are now regulated by 6 & 7 Vict. c. 68, under which (s. 13) the Lord Chamberlain may take a fee not exceeding two guineas for the examination of a play.

CHAP. VI.

OF THE FINE ARTS.

Engravings or Prints (c).—As to the evidence necessary to support an action for the piracy (*d*) of a print or engraving, the following decision has been made. In an action on the case (*e*) for pirating an engraving brought under the statute 17 Geo. 3, c. 57, which gives a right of action against any one who shall copy any print “in the whole, or in part, by varying, adding to, or diminishing from the main design,” the judge, at the trial, directed the jury to consider whether the defendant's

(*a*) See s. 20, s. 22, and s. 24.

(*b*) See p. 387 of *The Practical Treatise*, 2nd Ed.

(*c*) *Id.* 395.

(*d*) *Id.* 404.

(*e*) *Moore v. Clark*, 9 M. & W. 692.

engraving was substantially a copy of the plaintiff's: and the Court held that the direction was correct.

Designs for articles of manufacture (a).

The statutes respecting designs have been repealed by the 5 & 6 Vict. c. 100. On that act, amended by the 6 & 7 Vict. c. 65, the copyright in designs rests.

This subject is now divided into two parts—one relating to *ornaments* under the 5 & 6 Vict. c. 100, and the other relating to *articles of utility* under 6 & 7 Vict. c. 65.

And, *first*, as to ORNAMENTS (*b*).

The Subject of the Copyright.—The copyright is given to any new and original design, (except designs for articles mentioned in the two statutes relating to sculpture), whether such new and original design be applicable to the ornamenting,

1. of any article of manufacture ;

2. or of any substance, artificial or natural, or partly artificial and partly natural ;

and whether the design be so applicable for

the pattern,

the shape or configuration,

the ornament,

or for any two or more of such purposes ;

and by whatever means the design may be so applicable, whether by

(a) See p. 410 of *The Practical Treatise*, 2nd Ed.

(b) I have availed myself of an excellent analysis of the act made at p. 53 of *A Treatise on the Law of Copyright*, by Peter Burke, Esq., Barrister at Law, 1842.

printing,	embroidery,
painting,	weaving,
sewing,	embossing,
modelling,	engraving,
casting,	staining,

or by any other means whatsoever, manual, mechanical, or chemical, separate or combined.

The Nature and Duration of the Copyright.—The copyright itself is this—The proprietor of every such above-mentioned design, not previously published in the United Kingdom or elsewhere, is to have the sole right, provided it be done in the United Kingdom, of applying the design to any of the above-mentioned articles or substances for the respective terms, as follow :—

1. *For Three Years*, in respect to the application of the design to ornamenting any article of manufacture contained in

Class 1. Articles composed wholly or chiefly of metal or mixed metals.

Class 2. Articles composed wholly or chiefly of wood.

Class 3. Articles composed wholly or chiefly of glass.

Class 4. Articles composed wholly or chiefly of earthenware.

Class 5. Paper Hangings.

Class 6. Carpets (*a*).

Class 8. Shawls, not comprised in Class 7.

Class 11. Woven Fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such

(*a*) Floor-cloths and oil cloths added by s. 5 of 6 & 7 Vict. c. 65.

materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics coming within the description technically called furnitures, and if the repeat of the design be more than twelve inches by eight inches.

2. *For Nine Calendar Months*, in respect of the application of the design to ornamenting any article of manufacture contained in

Class 7. Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced on tissue or textile fabrics.

Class 9. Yarn, thread, or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced.

Class 10. Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, excepting the articles included in Class 11.

3. *For Twelve Calendar Months*, in respect of the application of the design to ornamenting any article of manufacture or substance contained in

Class 12. Woven fabrics, not comprised in any preceding class.

Class 13. Lace, and any article of manufacture or substance not comprised in any preceding class.
(s. 3.)

The Conditions of Copyright are as follow :—

1. Registration of the design before its publication.
2. Specification, at the time of registration, of the number of the class of the article of manufacture or substance, in respect to its application to which the design is registered.
3. Registration, as proprietor of the design, of the name of the person registering.
4. Marking, after publication, on the article or substance to which the design is applied, at one end if the article be a woven fabric for printing, or at the end or edge, if it be of any other kind or substance, the letters R^d., together with such numbers or letters, and in such form, as correspond with the date of registration in the registrar's office. These marks may be put on the article, either on the material itself or on a label attached to it. (s. 4.)

Explanation of the Term “ Proprietor.”—The author of a new and original design is to be considered its proprietor, unless he have executed the work for another person for a good or a valuable consideration ; in which case such person is to be considered the proprietor, and is entitled to registration in place of the author. Every person acquiring for a good or a valuable consideration a new and original design, or the right to its application to the above-mentioned articles or substances, either exclusively of any one else or otherwise, and every person upon whom the property in a design or the right to its application may devolve, shall be considered the proprietor of the design, in the respect in and to the extent which such property may have been acquired, but not otherwise. (s. 5.)

Transfer of Copyright.—Every person purchasing or otherwise acquiring the right to the entire or partial use of a design may enter his title in the register. Any writing purporting to be a transfer of the design, and signed by the proprietor, shall operate as an effectual transfer. On request, and on production of the written transfer, or, if the right be acquired otherwise than by purchase, on production of evidence to the registrar's satisfaction, the registrar is to insert the name of the new proprietor in the register. (s. 6). The same section gives forms in which the transfer and the requests to register may be made.

Registration (a).—Appointment of a Registrar and other Officers.—The lords of the committee of Privy Council for the consideration of all matters of trade and plantations may appoint a registrar of designs, and, if they see fit, a deputy registrar, clerks, officers, and servants, who are to hold their offices during the pleasure of the lords of the committee. Their salaries are to be fixed from time to time by the commissioners of the Treasury. The lords of the committee may, subject to the provisions of this act, make rules for regulating the execution of the duties of the registrar's office, and the registrar is to have an official seal. (s. 14).

Registrar's Duties.—The registrar is not to register a design, in respect of any application of it, unless he be furnished, for each application, with,

1. two copies, drawings, or prints of the design ; accompanied with

(a) The rules published by Mr. Bland, the registrar, are given in the Appendix.

2. the name of every person claiming to be proprietor, or of the style or title of the firm under which such proprietor trades, with his place of abode or of carrying on his business, or other place of address ; and,
3. the number of the class in respect of which the registration is made.

The registrar is to register all such copies, drawings, and prints, from time to time successively as he has received them, and upon every one of them he is to affix a number corresponding to such succession. One copy, drawing, or print he is to retain and file in his office ; the other he is to return to the person who has forwarded it to him. In order to give ready access to the registered copies of designs, the registrar is to class them, and to keep a proper index of each class. (s. 15).

Certificate of Registration.—Upon or attached to every copy, drawing, or print of an original design returned to the person registering, and upon or attached to every one received for the purpose of registration, or of the transfer being certified thereon, or attached thereto, the registrar is to certify under his hand—

1. that the design has been registered :
2. the date of registration :
3. the name of the registered proprietor, or the style or title of the firm under which he may trade, with his place of abode or of carrying on his business, or other place of address :
4. the number of the design, together with such numbers and letters, and in such form as the registrar shall employ, to denote or correspond with the date of registration.

A certificate so made on every original design or its copy, purporting to be signed by the registrar or deputy registrar, and purporting to have the registrar's seal of office affixed to it, is, in the absence of contrary evidence, to be sufficient proof of,

1. the due registration of the design, and the name of the proprietor mentioned in the certificate ;
2. the commencement of the period of registry ;
3. the proprietorship of the person named in the certificate as proprietor ;
4. the originality of the design ; and,
5. the fact, that the provisions of this act, and of any rule under which the certificate appears to be made, have been complied with.

Any writing purporting to be such certificate is, in the absence of contrary evidence, receivable in evidence, without proof of the handwriting of the signature, or of the seal of office, or of the person signing being the registrar or deputy registrar. (s. 16).

Inspection of Registered Designs.—Every person may inspect any design whose copyright has expired, on payment of the appointed fee. But no design whose copyright has not expired shall be open to the inspection of any one except the proprietor of the design, a person with written authority from him, or a person specially authorized by the registrar ; and then only in presence of the registrar or some person holding an appointment under this act, and not so as to take a copy of the design or part of it, nor without payment of the appointed fee. There is, however, this provision, that the registrar may give to any person applying to him, and producing a particular design with its registration mark, or pro-

ducing the registration mark alone, a certificate stating whether there exist a copyright of the design; and if there do, the particular article in respect to which such copyright exists, the term of the copyright, the date of its registration, and the name and address of its registered proprietor. (s. 17).

Fees (a).—The commissioners of the Treasury are from time to time to fix the fees payable for the services performed by the registrar, which fees are to go to defray the expenses and salaries of the registering establishment, and the balance to the consolidated fund. The commissioners are also to regulate how such fees are to be received, kept, and accounted for; they may also remit or dispense with the payment of fees in any cases where they may think it expedient. It is moreover provided, that

the fee for registering a design to be applied to any woven fabric in classes 7, 9, or 10, is not to exceed one shilling :

the fee for registering a design to be applied to a paper hanging is not to exceed ten shillings :

the fee to the registrar for a certificate relative to the existence or expiration of a copyright in a design printed on woven fabric, yarn, thread, or warp, or printed, embossed, or worked on any paper hanging, to a person exhibiting a piece-end of a registered pattern with the registration mark upon it, is not to exceed two shillings and sixpence. (s. 18).

Penalty for Extortion.—If the registrar or any person

(a) The list of the fees is given in the Appendix.

employed under him demand or receive any gratuity or reward, whether in money or otherwise, except his authorized salary or remuneration, he shall forfeit for every offence 50*l.* to any party suing for it by action of debt in the Court of Exchequer at Westminster. He is also, for such offence, liable to be suspended or dismissed, and to be rendered incapable of holding any situation in the registration office, as the commissioners of the Treasury see fit. (s. 19).

Cancellation or Amendment of Registration.—In a suit in equity relative to a design, instituted by its proprietor, or by a person lawfully entitled to it, if it appear to the satisfaction of the judge that the design has been registered in the name of a person not the proprietor, or not lawfully entitled, the judge may, in his discretion, by decree or order, direct the registration to be cancelled, in which case it becomes void; or the name of the proprietor or person lawfully entitled to be substituted in the register for that of the wrongful proprietor or claimant, and this to be done in the manner directed in case of the transfer of a design. The judge may make what order he thinks fit respecting the costs of cancellation or substitution, and the proceedings to effect them. The registrar, on service of the official copy of the decree or order, and on payment of the proper fee, is to comply with the tenor of the decree or order, and to make the cancellation or substitution as the case may be. (s. 10).

