abandon his work, and give to the public a power to publish his book before the usual time of copyright has transpired. (*p*)

There is no authority on the point; and it is very difficult to say, what circumstances would induce a court, either of law or equity, to consider a work as given up to the public by its author. But still it may be capable of proof; where an author, upon delivering a manuscript to a bookseller, says, "I will make a present of this work to you to publish: I wish to give it to the public," &c. (*q*) The Court of Equity refused to grant an injunction at the end of the first fourteen years, to restrain him from continuing the publication.

A very singular case occurred between an author and his assignee. The author of a law book sold the copyright to a bookseller, who published a third edition of the work (edited by another person,) without any name: but purchasers were likely to suppose that it was edited by the author. Such edition, having errors and mistakes in it, being calculated to injure the reputation of the author, the Court held, at nisi prius, that an action would lie by the author against his assignee. (*r*)

(*p*) 4 Burr. 2346, 2367, 2466; and see 2 Stark. N. P. C. 382. 4 Camp. N. P. C. 8, n.

(*q*) *Murray* v. *Rundall*, 5 Nov. and 7 Nov. 1822. In Chancery, MSS. See 1 Jacob's Rep. 311.

(*r*) *Archbold* v. *Sweet*, 5 C. & P. 219. S. C. 1 M. & M. 162, and 1 M. & R. 162. The question, whether an edition purports to have been edited by A., is a question for the jury;

II. THE QUEEN AND HER PRINTERS.

Hitherto the questions on copyright in books have been discussed in relation to the several acts of parliament vesting that property, on the ground of the original right of first publication, arising from the mental labour bestowed on the works by their authors.

But there is a power exercised over some books which is said to be founded on different principles. It is said that the Sovereign, by a prerogative right *vested in the crown*, has the exclusive privilege of printing: (*s*) 1st. Acts of Parliament, Proclamations, Orders of Council, &c. 2nd. The Liturgies Books of Divine Service, &c. and 3rd. The [illegible].

These works are called *prerogative copies*; and in consequence patents have been granted, by successive kings from the time of Henry the Eighth, to different persons, giving them full power to print and re-print them in exclusion of all other persons. The Queen's printer in England (*t*) enjoys the benefit to be derived from printing the acts of parliaments, &c. The universities of Ox-

but the question whether the alleged errors and mistakes be so or not, and whether they are such as are calculated to injure the reputation of A. as an author, are questions for the Court.

(*s*) 2 Bla. Com. 410. Chit. Jun. Prerog. of Crown, 239. But see the observations of Sir W. D. Evans, vol. II. Collection of Statutes, Pt. III. Class I.

(*t*) There are also Queen's printers for Scotland and Ireland to whom similar patents have been granted.

ford and Cambridge, in common with the King's printer, (*u*) claim a right to print all Bibles to be circulated in England. The Company of Stationers formerly exercised an exclusive power of printing almanacks: but their patent was afterwards declared to be void. (*v*)

Whether such a prerogative really exists in the crown, *to the extent claimed* by the patentees, has, of late years, been much questioned; (*w*) which doubt receives strength from the circumstance, that the only patent amongst them, which has ever been fully investigated in a court of common law, was adjudged to be invalid. It becomes a duty, therefore, to give the subject a full investigation.

The question is surrounded with many difficulties: and it would be presumptuous to state in what manner it would probably be decided in a court of common law. The better way of disposing of it seems to be, to contrast all the authorities and reasoning that are to be found in our law books; and to add to them the arguments that have an appearance of reason in them, which have been advanced on either side of the question.

1. A prerogative generally.

First. It is said that, for the sake of public peace, and to keep all the laws of the land pure

(*u*) 6 Ves. 689.

(*v*) *Stationers' Company* v. *Carnan*. See Vol. I. of Lord Erskine's Speeches.

(*w*) See 5 Bac. Abr. tit. Prerogative, p. 594. Carter Rep. 89.

and correct, the Queen has a prerogative right *generally* to print all ordinances of the state, as acts of parliament, proclamations, orders of the privy council, &c. and all papers which relate to the good government of the land. (*x*)

Which position is answered by saying that all prerogatives must have existed from time immemorial—that the art of printing was introduced into England in the reign of Henry VI. within the time of legal memory.

The length of time enjoyed.

An argument in favour of the prerogative is then derived from the length of time that it has been exercised, which commenced with the *first introduction* of the art of printing into England.