Penalty for wrongfully using Marks.—It is unlawful to apply to a design which has not been registered, or

to an article to which a design when registered has not been applied within the United Kingdom, or to an article after the expiration of copyright, the marks required by this act, or any marks corresponding with them. If any person do unlawfully apply any such marks, or publish, sell, or expose for sale, with a guilty knowledge, an article or substance having unlawful marks, he shall forfeit, for every offence, a sum not exceeding five pounds, to be recovered by any person proceeding for it by any of the ways directed with respect to penalties for piracy. (s. 11).

Piracy of Designs.—During the existence of a right to the entire or partial use of a design no person shall, without the registered proprietor's written license or consent, do any of the following acts, with regard to any articles or substances in respect of which the copyright of the design is in force; viz.—

No person shall apply the design, or a fraudulent imitation of it, for the purpose of sale, to ornamenting any article of manufacture, or any substance, artificial or natural, or partly artificial and partly natural.

No person shall publish, sell, or expose for sale, any article or substance to which such design or fraudulent imitation is applied, after having either verbally, in writing, or otherwise received from any source other than the proprietor knowledge that consent to such application has not been given; or after having been served with, or having had left at his premises, a written notice to the same effect, signed by the proprietor or his agent. (s. 7)

Penalties for Piracy.—A person committing any of the above acts of piracy is to forfeit, for every offence, a sum not less than five and not more than thirty pounds to the proprietor of the design in respect of whose right the offence is committed. (s. 8).

The proprietor may recover the penalty,

in *England*, by an action of debt, or on the case, against the offender ; or summarily before two magistrates having jurisdiction where the offender resides. The section (s. 8) directs, in the summary proceeding, the mode of process and of recovering the penalties and costs by distress : it also gives forms of information and conviction. The aggregate amount of penalties, however, for offences in respect of one design, committed by one person up to the time of proceedings being instituted, shall not exceed one hundred pounds. (s. 8). By the 13th section, in such summary proceedings, the magistrates may award payment of costs to the prevailing party, and may grant a warrant for enforcing payment against the summoning party, if unsuccessful, in the same manner as any penalty with costs is recoverable under this act :

in *Scotland*, by action before the Court of Session in ordinary form ; or by summary action before the sheriff of the county where the offence is committed, or the offender resides. The section directs, in the summary proceeding, the mode of process and the recovery of the penalties by poinding. If the sheriff dismiss the action, and assoilzie the defender, he may find the complainer liable in expenses ; and his judgment is final :

in *Ireland*, by action in a superior court of law at Dublin: or by civil bill in the Civil Bill Court of the county or place where the offence is committed. (s. 8).

Notwithstanding the remedies above given, the proprietor injured may, *if he elect to do so*, bring an action for the recovery of the damages which he has sustained from the piracy of his design. (s. 9).

Limitation of Actions.—No action or other proceeding for an offence or injury under this act shall be brought after the expiration of twelve calendar months from the commission of the offence. (s. 12).

Costs.—In every action or other proceeding for an offence or injury under this act, the prevailing party shall receive his full costs. (s. 12).

And, secondly, as to ARTICLES OF UTILITY.

By the 6 & 7 Vict. c. 65, a copyright for *three years* is given to the author or proprietor of any new and original design, for the *shape or configuration* either of the whole or of any part of any *article* of manufacture, *having reference to some purpose of utility*, whether such article be made in metal or any other substance.

To obtain that copyright or protection, it is necessary

1. That the design should be registered.

2. That after registration, every article of manufacture published by the proprietor, and made according to such design, or for which such design is used, should have upon it the word REGISTERED, *with the date* of registration (a).

(a) The directions for making the registration are given in the Appendix.

CHAP. VII.

OF THE PERSONS AND CORPORATIONS INTERESTED IN
THE PUBLICATION OF BOOKS.

The Author and his Assignee (a).—By the 5 & 6 Vict. c. 45, s. 25, all copyright is made personal property; the assignment of it, or license to use it, must be in writing, and may be registered at Stationers' Hall. The assignment of the copyright becomes perfect by an entry "of such assignment and the name and place of abode of the assignee."

The proprietor of a registered copyright may, by an entry in the book of registry, assign his interest without being liable to a *stamp duty* (b).

The Title may lapse (c).—If the proprietor of a copyright in a book refuse, after the death of the author, to republish it, or to allow its republication, the Judicial committee of the Privy Council may license the complainant to publish the book in such manner, and according to such conditions as they may think fit to impose.

The Company of Stationers (d).—The registration at Stationers' Hall is now regulated by the 11th section of

(a) See p. 423 of *The Practical Treatise*, 2nd Ed.

(b) Sec. 13 of 5 & 6 Vict. c. 45. A great concession by the Government, by which the copyright in small books, as pieces of music, is secured without expense. Many musical publishers had several hundred works unprotected before that time.

(c) *Id.* sec. 5.

(d) See p. 448 of *The Practical Treatise*, 2nd Ed.

the 5 & 6 Vict. c. 45, as to books, and the assignments of them ; and as to dramatic and musical pieces, whether in manuscript or otherwise, and the licenses affecting such copyright.

The registry is made of

1. the title of the book ;
2. the time of its first publication ;
3. the name and place of abode of its publisher ;
4. the name and place of abode of the proprietor of the copyright of the book, or of any portion of such copyright.

The Universities (a).—A copy of every book (if demanded in writing within twelve months) is to be presented to the Bodleian library at *Oxford*, the public library at *Cambridge*, the Library of Advocates at *Edinburgh*, and to the library of Trinity College, *Dublin*. It must be a copy upon the paper of which the largest number of copies of the book or edition is printed for sale (*b*).

The rights of the universities of Oxford and Cambridge, of the four universities of Scotland, of Trinity College, Dublin, and of the colleges of Eton, Westminster, and Winchester are preserved (*c*).

Booksellers (d)—They must be careful to avoid the importation of unlawfully printed books, under the penalties of the 15th section of the 5 & 6 Vict. c. 45.

(*a*) See p. 453 of *The Practical Treatise*, 2nd Ed.

(*b*) 5 & 6 Vict. c. 45, s. 8 and 9.

(*c*) *Id.* sec. 27.

(*d*) See p. 469 of *The Practical Treatise*, 2nd Ed.

CHAP. VIII.

OF THE REMEDIES FOR AN INFRINGEMENT OF A COPYRIGHT (*a*).

No proprietor of a copyright (except dramatic pieces), commencing after the 10th of June, 1833, can sue or proceed for any infringement before making an entry of it at Stationers' Hall (*b*); but the omission does not affect the copyright in the book, but only the right to sue or proceed for the infringement.

Piracy (c).—A special action on the case may be maintained against any person, who shall

1. print or cause to be printed, either for sale or exportation, any book in which there shall be a subsisting copyright, without the consent in writing of the proprietor ;
2. or import for sale or hire any such unlawfully printed book from parts beyond the sea ;
3. or, with a guilty knowledge, sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or have in possession for sale or hire, any such book so unlawfully printed or imported without the consent of the proprietor.

Summary proceedings for Importation, &c. of pirated Books.—If any person import or cause to be imported or brought for sale or hire, any pirated book into

(*a*) See p. 474 of *The Practical Treatise*, 2d Ed.

(*b*) 5 & 6 Vict. c. 45, s. 24.

(*c*) *Id.* s. 15. See *Campbell v. Scott*, 11 Sim. 31.

the British dominions, or shall knowingly, sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then the book shall be forfeited and may be seized and destroyed by any officer of the custom or excise, and the offender may be convicted in the penalty of ten pounds and double the value of every copy of the book (*a*).

A party injured is entitled to the pirated copies or to damages for their detention (*b*).

By a Custom-house Act (*c*), the importation of pirated books is prohibited in every case, whether for sale *or otherwise*.

Action on the case for damages (d).—All actions, suits, bills, indictments, or informations for any offence committed against the Copyright Amendment Act, must be commenced within twelve months after the commission of the offence (*e*).

Plea.—The defendant may plead *the general issue*, and give the special matter in evidence (*f*).

List of objections.—On pleading to an action, the defendant must deliver a notice in writing of any objections on which he means to rely on the trial of the action (*g*).

(*a*) 5 & 6 Vict. c. 45, s. 17.

(*b*) *Id.* s. 23.

(*c*) 5 & 6 Vict. c. 47, s. 23, and see sect. 25, as to the notice by the Author to the Commissioners of Customs.

(*d*) See p. 482 of *The Practical Treatise*, 2nd Ed.

(*e*) 5 & 6 Vict. c. 45, s. 26.

(*f*) *Id.*

(*g*) See *id.* sec. 16, for the particulars required in that notice.

*The proceedings in Equity.—Injunction (a).—*Before a party can move for an injunction, he must have registered the work at Stationers' Hall (*b*).

An injunction to restrain the piracy of a publication to which the plaintiffs would have been otherwise entitled, was refused on the ground of delay in making the application (*c*), and a constructive knowledge, was imputed to the plaintiffs by the Court, of an infringement of their copyright by the defendants.

The defendant, in a publication on modern English poetry with biographical sketches and selections, had introduced six short poems, and parts of longer poems of the plaintiff, which he alleged had been introduced only for illustration: a Court of Equity restrained the publication as being an infringement of the plaintiff's copyright (*d*).

In a suit to restrain the piracy of the plaintiff's work, the injunction had been continued until the title was decided by an action which was afterwards discontinued at the instance of the defendant, who was willing to pay the costs of the bill as between party and party, which offer was refused by the plaintiff. The Court held, that the plaintiff being entitled to an answer to settle the question of title, his claim to costs as between solicitor and client on agreeing to waive the answer and the account, was not unreasonable; and therefore he, on the defendant's refusal, was entitled to the full costs of the suit, including those of the answer (*e*).

(*a*) See p. 486 of *The Practical Treatise*, 2nd Ed.

(*b*) 5 & 6 Vict. c. 45, s. 24.

(*c*) *Lewis v. Chapman*, 3 Beavan's Rep. 133.

(*d*) *Campbell v. Scott*, 11 Sim. 31.

(*e*) *Kelly v. Hooper*, 1 Y. & C. 197.

Proceedings before the Judicial Committee (a).—If the proprietor of a copyright in a work shall refuse after the death of the author to republish it, or to allow the republication of it, the Judicial Committee of the Privy Council may license the petitioner to publish the work on such conditions as they may think fit to impose.

(a) 5 & 6 Vict. c. 45, s. 5.

APPENDIX.

5 & 6 Vict. c. 45.

An Act to amend the Law of Copyrights.

[1st July, 1842.]