On the other hand it is contended, that length of time warrants no wrong; and that the prerogative, as at first assumed, has been continually diminished. Thus, the Sovereign at first exercised a power over the *art of printing* itself; and when that was in some degree lessened, he still controlled the publication of books with respect to their *contents*: a right which is not now attempted to be claimed. And farther that, when these patents

(*x*) 2 Ves. & Beam. 21. See the observations of Mr. Justice Yates, in 4 Burr. 2384. But Lord Mansfield said, crown copies are, as in the case of an author, *civil property*: which is deduced, as in the case of an author, from the King's right of original publication. The *kind* of property in the crown, or patentee from the crown, is just the same: incorporeal; incapable of violation but by a civil injury; and only to be vindicated by the same remedy, an action on the case, or a bill in equity.

were first granted, the prerogatives of the crown were maintained on principles, which the most servile courtiers would at this day blush to name: that they were all granted before the expiration of the licensing acts; (*y*) and that one of them—for almanacks—as *ancient in its date* as the others, has been declared to be invalid and cancelled.

On the other hand, on the some principle—length of time—an inference *against* prerogative copyrights is drawn from the old method of promulgating the laws, before the art of printing was discovered, by which the sheriff read them in the public market place in every town: at which time every person who pleased might have taken a copy of them. And it is added that no trace of an authority, for supposing that any one was ever prevented from making transcripts for sale, can be found.

Secondly, It is said, that if there is not such a general common law prerogative, yet, for political and *public convenience*, the Sovereign, *as supreme executive Magistrate*, ought to promulgate to the people all acts of the state and government; and, consequently, that he has the exclusive privilege of printing, at his own press or that of his grantees, all acts of parliaments, proclamations, and orders of council. (*z*) 2. As executive magistrate.

On the other hand it is contended, that the Sovereign has not any power to grant to patentees

(*y*) First enacted in 1662, 13 & 14 Car. II.; and finally done away with in 1694.

(*z*) 2 Bla. Com. 410. 2 Ves. & Beam. 21.

the privilege of printing the acts of the state, *in exclusion of all other persons*, even on the ground of "*political and public convenience*;" but that the principle, in its farthest extent, only warrants a prerogative right to print a sufficent number for *the use of the officers of state*, as for the judges, magistrates, &c.; and that every person is afterwards at liberty to multiply copies for his own convenience or profit. For, it is added, when the reason ceases the law ceases, and although an act of parliament not printed by the Sovereign's patentee could not be used as authentic in the courts of justice, yet it would certainly answer the private purposes of the subject.

3. As head of the church.

Thirdly, It is said that the Sovereign, as *supreme head of the church*, has a right to the publication of all liturgies and books of Divine service, &c.; and in consequence her patentee has the exclusive privilege of printing the forms of prayers for a particular occasion. (*a*)

This argument, it is contended, destroys the proposition which it is adduced to support; for if the Sovereign, *as head of the church*, has the exclusive right of printing *all books* of Divine service, why not, as head of the church, have a right to print the principal book used in the divine service—*the Bible*,—and all kinds of Bibles, in whatever language they might be written? And yet the principle of *property* is resorted to, for the right

(*a*) *Eyre and Strahan* v. *Carnan*, cited 6 Ves. 697, and reported at length in 5 Bac. Abr. tit. Prerogative, p. 597.

of printing the present edition of the Bible: and Lord Mansfield has declared, that there is no prerogative right to the Bible in the original languages. (*b*)

It is therefore insisted, that the prerogative claimed as head of the church must be taken with a limitation, similar to that claimed as executive magistrate: That the Sovereign's patentee may provide all the clergy and members of the church with copies of the liturgies, books of divine service, &c.; but that every one who thinks proper is then entitled to make a copy for himself, and to print others for those persons who may please to buy them.

And, farther, it is contended that, when the *reason* for the law ceases, the *law* itself ceases; and therefore, when all the persons concerned

(*b*) 4 Burr. 2405. Lord Mansfield.—The copy of the Hebrew Bible, the Greek Testament, or the Septuagint, does not belong to the king: it is common. But the English translation he bought: therefore, it has been concluded to be his property. If any man should turn the Psalms, or the writings of Solomon, or Job, into verse, the king could not stop the printing or sale of such a work: it is the author's work. The king has no power or control over the subject matter: his power vests in property. His whole right rests upon the foundation of property in the copy by the common law. What other ground can there be for the king's having a property in the Latin grammar, (which is one of his ancientest copies,) than that it was originally composed at his expense? Whatever the common law says of property in the king's case, from analogy to the case of authors, must hold conclusively, in my apprehension, with regard to authors.

in the administration of justice have been provided with authentic copies of the laws, and all the ministers of the gospel have been furnished with the books of divine service, it is not for the good of the public that only one set of men should print other editions of the statutes and Bible, for general circulation in the kingdom, or for exportation into foreign parts, for their own private profit. And it is added that, so far from the Sovereign's printer's situation being a place of emolument, it appears that in ancient times it was merely *an office*, and that it was formerly granted by that name, with a fee annexed to it; and, when appointed the printer, he was *sworn into the office.* (*c*)

4. The Sovereign's right from purchase.

Fourthly. It was formerly maintained that the Sovereign had a right *by purchase* to such works as were compiled at the expense of the crown. (*d*) By which rule was meant, not a book written and composed by the Sovereign, in which the common law might have given a common copyright,

(*c*) 4 Burr. 2384. 3 Mod. 77. And see *Eyre* v. *Carnan*, 5 Bac. Ab. 597. As to the King's printer's right being merely an authority, see 6 Ves. 713.