Whereas it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world: 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 from the passing of this act an act passed in the eighth year of the reign of her Majesty queen Anne, intituled "An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned;" and also an act passed in the forty-first year of the reign of his Majesty king George the third, intituled "An Act for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns, for the time therein mentioned;" and also an act passed in the fifty-fourth year of the reign of his Majesty king George the third, intituled, "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed books to the Authors of such Books, or their Assigns," be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceedings at law or in

Repeal of
former acts;
8 Anne, c. 19.

41 G. 3, c.
107.

54 G. 3, c.
156.

equity pending at the time of passing this act, or for enforcing any cause of action or suit, or any right or contract, then subsisting.

Interpretation
of act.

II. And be it enacted, that in the construction of this act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published; that the words "dramatic piece" shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; that the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied; that the words "personal representative" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; that the word "assigns" shall be construed to mean and include every person to whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise; that the words "British dominions" shall be construed to mean and include all parts of the united kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired; and that whenever in this act, in describing any person, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there shall be something in the subject or context repugnant to such construction.

Endurance of
term of copy-
right in any
book hereafter
to be published
in the lifetime
of the author;

III. And be it enacted, that the copyright in every book which shall after the passing of this act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the

if published
after the
author's death.

term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

IV. And whereas it is just to extend the benefits of this act to authors of books published before the passing thereof, and in which copyright still subsists; be it enacted, that the copyright which at the time of passing this act shall subsist in any book theretofore published (except as hereinafter mentioned) shall be extended and endure for the full term provided by this act in cases of books thereafter published, and shall be the property of the person who at the time of passing this act shall be the proprietor of such copyright; provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this act, but shall endure for the term which shall subsist therein at the time of passing of this act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to this act annexed to be entered in the book of registry herein-after directed to be kept, in which case such copyright shall endure for the full term by this act provided in cases of books to be published after the passing of this act, and shall be the property of such person or persons as in such minute shall be expressed.

In cases of subsisting copyright, the term to be extended, except when it shall belong to an assignee for other consideration than natural love and affection; in which case it shall cease at the expiration of the present term, unless its extension be agreed to between the proprietor and the author.

V. And whereas it is expedient to provide against the suppression of books of importance to the public; be it enacted, that it shall be lawful for the judicial committee of her Majesty's privy council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a license to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and that it shall be lawful for such complainant to publish such book according to such license.

Judicial committee of the privy council may license the republication of books which the proprietor refuses to republish after death of the author.

VI. And be it enacted, that a printed copy of the whole of every

Copies of books

published after the passing of this act, and of all subsequent editions, to be delivered within certain times at the British Museum.

book which shall be published after the passing of this act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letter press, or in the maps, prints, or other engravings belonging thereto, and whether the first edition of such book shall have been published before or after the passing of this act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which any such book shall first be sold, published, or offered for sale within the bills of mortality, or within three calendar months if the same shall first be sold, published, or offered for sale in any other part of the united kingdom, or within twelve calendar months after the same shall first be sold, published, or offered for sale in any other part of the British dominions, be delivered, on behalf of the publisher thereof, at the British Museum.

Mode of delivering at the British Museum.

VII. And be it enacted, that every copy of any book which under the provisions of this act ought to be delivered as aforesaid shall be delivered at the British Museum between the hours of ten in the forenoon and four in the afternoon on any day except Sunday, Ash Wednesday, Good Friday, and Christmas day, to one of the officers of the said Museum, or to some person authorized by the trustees of the said Museum to receive the same, and such officer or other person receiving such copy is hereby required to give a receipt in writing for the same, and such delivery shall to all intents and purposes be deemed to be good and sufficient delivery under the provisions of this act.

A copy of every book to be delivered within a month after demand to the officer of the Stationers' Company for the following libraries: the Bodleian at Oxford, the public library

VIII. And be it enacted, that a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers who shall from time to time be appointed

by the said company for the purposes of this act, or under the hand of any other person thereto authorized by the persons or bodies politic and corporate, proprietors and managers of the libraries following, (*videlicet*,) the Bodleian library at Oxford, the public library at Cambridge, the library of the Faculty of Advocates at Edinburgh, the library of the college of the holy and undivided Trinity of queen Elizabeth near Dublin, be delivered, upon the paper of which the largest number of copies of such book or edition shall be printed for sale, in the like condition as the copies prepared for sale by the publisher thereof respectively, within one month after demand made thereof in writing as aforesaid, to the said officer of the said company of stationers for the time being, which copies the said officer shall and he is hereby required to receive at the hall of the said company, for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said officer is hereby required to give a receipt in writing for the same, and within one month after any such book shall be so delivered to him as aforesaid to deliver the same for the use of such library.

at Cambridge,
the Faculty of
Advocates at
Edinburgh,
and that of
Trinity college
Dublin.

IX. Provided also, and be it enacted, that if any publisher shall be desirous of delivering the copy of such book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expense, to such librarian or other person authorized to receive the same (who is hereby required in such case to receive and give a receipt in writing for the same,) and such delivery shall to all intents and purposes of this act be held as equivalent to a delivery to the said officer of the Stationers' Company.

Publishers may
deliver the
copies to the
libraries,
instead of at
the Stationers'
Company.

X. And be it enacted, that if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same, pursuant to this act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding five pounds to be recovered by the librarian or other officer (properly authorized) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the united kingdom, in which

Penalty for
default in de-
livering copies
for the use of
the libraries.

action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

Book of registry to be kept at Stationers' Hall.

XI. And be it enacted, that a book of registry, wherein may be registered, as herein-after enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licenses affecting such copyright, shall be kept at the hall of the Stationers' Company, by the officer appointed by the said company for the purposes of this act, and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

Making a false entry in the book of registry, a misdemeanor.

XII. And be it enacted, that if any person shall wilfully make or cause to be made any false entry in the registry book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, he shall be guilty of an indictable misdemeanor, and shall be punished accordingly.

Entries of copyright may be made in the book of registry.

XIII. And be it enacted, that after the passing of this Act it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the schedule to this act annexed, upon pay-

ment of the sum of five shillings to the officer of the said company; and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

XIV. And be it enacted, That if any person shall deem himself aggrieved by any entry made under colour of this act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in Term time, or to apply by summons to any judge of either of such courts in vacation, for an order that such entry may be expunged or varied; and that upon any such application by motion or summons to either of the said courts, or to a judge as aforesaid, such court or judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such court or judge shall seem just; and the officer appointed by the Stationers' Company for the purposes of this act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or judge in vacation, who may order such entry to be varied or expunged.

XV. And be it enacted, That if any person shall, in any part of the British dominions, after the passing of this Act, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book, so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: provided always, that in Scotland such

Remedy for the piracy of books by action on the case.

offender shall be liable to an action in the court of session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there.

In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.

XVI. And be it enacted, that after the passing of this act, in any action brought within the British dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

No person, except the proprietor, &c. shall import into the British dominions for sale or hire any

XVII. And be it enacted, that after the passing of this act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorized by him, to import into any part of the united kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or

written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions; and if any person, not being such proprietor or person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book, into any part of the British dominions, contrary to the true intent and meaning of this act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited, and shall be seized by any officer of customs or excise, and the same shall be destroyed by such officer; and every person so offending, being duly convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British dominions, or shall knowingly sell, publish, or expose to sale or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this act, five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book.

book first composed, &c. within the United Kingdom, and reprinted elsewhere, under penalty of forfeiture thereof, and also of 10*l*. and double the value.

Books may be seized by officers of customs or excise.

XVIII. And be it enacted, that when any publisher or other person shall, before or at the time of the passing of this act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or

As to the copyright in encyclopædias, periodicals and works published in a series, reviews, or magazines.

Proviso for authors who have reserved the right of publishing their articles in a separate form.

other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this act; provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author thereof, or his assigns: provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid.

Proprietors of encyclopædias, periodicals and works published in series, may enter at once at Stationers' Hall, and thereon have the benefit of the registration of the whole.

XIX. And be it enacted, that the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers' Hall under this act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

The provisions of 3 & 4 W. 4, c. 15, extended to musical compositions, and the term of copyright, as provided by

XX. And whereas an act was passed in the third year of the reign of his late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that act to the full time by this act provided for the continuance of copyright: and

whereas it is expedient to extend to musical compositions the benefits of that act, and also of this act; be it therefore enacted, that the provisions of the said act of his late Majesty, and of this act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this act provided for the duration of copyright in books; and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this act, to the first publication of any book: provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed the same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

this act, applied to the liberty of representing dramatic pieces and musical compositions.

XXI. And be it enacted, that the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said act of the third and fourth years of the reign of his late Majesty king William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this act.

Proprietors of right of dramatic representations shall have all the remedies given by 3 & 4 W. 4, c. 15.

XXII. And be it enacted, that no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

Assignment of copyright of a dramatic piece not to convey the right of representation.

XXIII. And be it enacted, that all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully

Books pirated shall become the property of the proprietor

of the copyright
and may be
recovered by
action.

printed or imported without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover.

No proprietor of
copyright com-
mencing after
this act shall
sue or proceed
for any infringe-
ment before
making entry in
the book of
registry.

XXIV. And be it enacted, that no proprietor of copyright in any book which shall be first published after the passing of this act shall maintain any action or suit, at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry of the Stationers' Company, of such book, pursuant to this act: provided always, that the omissions to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the act passed in the third year of the reign of his late Majesty king William the Fourth to amend the laws relating to dramatic literary property, or of this act, although no entry shall be made in the book of registry aforesaid.

Proviso for
dramatic
pieces.

Copyright shall
be personal
property.

XXV. And be it enacted, that all copyright shall be deemed personal property, and shall be transmissible by bequest, or, in case of intestacy, shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal and moveable estate.

General issue.

XXVI. And be it enacted, that if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done any thing in pursuance of this act the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath: and that all actions, suits, bills, indictments, or informations for any offence

Limitation
of actions;

that shall be committed against this act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect; provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which under the authority of this act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries herein before mentioned.

not to extend to actions, &c. in respect of the delivery of books.

XXVII. Provided always, and be it enacted, that nothing in this act contained shall affect or alter the rights of the two universities of Oxford and Cambridge, the colleges or houses of learning within the same, the four universities in Scotland, the college of the holy and undivided Trinity of queen Elizabeth near Dublin, and the several colleges of Eton, Westminster, and Winchester, in any copyrights heretofore and now vested or hereafter to be vested in such universities and colleges respectively, anything to the contrary herein contained notwithstanding.

Saving the rights of the universities, and the colleges of Eton, Westminster, and Winchester.

XXVIII. Provided also, and be it enacted, that nothing in this act contained shall affect, alter, or vary any right subsisting at the time of passing of this act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this act, and all remedies relating thereto, shall remain in full force, any thing herein contained to the contrary notwithstanding.

Saving all subsisting rights, contracts, and engagements.

XXIX. And be it enacted, that this act shall extend to the united kingdom of Great Britain and Ireland, and to every part of the British dominions.

Extent of the act.

XXX. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

Act may be amended this session.

SCHEDULE to which the preceding act refers.

No. 1.

FORM of MINUTE of CONSENT to be entered at Stationers' Hall.

We, the undersigned, *A. B.* of _____ the author of a certain book, intituled *Y. Z.* [*or the personal representative of the author,*

No. 3.

ORIGINAL ENTRY of PROPRIETORSHIP of COPYRIGHT of a BOOK.

Time of making the entry.	Title of Book.	Name of the publisher, and place of publication.	Name and place of abode of the proprietor of the copyright.	Date of first publication.
	<i>Y. Z.</i>	<i>A. B.</i>	<i>C. D.</i>	

No. 4.

FORM of CONCURRENCE of the PARTY assigning in any Book previously registered.

I, *A. B.* of being the Assigner of the Copyright of the Book hereunder described, do hereby require you to make Entry of the Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
<i>Y. Z.</i>	<i>A. B.</i>	<i>C. D.</i>

Dated this Day of 18 .
(Signed) *A. B.*

No. 5.

FORM of ENTRY of ASSIGNMENT of COPYRIGHT in any Book previously registered.

Date of entry.	Title of book.	Assigner of the Copyright.	Assignee of Copyright.
	[Set out the title of the book, and refer to the page of the registry book in which the original entry of the copyright thereof is made.]	<i>A. B.</i>	<i>C. D.</i>

5 & 6 Vict. c. 100.

An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.

[10th August, 1842.]

Whereas by the several acts mentioned in the schedule (A.) to this act annexed, there was granted, in respect of the woven fabrics therein mentioned, the sole right to use any new and original pattern for printing the same during the period of three calendar months: and whereas by the act mentioned in the schedule (B.) to this act annexed, there was granted, in respect of all articles, except lace, and except the articles within the meaning of the acts herein-before referred to, the sole right of using any new and original design, for certain purposes, during the respective periods therein mentioned; but forasmuch as the protection afforded by the said acts in respect of the application of designs to certain articles of manufacture is insufficient, it is expedient to extend the same, but upon the conditions herein-after expressed; now, for that purpose, and for the purpose of consolidating the provisions of the said acts, 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 this act shall come into operation on the first day of September one thousand eight hundred and forty-two, and that thereupon all the said acts mentioned in the said schedules (A.) and (B.) to this act annexed shall be and they are hereby repealed.

Commencement of act, and repeal of former acts.

Proviso as to existing copyrights.

II. Provided always, and be it enacted, that notwithstanding such repeal of the said acts, every copyright in force under the same shall continue in force till the expiration of such copyright; and with regard to all offences or injuries committed against any such copyright before this act shall come into operation, every penalty imposed and every remedy given by the said acts, in relation to any such offence or injury, shall be applicable as if such acts had not been repealed; but with regard to such offences or injuries committed against any such copyright after this act shall come into operation, every penalty imposed and every remedy given by this act in relation to any such offence or injury

shall be applicable as if such copyright had been conferred by this act.

III. And with regard to any new and original design (except ^{Grant of} for sculpture and other things within the provisions of the several ^{copyright.} acts mentioned in the schedule (C.) to this act annexed), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined; be it enacted, that the proprietor of every such design, not previously published either within the united kingdom of Great Britain and Ireland, or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such substances as aforesaid, provided the same be done within the united kingdom of Great Britain and Ireland, for the respective terms herein-after mentioned, such respective terms to be computed from the time of such design being registered according to this act; (that is to say,)

In respect of the application of any such design to ornamenting any article of manufacture contained in the first, second, third, fourth, fifth, sixth, eighth, or eleventh of the classes following, for the term of three years :

In respect of the application of any such design to ornamenting any article of manufacture contained in the seventh, ninth, or tenth of the classes following, for the term of nine calendar months :

In respect of the application of any such design to ornamenting any article of manufacture or substance contained in the twelfth or thirteenth of the classes following, for the term of twelve calendar months :

Class 1.—Articles of manufacture composed wholly or chiefly of any metal or mixed metals :

Class 2.—Articles of manufacture composed wholly or chiefly of wood :

Class 3.—Articles of manufacture composed wholly or chiefly of glass :

Class 4.—Articles of manufacture composed wholly or chiefly of earthenware :

Class 5.—Paper hangings :

Class 6.—Carpets :

Class 7.—Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics :

Class 8.—Shawls not comprised in Class 7.

Class 9.—Yarn, thread, or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced :

Class 10.—Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics ; excepting the articles included in Class 11 :

Class 11.—Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the design whereof shall be more than twelve inches by eight inches :

Class 12.—Woven fabrics, not comprised in any preceding Class :

Class 13.—Lace, and any article of manufacture or substance not comprised in any preceding class.

Condition of
copyright.

Registration.

IV. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act, with regard to any design in respect of the application thereof to ornamenting any article of manufacture, or any such substance, unless such design have before publication thereof been registered according to this act, and unless at the time of such registration such design have been registered in respect of the application thereof to some or one of the articles of manufacture or substances comprised in the above-mentioned classes, by specifying the number of the class in respect of which

such registration is made, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every such article of manufacture, or such substance to which the same shall be so applied, published by him, hath thereon, if the article of manufacture be a woven fabric for printing, at one end thereof, or, if of any other kind or such substance as aforesaid, at the end or edge thereof, or other convenient place thereon, the letters “R^d,” Marks denoting a registered design. together with such number or letter, or number and letter, and in such form as shall correspond with the date of the registration of such design according to the registry of designs in that behalf; and such marks may be put on any such article of manufacture or such substance, either by making the same in or on the material itself of which such article or such substance shall consist, or by attaching thereto a label containing such marks.

V. And be it enacted, that the author of any such new and original design shall be considered the proprietor thereof, unless The term “proprietor” explained. he have executed the work on behalf of another person for a good or a valuable consideration, in which case such person shall be considered the proprietor, and shall be entitled to be registered in the place of the author; and every person acquiring for a good or a valuable consideration a new and original design, or the right to apply the same to ornamenting any one or more articles of manufacture, or any one or more such substances as aforesaid, either exclusively of any other person or otherwise, and also every person upon whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

VI. And be it enacted, that every person purchasing or otherwise acquiring the right to the entire or partial use of any such design may enter his title in the register hereby provided, and any writing purporting to be a transfer of such design and signed by the proprietor thereof shall operate as an effectual transfer; and the registrar shall, on request, and the production of such writing, or in the case of acquiring such right by any other mode than that of purchase on the production of any evidence to the satisfaction of the registrar, insert the name of the new proprietor in the register; and the following may be the form of such transfer, and of such request to the registrar:

Transfer of copyright and register thereof.

any article of manufacture, or any substance, artificial or natural, or partly artificial and partly natural :

No person shall publish, sell, or expose for sale any article of manufacture, or any substance, to which such design, or any fraudulent imitation thereof, shall have been so applied, after having received, either verbally or in writing, or otherwise from any source other than the proprietor of such design, knowledge that his consent has not been given to such application, or after having been served with or had left at his premises a written notice signed by such proprietor or his agent to the same effect.

VIII. And be it enacted, that if any person commit any such act he shall for every offence forfeit a sum not less than five pounds and not exceeding thirty pounds to the proprietor of the design in respect of whose right such offence has been committed : and such proprietor may recover such penalty as follows : Recovery of penalties for piracy.

In England, either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides; and if such proprietor proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city, or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture, or in the design to which such summary proceeding relates, may issue a summons requiring such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending, either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending, or upon the oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds, as aforesaid, for each offence, as to such justices doth seem fit; but

the aggregate amount of penalties for offences in respect of any one design committed by any one person, up to the time at which any of the proceedings herein mentioned shall be instituted, shall not exceed the sum of one hundred pounds; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender, wherever the same happen to be in England; and the justices before whom the party has been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city, or borough in England, where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels, on demand; and every information and conviction which shall be respectively laid or made in such summary proceeding before two justices under this act may be drawn or made out in the following forms respectively, or to the effect thereof, *mutatis mutandis*, as the case may require :

Form of Information.

' **B**E it remembered, that on the _____ at _____
 ' in the county of _____ *A. B.* of _____ in
 ' the county of _____ [*or C. D.* of _____ in the
 county of _____ at the instance and on the behalf of
 ' *A. B.* of _____ in the county of _____] cometh
 ' before us _____ and _____ two of her
 ' Majesty's justices of the peace in and for the county of _____
 _____, and giveth us to understand that the said *A. B.*
 ' before and at the time when the offence herein-after men-
 ' tioned was committed, was the proprietor of a new and ori-
 ' ginal design for [*here describe the design*], and that within
 ' twelve calendar months last past, to wit, on the _____ at
 ' _____ in the county of _____ *E. F.* of _____
 ' in the county of _____ did [*here describe the offence*],
 ' contrary to the form of the act passed in the

‘ year of the reign of her present Majesty, intituled “ An Act
 ‘ to consolidate and amend the laws relating to the copyright
 ‘ of designs for ornamenting articles of manufacture.’

Form of Conviction.

‘ **B**E it remembered, that on the day of
 ‘ in the year of our Lord at
 ‘ in the county of *E. F.* of in the
 ‘ county aforesaid is convicted before us and
 ‘ two of her Majesty’s justices of the peace
 ‘ for the said county, for that he the said *E. F.* on the
 ‘ day of in the year at
 ‘ in the county of did [*here describe the offence*]
 ‘ contrary to the form of the statute in that case made and
 ‘ provided; and we the said justices do adjudge that the said
 ‘ *E. F.* for his offence aforesaid hath forfeited the sum of
 ‘ to the said *A. B.*’

In Scotland, by action before the court of session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocacy, suspension, reduction, or otherwise:

In Ireland, either by action in a superior court of law at Dublin or by civil bill in the civil bill court of the county or place where the offence was committed.

Proviso as to
action for da-
mages.

IX. Provided always, and be it enacted, that notwithstanding the remedies hereby given for the recovery of any such penalty as aforesaid, it shall be lawful for the proprietor in respect of whose right such penalty shall have been incurred (if he shall elect to do so) to bring such action as he may be entitled to for the recovery of any damages which he shall have sustained, either by the application of any such design or of a fraudulent imitation thereof, for the purpose of sale, to any articles of manufacture or substances, or by the publication, sale, or exposure to sale, as aforesaid, by any person, of any article or substance to which such design or any fraudulent imitation thereof shall have been so applied, such person knowing that the proprietor of such design had not given his consent to such application.

Registration
may in some
cases be can-
celled or
amended.

X. And be it enacted, that in any suit in equity which may be instituted by the proprietor of any design or the person lawfully entitled thereto, relative to such design, if it shall appear to the satisfaction of the judge having cognizance of such suit that the design has been registered in the name of a person not being the proprietor or lawfully entitled thereto, it shall be competent for such judge, in his discretion, by a decree or order in such suit to direct either that such registration be cancelled (in which case the same shall thenceforth be wholly void), or that the name of the proprietor of such design, or other person lawfully entitled thereto, be substituted in the register for the name of such wrongful proprietor or claimant, in like manner as in herein-before directed in case of the transfer of a design, and to make such order respecting the costs of such cancellation or substitution, and of all proceedings to procure and effect the same, as he shall think fit; and the registrar is hereby authorized and required, upon being served with an official copy of such decree or order, and upon payment of the proper fee, to comply with the tenor of such decree or order, and either cancel such registration or substitute such new name, as the case may be.

Penalty for
wrongfully
using marks
denoting a re-
gistered design.

XI. And be it enacted, that unless a design applied to ornamenting any article of manufacture or any such substance as aforesaid be so registered as aforesaid, and unless such design so registered shall have been applied to the ornamenting such article or substance within the United Kingdom of Great Britain and Ireland, and also after the copyright of such design in relation to such article or substance shall have expired, it shall be unlawful

to put on any such article or such substance, in the manner herein-before required with respect to articles or substances whereto shall be applied a registered design, the marks herein-before required to be so applied, or any marks corresponding therewith or similar thereto; and if any person shall so unlawfully apply any such marks, or shall publish, sell, or expose for sale any article of manufacture, or any substance with any such marks so unlawfully applied, knowing that any such marks have been unlawfully applied, he shall forfeit for every such offence a sum not exceeding five pounds, which may be recovered by any person proceeding for the same by any of the ways herein-before directed with respect to penalties for pirating any such design.

XII. And be it enacted, that no action or other proceeding for any offence or injury under this act shall be brought after the expiration of twelve calendar months from the commission of the offence; and in every such action or other proceeding the party who shall prevail shall recover his full costs of suit or of such other proceeding. Limitation of actions.

XIII. And be it enacted, that in the case of any summary proceeding before any two justices in England such justices are hereby authorized to award payment of costs to the party prevailing, and to grant a warrant for enforcing payment thereof against the summoning party, if unsuccessful, in the like manner as is herein-before provided for recovering any penalty with costs against any offender under this act. Justices may order payment of costs in cases of summary proceeding.

XIV. And for the purpose of registering designs for articles of manufacture, in order to obtain the protection of this act, be it enacted, that the lords of the committee of Privy Council for the consideration of all matters of trade and plantations may appoint a person to be a registrar of designs for ornamenting articles of manufacture, and, if the lords of the said committee see fit, a deputy registrar, clerks, and other necessary officers and servants; and such registrar, deputy registrar, clerks, officers, and servants, shall hold their offices during the pleasure of the lords of the said committee; and the commissioners of the treasury may from time to time fix the salary or remuneration of such registrar, deputy registrar, clerks, officers, and servants; and, subject to the provisions of this act, the lords of the said committee may make rules for regulating the execution of the duties of the office of the said registrar; and such registrar shall have a seal of office. Registrar, &c. of designs to be appointed.

Registrar's
duties.

XV. And be it enacted, that the said registrar shall not register any design in respect of any application thereof to ornamenting any articles of manufacture or substances, unless he be furnished, in respect of each such application, with two copies, drawings, or prints of such design, accompanied with the name of every person who shall claim to be the proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and the number of the class in respect of which such registration is made ; and the registrar shall register all such copies, drawings, or prints, from time to time successively, as they are received by him for that purpose ; and on every such copy, drawing, or print he shall affix a number corresponding to such succession ; and he shall retain one copy, drawing, or print, which he shall file in his office, and the other he shall return to the person by whom the same has been forwarded to him ; and in order to give ready access to the copies of designs so registered, he shall class such copies of designs, and keep a proper index of each class.

Certificate of
registration of
design.

XVI. And be it enacted, that upon every copy, drawing, or print of an original design so returned to the person registering as aforesaid, or attached thereto, and upon every copy, drawing, or print thereof received for the purpose of such registration, or of the transfer of such design being certified thereon or attached thereto, the registrar shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and also the number of such design, together with such number or letter, or number and letter, and in such form as shall be employed by him to denote or correspond with the date of such registration ; and such certificate made on every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall in the absence of evidence to the contrary, be sufficient proof, as follows,

Of the design, and of the name of the proprietor therein mentioned, having been duly registered ; and

Of the commencement of the period of registry ; and

Of the person named therein as proprietor being the proprietor ;
and

Of the originality of the design ; and

Of the provisions of this act, and of any rule under which the
certificate appears to be made, having been complied with :

And any such writing purporting to be such certificate shall, in the
absence of evidence to the contrary, be received as evidence, with-
out proof of the handwriting of the signature thereto, or of the
seal of office affixed thereto, or of the person signing the same
being the registrar or deputy registrar.

XVII. And be it enacted, that every person shall be at liberty to inspect any design whereof the copyright shall have expired, paying only such fee as shall be appointed by virtue of this act in that behalf ; but with regard to designs whereof the copyright shall not have expired, no such design shall be open to inspection, except by a proprietor of such design or by any person authorized by him in writing, or by any person specially authorized by the registrar, and then only in the presence of such registrar or in the presence of some person holding an appointment under this act, and not so as to take a copy of any such design or of any part thereof, nor without paying for every such inspection such fee as aforesaid : provided always, that it shall be lawful for the said registrar to give to any person applying to him, and producing a particular design, together with the registration mark thereof, or producing such registration mark only, a certificate stating whether of such design there be any copyright existing, and if there be, in respect to what particular article of manufacture or substance such copyright exists, and the term of such copyright, and the date of registration, and also the name and address of the registered proprietor thereof.

Inspection of
registered
designs.

XVIII. And be it enacted, that the commissioners of the treasury, shall from time to time fix fees to be paid for the services to be performed by the registrar, as they shall deem requisite, to defray the expenses of the said office, and the salaries or other remuneration of the said registrar and of any other persons employed under him, with the sanction of the commissioners of the treasury, in the execution of this act : and the balance, if any, shall be carried to the consolidated fund of the united kingdom, and be paid accordingly into the receipt of her Majesty's exchequer at Westminster ; and the commissioners of the treasury may regu-

Application of
fees of registra-
tion.

late the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for, and they may also remit or dispense with the payment of such fees in any cases, where they may think it expedient so to do: provided always, that the fee for registering a design to be applied to any woven fabric, mentioned or comprised in classes 7, 9, or 10, shall not exceed the sum of one shilling; that the fee for registering a design to be applied to a paper hanging shall not exceed the sum of ten shillings; and that the fee, to be received by the registrar for giving a certificate relative to the existence or expiration of any copyright in any design printed on any woven fabric, yarn, thread, or warp, or printed, embossed, or worked on any paper hanging, to any person exhibiting a piece end of a registered pattern, with the registration mark thereon, shall not exceed the sum of two shillings and sixpence.

Penalty for
extortion.

XIX. And be it enacted, that if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the commissioners of the treasury, he shall forfeit for every such offence fifty pounds to any person suing for the same by action of debt in the Court of Exchequer at Westminster; and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the commissioners of the treasury see fit.

Interpretation
of act.

XX. And for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows: (that is to say,) the expression "commissioners of the treasury" shall mean the lord high treasurer for the time being, or the commissioners of her Majesty's treasury for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender.

Alteration of
act.

XXI. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)

DATE OF ACTS.	TITLE.
27 Geo. 3. c. 38. (1787.)	An Act for the encouragement of the arts of designing and printing linens, cottons, calicoes, and muslins, by vesting the properties thereof in the designers, printers, and proprietors for a limited time.
29 Geo. 3. c. 19. (1789.)	An Act for continuing an act for the encouragement of the arts of designing and printing linens, cottons, calicoes, and muslins, by vesting the properties thereof in the designers, printers, and proprietors for a limited time.
34 Geo. 3. c. 23. (1794.)	An Act for amending and making perpetual an act for the encouragement of the arts of designing and printing linens, cottons, calicoes, and muslins, by vesting the properties thereof in the designers, printers, and proprietors for a limited time.
2 Vict. c. 13. (1839.)	An Act for extending the copyright of designs for calico printing to designs for printing other woven fabrics.

SCHEDULE (B.)

DATE OF ACT.	TITLE.
2 Vict. c. 17. (1839.)	An Act to secure to proprietors of designs for articles of manufacture the copyright of such designs for a limited time.

SCHEDULE (C.)

DATE OF ACTS.	TITLE.
38 Geo. 3. c. 71. (1798.)	An Act for encouraging the art of making new models and casts of busts and other things therein mentioned.
54 Geo. 3. c. 56. (1814.)	An Act to amend and render more effectual an act for encouraging the art of making new models and casts of busts and other things therein mentioned, and for giving further encouragement to such arts.

6 & 7 Vict. c. 65.

An Act to amend the Laws relating to the Copyright of Designs.
 [22d August, 1843.]

5 & 6 Vict.
c. 100.

Whereas by an act passed in the fifth and sixth years of the reign of her present Majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," there was granted to the proprietor of any new and original design, with the exceptions therein mentioned, the sole right to apply the same to the ornamenting of any article of manufacture or any such substance as therein described during the respective periods therein mentioned: and whereas it is expedient to extend the protection afforded by the said act to such designs hereinafter mentioned, not being of an ornamental character, as are not included therein: 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 this act shall come into operation on the first day of September one thousand eight hundred and forty-three.

Commence-
ment of act.

Grant of
copyright.

II. And with regard to any new or original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and that whether it be for the whole of such shape or configuration or only for a part thereof, be it enacted, that the proprietor of such design not previously published within the united kingdom of Great Britain and Ireland or elsewhere shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according to this act: provided always, that this enactment shall not extend to such designs as are within the provisions of the said act, or of two other acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of his late Majesty king George the

38 G. 3. c. 71. Third and intituled respectively, "An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned, and An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned."

Proviso.

38 G. 3. c. 71.

54 G. 3. c. 56.

III. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act unless such design have before publication thereof been registered according to this act, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every article of manufacture made by him according to such design, or on which such design is used, hath thereon the word "registered," with the date of registration. Conditions of copyright.

IV. And be it enacted, that unless a design applied to any article of manufacture be registered either as aforesaid or according to the provisions of the said first mentioned act, and also after the copyright of such design shall have expired, it shall be unlawful to put on any such article the word "registered," or to advertise the same for sale as a registered article; and if any person shall so unlawfully publish, sell, or expose or advertise for sale any such article of manufacture, he shall forfeit for every such offence a sum not exceeding five pounds nor less than one pound, which may be recovered by any person proceeding for the same by any of the remedies hereby given for the recovery of penalties for pirating any such design. Penalty for wrongfully using marks denoting a registered design.

V. And be it enacted, that all such articles of manufacture as are commonly known by the name of floor cloths or oil cloths, shall henceforth be considered as included in class six in the said first-mentioned act in that behalf mentioned, and be registered accordingly. Floor or oil cloths included in class six.

VI. And be it enacted, that all and every the clauses and provisions contained in the said first-mentioned act, so far as they are not repugnant to the provisions contained in this act, relating respectively to the explanation of the term proprietor, to the transfer of designs, to the piracy of designs, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees of registration, and to the penalty for extortion, shall be applied and extended to this present act as fully and effectually and to all intents and purposes, as if the said several clauses and provisoes had been particularly repeated and re-enacted in the body of this act. Certain provisions of 5 & 6 Vict. c. 100, to apply to this act.

VII. And be it enacted, that so much of the said first-mentioned act as relates to the appointment of a registrar of designs for Appointment of registrar, &c.

ornamenting articles of manufacture, and other officers, as well as to the fixing of the salaries for the payment of the same, shall be and the same is hereby repealed; and for the purpose of carrying into effect the provisions as well of this act as of the said first-mentioned act, the lords of the committee of the privy council for the consideration of all matters of trade and plantations may appoint a person to be registrar of designs for articles of manufacture, and, if the lords of the said committee see fit, an assistant registrar and other necessary officers and servants; and such registrar, assistant registrar, officers, and servants shall hold their offices during the pleasure of the lords of the said committee; and such registrar shall have a seal of office; and the commissioners of her Majesty's treasury may from time to time fix the salary or other remuneration of such registrar, assistant registrar, and other officers and servants; and all the provisions contained in the said first-mentioned act, and not hereby repealed, relating to the registrar, deputy registrar, clerks and other officers and servants thereby appointed and therein named, shall be construed and held to apply respectively to the registrar, assistant registrar, and other officers and servants to be appointed under this act.

Registrar's
duties.

Drawings.

VIII. And be it enacted, that the said registrar shall not register any design for the shape or configuration of any article of manufacture as aforesaid unless he be furnished with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible according to the judgment of the said registrar, together with the title of the said design, and the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address; and every such drawing or print, together with the title and description of such design, and the name and address of the proprietor aforesaid, shall be on one sheet of paper or parchment, and on the same side thereof; and the size of the said sheet shall not exceed twenty-four inches by fifteen inches; and there shall be left on one of the said sheets a blank space on the same side on which are the said drawings, title, description, name, and address, of the size of six inches by four inches, for the certificate herein mentioned; and the said drawings or prints shall be made on a proper geometric scale: and the said description shall set forth such part or parts of the

said design (if any) as shall not be new or original; and the said registrar shall register all such drawings or prints from time to time as they are received by him for that purpose; and on every such drawing or print he shall affix a number corresponding to the order of succession in the register, and he shall retain one drawing or print which he shall file at his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give a ready access to the designs so registered he shall keep a proper index of the titles thereof.

IX. And be it enacted, that if any design be brought to the said registrar to be registered under the said first-mentioned act, and it shall appear to him that the same ought to be registered under this present act, it shall be lawful for the said registrar to refuse to register such design otherwise than under the present act and in the manner hereby provided: and if it shall appear to the said registrar that the design brought to be registered under the said first mentioned act or this act is not intended to be applied to any article of manufacture, but only to some label, wrapper, or other covering in which such article might be disposed for sale, or that such design is contrary to public morality or order, it shall be lawful for the said registrar, in his discretion, wholly to refuse to register such design: provided always, that the lords of the said Privy Council may, on representation made to them by the proprietor of any design so wholly refused to be registered as aforesaid, if they shall see fit, direct the said registrar to register such design, whereupon and in such case the said registrar shall be and is hereby required to register the same accordingly.

X. And be it enacted, that every person shall be at liberty to inspect the index of the titles of the designs, not being ornamental designs, registered under this act, and to take copies from the same, paying only such fees as shall be appointed by virtue of this act in that behalf; and every person shall be at liberty to inspect any such design, and to take copies thereof, paying such fee as aforesaid; but no design whereof the copyright shall not have expired shall be open to inspection, except in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as to take a copy of such design, nor without paying such fee as aforesaid.

XI. And, for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repug-

Discretionary power as to registry vested in the registrar.

Inspection of index of titles of designs, &c.

Interpretation of act.

nant to the context of this act, shall be construed as follows; (that is to say,) the expression "commissioners of the treasury" shall mean the lord high treasurer for the time being, or the commissioners of her Majesty's treasury of the united kingdom of Great Britain and Ireland for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number, and the masculine gender shall include the feminine gender as well as the masculine gender.

XII. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament

7 Vict. cap. 12.

An Act to amend the Law relating to International Copyright.

[10th May, 1844.]

1 & 2 Vict.
c. 59.

Whereas by an act passed in the session of Parliament held in the first and second years of the reign of her present Majesty, intituled "An Act for securing to Authors in certain Cases the Benefit of international Copyright" (and which act is hereinafter, for the sake of perspicuity, designated as "the International Copyright Act"), her Majesty was empowered by order in council to direct that the authors of books which should after a future time, to be specified in such order in council, be published in any foreign country, to be specified in such order in council, and their executors, administrators, and assigns, should have the sole liberty of printing and reprinting such books within the British dominions for such term as her Majesty should by such order in council direct, not exceeding the term which authors, being British subjects, were then, (that is to say) at the time of passing the said act, entitled to in respect of books first published in the united kingdom; and the said act contains divers enactments securing to authors and their representatives the copyright in the books to which any such order in council should extend: and whereas an act was passed in the session of Parliament held in the fifth and sixth years of the reign of her present Majesty, intituled "An Act

5 & 6 Vict.
c. 45.

to amend the Law of Copyright" (and which act is herein-after, for the sake of perspicuity, designated as "the Copyright Amendment Act"), repealing various acts therein mentioned relating to the copyright of printed books, and extending, defining, and securing to authors and their representatives the copyright of books: and whereas an act was passed in the session of Parliament held in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act to amend the Laws relating to Dramatic Literary Property" (and which act is herein-after, for sake of perspicuity, designated as "the Dramatic Literary Property Act"), whereby the sole liberty of representing or causing to be represented any dramatic piece in any place of dramatic entertainment in any part of the British dominions, which should be composed and not printed or published by the author thereof or his assignee, was secured to such author or his assignee; and by the said act it was enacted, that the author of any such production which should thereafter be printed and published, or his assignee, should have the like sole liberty of representation until the end of twenty-eight years from the first publication thereof: and whereas by the said Copyright Amendment Act the provisions of the said Dramatic Literary Property Act and of the said Copyright Amendment Act were made applicable to musical compositions; and it was thereby also enacted, that the sole liberty of representing or performing, or causing or permitting to be represented or performed, in any part of the British dominions, any dramatic piece or musical composition, should endure and be the property of the author thereof and his assigns for the term in the said Copyright Amendment Act provided for the duration of the copyright in books, and that the provisions therein enacted in respect of the property of such copyright should apply to the liberty of representing or performing any dramatic piece or musical composition; and whereas under or by virtue of the four several acts next herein-after mentioned; (that is to say,) an act passed in the eighth year of the reign of his late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors or Engravers during the time therein mentioned;" an act passed in the seventh year of his late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of

- King George the Second, for Encouragement of the Arts of designing, engraving, and etching historical and other Prints; and for vesting in and securing to Jane Hogarth, Widow, the Property in certain Prints;" an act passed in the seventeenth year of the reign of his late Majesty King George the Third, intituled "An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases;" and an act passed in the session of Parliament held in the sixth and seventh years of the reign of his late Majesty King William the Fourth, intituled "An Act to extend the Protection of Copyright in Prints and Engravings to Ireland;" (and which said four several acts are herein-after, for the sake of perspicuity, designated as the Engraving Copyright Acts;) every person who invents or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design, or invention causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, notwithstanding such print shall not have been graven or drawn from the original design of such graver, etcher, or draftsman, is entitled to the copyright of such print for the term of twenty-eight years from the first publishing thereof; and by the said several Engraving Copyright Acts it is provided that the name of the proprietor shall be truly engraved on each plate, and printed on every such print, and remedies are provided for the infringement of such copyright: and whereas under and by virtue of an act passed in the thirty-
- 17 G. 3. c. 57.
- 6 & 7 W. 4. c. 59.
- 8 G. 3. c. 71.
- 54 G. 3. c. 56.
- King George the Third, intituled "An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned," and of an act passed in the fifty-fourth year of the reign of his late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned, and for giving further encouragement to such Arts," (and which said acts are, for the sake of perspicuity,

herein-after designated as the Sculpture Copyright Acts,) every person who makes or causes to be made any new and original sculpture, or model or copy or cast of the human figure, any bust or part of the human figure clothed in drapery or otherwise, any animal or part of any animal combined with the human figure or otherwise, any subject, being matter of invention in sculpture, any alto or basso relievo, representing any of the matters aforesaid, or any cast from nature of the human figure or part thereof, or of any animal or part thereof, or of any such subject representing any of the matters aforesaid, whether separate or combined, is entitled to the copyright in such new and original sculpture, model, copy, and cast, for fourteen years from first putting forth and publishing the same, and for an additional period of fourteen years in case the original maker is living at the end of the first period; and by the said acts it is provided that the name of the proprietor, with the date of the publication thereof, is to be put on all such sculptures, models, copies, and casts, and remedies are provided for the infringement of such copyright: and whereas the powers vested in Her Majesty by the said International Copyright Act are insufficient to enable her Majesty to confer upon authors of books first published in foreign countries copyright of the like duration, and with the like remedies for the infringement thereof, which are conferred and provided by the said Copyright Amendment Act with respect to authors of books first published in the British dominions; and the said International Copyright Act does not empower her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; and it is expedient to vest increased powers in her Majesty in this respect, and for that purpose to repeal the said International Copyright Act, and to give such other powers to her Majesty, and to make such further provisions, as are herein-after contained: 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 the said recited act herein designated as the International Copyright Act shall be and the same is hereby repealed.

Repeal of International Copyright Act.

II. And be it enacted, that it shall be lawful for her Majesty, Her Majesty,

by order in council, may direct that authors, &c. of works first published in foreign countries shall have copyright therein within her Majesty's dominions.

by any order of her Majesty in council, to direct that, as respects all or any particular class or classes of the following works, (namely,) books, prints, articles of sculpture, and other works of art, to be defined in such order, which shall after a future time, to be specified in such order, be first published in any foreign country to be named in such order, the authors, inventors, designers, engravers, and makers thereof respectively, their respective executors, administrators, and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such order, not exceeding, however, as to any of the above-mentioned works, the term of copyright which authors, inventors, designers, engravers, and makers of the like works respectively first published in the united kingdom may be then entitled to under the herein-before recited acts respectively, or under any acts which may hereafter be passed in that behalf.

If the order applies to books, the copyright law as to books first published in this country shall apply to the books to which the order relates with certain exceptions.

III. And be it enacted, that in case any such order shall apply to books, all and singular the enactments of the said Copyright Amendment Act, and of any other act for the time being in force with relation to the copyright in books first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained, apply to and be in force in respect of the books to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such books were first published in the united kingdom, save and except such of the said enactments, or such parts thereof, as shall be excepted in such order, and save and except such of the said enactments as relate to the delivery of copies of books at the British Museum, and to or for the use of the other libraries mentioned in the said Copyright Amendment Act.

If the order applies to prints, sculptures, &c., the copyright law as to prints or sculptures first published in this country shall apply to the prints, sculptures, &c. to which such order relates.

IV. And be it enacted, that in case any such order shall apply to prints, articles of sculpture, or to any such other works of art as aforesaid, all and singular the enactments of the said Engraving Copyright Acts and the said Sculpture Copyright Acts, or of any other act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country, and of any act for the time being in force with relation to the copyright in any similar works of art first published in this country, shall, from and after the time so to be specified in that behalf

in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained respectively, apply to and be in force in respect of the prints, articles of sculpture, and other works of art to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such articles and other works of art were first published in the united kingdom, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

V. And be it enacted, that it shall be lawful for her Majesty, by any order of her Majesty in council, to direct that the authors of dramatic pieces and musical compositions which shall after a fixture time, to be specified in such order, be first publicly represented or performed in any foreign country to be named in such order, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as shall be defined in such order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the united kingdom may for the time be entitled by law to the sole liberty of representing and performing the same: and from and after the time so specified in any such last-mentioned order the enactments of the said Dramatic Literary Property Act and of the said Copyright Amendment Act, and of any other act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitation as to the duration of the right conferred by any such order as shall be therein contained, apply to and be in force in respect of the dramatic pieces and musical compositions to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

VI. Provided always, and be it enacted, that no author of any book, dramatic piece or musical composition, or his executors, administrators, or assigns, and no inventor, designer, or engraver of any print, or maker of any article of sculpture, or other work of art, his executors, administrators, or assigns, shall be entitled

Her Majesty may by order in council, direct that authors and composers of dramatic pieces and musical compositions first publicly represented and performed in foreign countries shall have similar rights in the British dominions.

Particulars to be observed as to registry and to delivery of copies.

to the benefit of this act, or of any order in council to be issued in pursuance thereof, unless, within a time or times to be in that behalf prescribed in each such order in council, such book, dramatic piece, musical composition, print, article of sculpture, or other work of art, shall have been so registered, and such copy thereof shall have been so delivered as herein-after is mentioned; (that is to say,) as regards such book, and also such dramatic piece or musical composition, (in the event of the same having been printed,) the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof, the time and place of the first publication, representation, or performance thereof, as the case may be, in the foreign country named in the order in council under which the benefits of this act shall be claimed, shall be entered in the register book of the Company of Stationers in London, and one printed copy of the whole of such book, and of such dramatic piece or musical composition, in the event of the same having been printed, and of every volume thereof, upon the best paper upon which the largest number or impression of the book, dramatic piece, or musical composition shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the officer of the Company of Stationers at the Hall of the said company; and as regards dramatic pieces and musical compositions in manuscript, the title to the same, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the right of representing or performing the same, and the time and place of the first representation or performance thereof in the country named in the order in council under which the benefit of the act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London; and as regards prints, the title thereof, the name and place of abode of the inventor, designer, or engraver thereof, the name of the proprietor of the copyright therein, and the time and place of the first publication thereof in the foreign country named in the order in council under which the benefits of the act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London, and a copy of such print, upon the best paper upon which the largest number or impressions of the print shall have been printed for sale, shall be delivered to the officer of the Company of Stationers at the Hall

of the said company; and as regards any such article of sculpture or any such other work of art as aforesaid, a descriptive title thereof, the name and place of abode of the maker thereof, the name of the proprietor of the copyright therein, and the time and place of its first publication in the foreign country named in the order in council under which the benefit of this act shall be claimed shall be entered in the said register book of the said Company of Stationers in London; and the officer of the said Company of Stationers receiving such copies so to be delivered as aforesaid shall give a receipt in writing for the same, and such delivery shall to all intents and purposes be a sufficient delivery under the provisions of this act.

VII. Provided always, and be it enacted, that if a book be published anonymously, it shall be sufficient to insert in the entry thereof in such register book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry is made either on behalf of the author or on behalf of such first publisher, as the case may require.

In case of books published anonymously, the name of the publisher to be sufficient.

VIII. And be it enacted, that the several enactments in the said Copyright Amendment Act contained with relation to keeping the said register book, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the applications to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the books, dramatic pieces, and musical compositions, prints, articles of sculpture, and other works of art, to which any order in council issued in pursuance of this act shall extend, and to the entries and assignments of copyright and proprietorship therein, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Copyright Amendment Act, may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this act shall be one shilling only.

The provisions of the Copyright Amendment Act as regards entries in the register book of the Company of Stationers, &c. to apply to entries under this act.

IX. And be it enacted, that every entry made in pursuance of

As to expunging or

varying entry
grounded in
wrongful first
publication.

this act of a first publication shall be *primâ facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, no order for expunging or varying such entry shall be made unless it be proved to the satisfaction of the court or of the judge taking cognizance of the application for expunging or varying such entry, first, with respect to a wrongful publication in a country to which the author or first publisher does not belong, and in regard to which there does not subsist with this country any treaty of international copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a treaty of international copyright, that a court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher.

Copies of books
wherein copy-
right is subsist-
ing under this
act, printed in
foreign
countries other
than those
wherein the
book was first
published pro-
hibited to be
imported.

X. And be it enacted, that all copies of books wherein there shall be any subsisting copyright under or by virtue of this act, or of any order in council made in pursuance thereof, printed or reprinted in any foreign country except that in which such books were first published, shall be and the same are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright thereof, or his agent authorized in writing, and if imported to the contrary to this prohibition the same and the importers thereof shall be subject to the enactments in force relating to goods prohibited to be imported by any act relating to the customs; and as respects any such copies so prohibited to be imported, and also as respects any copies unlawfully printed in any place whatsoever of any books wherein there shall be any such subsisting copyright as aforesaid, any person who shall in any part of the British dominions import such prohibited or unlawfully printed copies, or who, knowing such copies to be so unlawfully imported or unlawfully printed, shall sell, publish, or expose to sale or hire, or shall cause to be sold, published, or exposed to sale or hire, or have in his possession for sale or hire, any such copies so unlawfully imported or unlawfully printed, such offender shall be liable to a special action on the case at the suit of the proprietor of such

copyright, to be brought and prosecuted in the same courts and in the same manner, and with the like restrictions upon the proceedings of the defendant, as are respectively prescribed in the said Copyright Amendment Act with relation to actions thereby authorized to be brought by proprietors of copyright against persons importing or selling books unlawfully printed in the British dominions.

XI. And be it enacted, that the said officer of the said Company of Stationers shall receive at the Hall of the said company every book, volume, or print so to be delivered as aforesaid, and within one calendar month after receiving such book, volume, or print shall deposit the same in the library of the British Museum.

Officer of Stationers' Company to deposit books, &c. in the British Museum.

XII. Provided always and be it enacted, that it shall not be requisite to deliver to the said officer of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations.

Second or subsequent editions.

XIII. And be it enacted, that the respective terms to be specified by such orders in council respectively for the continuance of the privilege to be granted in respect of works to be first published in foreign countries may be different for works first published in different foreign countries and for different classes of such works; and that the times to be prescribed for the entries to be made in the register book of the Stationers' Company, and for the deliveries of the books and other articles to the said officer of the Stationers' Company, as hereinbefore is mentioned, may be different for different foreign countries and for different classes of books or other articles.

Orders in council may specify different periods for different foreign countries and for different classes of works.

XIV. Provided always, and be it enacted, that no such order in council shall have any effect unless it shall be therein stated, as the ground for issuing the same, that due protection has been secured by the foreign power so named in such order in council for the benefit of parties interested in works first published in the dominions of her Majesty similar to those comprised in such order.

No order in council to have any effect unless it states that reciprocal protection is secured.

XV. And be it enacted, that every order in council to be made under the authority of this act shall as soon as may be after the making thereof by her Majesty in council be published in the *London Gazette*, and from the time of such publication shall have the same effect as if every part thereof was included in this act.

Orders in council to be published in *Gazette*, and to have same effect as this act.

Orders in council to be laid before Parliament.

XVI. And be it enacted, that a copy of every order of her Majesty in council made under this act shall be laid before both houses of Parliament within six weeks after issuing the same, if Parliament be then sitting, and if not, then within six weeks after the commencement of the then next session of Parliament.

Orders in council may be revoked.

XVII. And be it enacted, that it shall be lawful for her Majesty by an order in council from time to time to revoke or alter any order in council previously made under the authority of this act, but nevertheless without prejudice to any rights acquired previously to such revocation or alteration.

Translations.

XVIII. Provided always, and be it enacted, that nothing in this act contained shall be construed to prevent the printing, publication, or sale of any translation of any book the author whereof and his assigns may be entitled to the benefit of this act.

Authors of works first published in foreign countries not entitled to copyright except under this act.

XIX. And be it enacted, that neither the author of any book, nor the author or composer of any dramatic piece or musical composition, nor the inventor, designer, or engraver of any print, nor the maker of any article of sculpture, or of such other work of art as aforesaid, which shall after the passing of this act be first published out of her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under this act.

Interpretation clause.

XX. And be it enacted, that in the construction of this act the word "book" shall be construed to include "volume," "pamphlet," "sheet of letter-press," "sheet of music," "map," "chart," or "plan;" and the expression "articles of sculpture" shall mean all such sculptures, models, copies, and casts as are described in the said Sculpture Copyright Acts, and in respect of which the privileges of copyright are thereby conferred; and the words "printing" and re-printing," shall include engraving and any other method of multiplying copies; and the expression "her Majesty," shall include the heirs and successors of her Majesty; and the expressions "order of her Majesty in council," "order in council," and "order," shall respectively mean order of her Majesty acting by and with the advice of her Majesty's most honourable privy council; and the expression "officer of the Company of Stationers" shall mean the officer appointed by the said Company of Stationers for the purposes of the said Copyright Amendment Act; and in describing any persons or things any word importing the plural

number shall mean also one person or thing, and any word importing the singular number shall include several persons or things, and any word importing the masculine shall include also the feminine gender; unless in any of such cases there shall be something in the subject or context repugnant to such construction.

XXI. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of Parliament. Act may be repealed this session.

COPYRIGHT OF DESIGNS.

No. 1.

ARTICLES OF ORNAMENT.

*Office of the Registrar of Designs,
35, Lincoln's Inn Fields.*

By the Consolidated Designs Copyright Act, 5 & 6 Vict. c. 100, commencing its operation the 1st September, 1842, a Copyright or Property is given to the Authors or Proprietors of Original Designs for ornamenting any article of manufacture or substance, for the various Terms specified in the following classes :—

<i>Class.</i>	<i>Article.</i>	<i>Copyright.</i>
1.	Articles in Metal	3 years
2.	Articles in Wood	3 „
3.	Articles in Glass	3 „
4.	Articles in Earthenware	3 „
5.	Paper Hangings	3 „
6.	Carpets, Floorcloths, and Oil Cloths	3 „
7.	Shawls (patterns printed)	9 months
8.	Shawls (patterns not printed)	3 years
9.	Yarn, Thread or Warp (printed)	9 months
10.	Woven Fabrics, not Furnitures (patterns printed)	9 „
11.	Woven Fabrics, Furnitures (patterns printed)	3 years
12.	Woven Fabrics (patterns not printed)	12 months
13.	Lace and all other Articles	12 months

DIRECTIONS FOR REGISTERING.

All persons wishing to register a Design, must bring or send to the Registrar's Office two exactly similar copies thereof, for each Class under which the same is proposed to be registered, together with the proper fees. These copies may consist, either of portions of the manufactured articles, when such can conveniently be done (as in the case of *Paper Hangings, Calico Prints, &c.*), or else of Prints or Drawings, (which, whether coloured or not, must be correct representations of the Design,) when the article is of such a nature as not to admit of being pasted in a book. These copies must be accompanied with the name and address, *distinctly written or printed*, of the Proprietor or Proprietors, or with the title of the firm under which he or they may be trading, and the place of carrying on business, and *also with the number of that one of the above Classes*, in respect of which such Design is intended to be registered. After the Design has been registered, one of the two copies will be filed at the Office, and the other returned to the Proprietor, with a Certificate annexed, on which will appear the Mark to be placed on each article of manufacture on which the Design is used.

A Design may be registered in respect of one or more of the above Classes according as it is intended to be employed in one or more species of manufacture, but two separate copies must be furnished, and a separate fee paid on account of each separate Class, and all such registrations must be made at the same time.

In case of the transfer of a registered Design, a copy must be transmitted to the Registrar, together with the forms which can be procured at the Office, properly filled up and signed, the transfer will then be registered, and the copy returned with a Certificate annexed.

All communications for the registration of Designs may be made either through the General Post, directed to "The Registrar of Designs, Designs Office, London," (and parcels so directed containing Designs, are not restricted in weight to 16 ounces,) or by any other mode of conveyance; and provided the carriage be paid, and the proper fees, or a Post-Office Order for payment, be enclosed, the Designs will be duly registered, and the certified copies returned to the Proprietor free of expense.

The Registrar's Office, No. 35, Lincoln's Inn Fields, is open

every day, between the hours of 10 in the Morning and 4 in the Afternoon. Designs and Transfers are registered from 11 until 3.

The following are the fees ordered to be paid by the Treasury:—

TABLE OF FEES.

REGISTERING DESIGNS:—

COPYRIGHT.	£	s.	d.	COPYRIGHT.	£	s.	d.
Class 1. . 3 years . .	3	0	0	Class 13. 12 months	0	5	0
Class 2. . do . .	1	0	0	Transfer	1	0	0
Class 3. . do . .	1	0	0	Certifying Design same	1	0	0
Class 4. . do . .	1	0	0	as Registration Fee,			
Class 5. . do . .	0	10	0	but for Class 1.	1	0	0
Class 6. . do . .	1	0	0	Cancellation or Substi-			
Class 7. . 9 months .	0	1	0	tution	0	2	6
Class 8. . 3 years . .	1	0	0	Search	0	1	0
Class 9. . 9 months .	0	1	0	Inspection of Designs of			
Class 10. . do . .	0	1	0	which the Copyright			
Class 11. . 3 years . .	0	5	0	has expired each Class			
Class 12. 12 months	0	5	0				

Directions for Registering articles of utility under the Act 6 & 7 Vict. c. 65, may be procured at the Office.

No. 2.

DESIGNS FOR ARTICLES OF UTILITY.

Designs' Office.
35, Lincoln's Inn Fields.

By the Act 5 & 6 Vict. c. 100, a copyright is given for such Designs for Articles of Manufacture as are of an *Ornamental* Character only ; by the new Act 6 & 7 Vict. c. 65, commencing its operation on the 1st of September, 1843, a Copyright of THREE YEARS is given to the Author or Proprietor of any new and original Design *for the shape or configuration either of the whole or of part of any Article of Manufacture having reference to some purpose of utility*, whether such article be made in Metal or any other Substance.

To obtain this protection, it is necessary—

1st.—That the Design should be registered.

2nd.—That after registration, every Article of Manufacture published by the Proprietor, and made according to such Design, or on which such Design is used, should have upon it the word “REGISTERED,” *with the date of registration.*

In case of Piracy of a Design so registered, the same remedies are given, and the same penalties imposed (from £5 to £30 for each offence) as under the Act 5 & 6 Vict. c. 100, and all the provisions contained in the latter Act relating to the Transfer of *Ornamental Designs*, in case of purchase or devolution of a Copyright, are made applicable to those *useful Designs* registered under this Act.

In addition to this, a penalty of not more than £5 nor less than £1 is imposed upon all persons marking, selling, or advertising for sale any Article as “Registered,” unless the Design for such Article has been registered under one of the *above-mentioned Acts.*

DIRECTIONS FOR REGISTERING AND SEARCHING.

REGISTERING.

Persons registering a Design for purposes of utility, must bring or send to the Registrar's Office TWO EXACTLY SIMILAR Drawings or Prints thereof, made on a proper geometric scale, together with the name and address of the Proprietor or Proprietors, or the title of the Firm under which he or they may be trading; also the *Title* of the Design, and *such description in writing* as may be necessary, either to make it intelligible or to explain which parts may not be new or original. These two drawings or copies must, together with the title, name, &c., be on two separate sheets of paper or parchment, only one side of which must be written or drawn upon. Each of these sheets must not exceed in size 24 inches by 15 inches, and on one of the two sheets, and on the same side as the drawings, &c., there *must be left a blank space*, of the size of 6 inches by 4 inches, upon which the Certificate of Registration will be placed.

After the Design has been registered, one of the drawings will be filed at the Office, and the other returned to the Proprietor duly stamped and certified.

In case of the *transfer* of a registered Design, a copy, on one sheet of paper, with a blank space left for the Certificate, must be

transmitted to the Registrar, together with the forms of application (which may be procured at the Office), properly filled up and signed; the transfer will then be registered, and the certified copy returned.

SEARCHES.

An Index of the Titles and Proprietors of all the registered Designs for articles of utility is kept at the Registrar's Office, and may be inspected by any person, and extracts made from it.

All such Designs, the copyright of which is *expired*, may be seen and copied at the Office.

Any such Design, the copyright of which is *unexpired*, may also be inspected, but copies are not allowed to be taken from them.

All communications for the registration of Designs, either for ornamental or useful purposes, may be made either through the General Post, directed to the "Registrar of Designs, Designs' Office, London," (and Letters or Parcels so sent are not restricted in weight to 16 oz.) or by any other mode of conveyance; and provided the carriage be paid, and the proper fees, or a Post-office Order for the amount, be inclosed, the Designs will be duly registered, and the certified copies returned to the Proprietor, free of expense.

The Registrar's Office, 35, Lincoln's Inn Fields, is open every day, between the hours of 10 in the Morning and 4 in the Afternoon, when inquiries and searches may be made. Designs and transfers are registered from 11 until 3.

TABLE OF FEES.

	Stamp.	Fee.	Total.
	£ s. d.	£ s. d.	£ s. d.
Registering Design	5 0 0	5 0 0	10 0 0
Certifying former Registration	5 0 0	1 0 0	6 0 0
Registering and Certifying Transfer	5 0 0	1 0 0	6 0 0
Cancellation or Substitution		1 0 0	1 0 0
Inspecting Index of Titles		0 1 0	0 1 0
Inspecting Designs (expired Copyrights) } each vol.		0 1 0	0 1 0
Taking Copies of ditto, each Design		0 2 0	0 2 0
Inspecting Designs (unexpired Copy- } rights) each Design		0 5 0	0 5 0

No. 3.

Designs' Office,
9th September, 1843.

As the Act 6 & 7 Vict. c. 65 applies only to the *shape or configuration* of Articles of utility, and not to any *mechanical action, principle, contrivance, or application* (except in so far as these may be dependent upon, and inseparable from, the shape or configuration), NO Design will be registered the description of which shall contain *a claim* for any such mechanical action, principle, contrivance, or application.

With this exception *all* Designs, the drawings and descriptions of which are properly prepared and made out, will be registered, *without reference to the nature or extent of the Copyright sought to be thereby acquired; which considerations must be left entirely* TO THE JUDGMENT AND DISCRETION OF THE PROPRIETOR OF THE DESIGN.

Parties are strongly recommended to read the Act before determining to register their Designs, in order that they may be satisfied as to the nature, extent, and comprehensiveness of the protection afforded by it, of which the registration will not constitute any guarantee.

No. 4.

Designs' Office,
12th September, 1843.

The Certificates of those Designs which are received for registration under the 6 & 7 Vict. c. 65, will be ready for delivery by 3 o'clock on the day following. No certificate can be delivered the day on which the Design is brought to the office.

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THE END.

Ex. H. A. A.

LONDON:

PRINTED BY RAYNER AND HODGES,

107, Fetter Lane, Fleet Street.