(*d*) See *Nicol* v. *Stockdale and Others*, 3 Swanst. 687. A voyage of discovery having been executed, and a narrative of it prepared under the orders of the crown, the narrative is the property of the crown; but on a bill by a publisher, authorized by the secretary to the board of Admiralty to publish such a narrative, the profits remaining at their disposition, an injunction restraining publication by a stranger was dissolved.

that was not taken away by the stat. 8 Ann. c. 19: but a work compiled by the order of government, and made, in other words, at the expense of the people. And also inasmuch as the Sovereign appointed the judges, who made the decisions in the courts of law, that therefore the Sovereign had a prerogative to print all law books. (*e*)

And, upon the principle of *purchase* the Sovereign had a prerogative copy in the old Latin grammar, which had been written and composed at the expense of the crown.(*f*)

The position that the Sovereign has a prerogative copy in law publications, or in the Latin grammar, is now considered to be perfectly ridiculous. (*g*) And yet upon the very *same principle of purchase*, combined with the principle of the Sovereign being the *head of the church*, the prerogative over Bibles is said to be founded. (*h*)

The answers, given to the reasons urged in support of the prerogatives in the crown copies, arising from the Sovereign being the chief executive magistrate and head of the church, having been stated, it will be proper to collect the arguments that may be advanced against the position, The Bible.

(*e*) Ante, *Roper* v. *Streater*, cited in Skin. 234. 1 Mod. 257. And see 4 Burr. 2316. 2 Show. 260. 10 Mod. 106. Vern. 120.

(*f*) 4 Burr. 2329, 2401.

(*g*) 4 Burr. 2315. *Gibbs* v. *Cole*, 3 P. Wms. 255, which was on a patent for the sole printing a book of architectural designs.

(*h*) 2 Bla. Com. 410.

that the Sovereign has, *by purchase*, (*i*) a prerogative copy in the present edition of the Bible.

It might be taken for granted (inasmuch as in the great case of *Donaldson* v. *Becket* in the House of Lords, seven judges were of opinion that there was a common law copyright, and only four judges were of a different one,) that it may fairly be inferred that an author at common law had a right to print and publish his work in perpetuity. And, therefore, supposing the Sovereign were to write a book herself, with her own hand, she (not being mentioned in the stat. of 8 Ann. c. 19,) might have a perpetual copyright in it.

But the Sovereign *did not* write the present translation of the Bible; it was done by many learned men from each of the Universities, who were employed and paid by the government.

And it has never yet been contended that the mere act of purchasing a work, conferred on him by whom the manuscript was bought, a copyright dependent on the purchaser; (*j*) for such a

(*i*) See 4 Burr. 2384. Yates, J.—It is mentioned as one ground of the King's right to print them, "that some of these prerogative books were composed at his expense." But in fact it is no private disbursement of the King, but done at the public charge, and part of the expenses of government. It can hardly be contended that the produce of expenses of a public sort are the private property of the King, when purchased with public money. He cannot dispose or sell one of those compositions. How, then, can they be his private property, like the private property claimed by an author in his own compositions?

(*j*) 4 Burr. 2346, 2404. Amb. 164. Sed vide, 3 Ves. & Beam. 77.

proposition would establish a rule that, under the present acts of parliament, the copyright in a book ought to continue for *the life of the purchaser* of the manuscript, and not for the life time of the author: a proposition evidently absurd.

It is true that a person, by a *mere gift*, may have such a power over a publication as to maintain an action, or obtain an injunction, against any one who pirates it. And so he might, even if he *came wrongfully* by the manuscript from which it was printed; but those decisions proceed upon the principle, that title arising from possession is sufficient evidence of property, against the pretensions of a third person: and not on the ground of copyright.

To which reasoning it is, on the other part of the crown, *replied*, that the translators of the Bible had, *at the time* the Sovereign *purchased* the copy, a common law copyright in the production. That the Sovereign took such interest; and, therefore, inasmuch as he is not bound by the statute of Anne, taking away the common law copyright of authors in general, that his power to print and reprint the Bible is a perpetual right, or a prerogative in the crown.

It is further contended, that the acts of parliament, &c., books of Divine service, &c., and Bibles, are works in which *no one* can claim property by *authorship*; and, therefore, inasmuch as the Sovereign has not a right to books and publi-

cations abandoned to the public, he can have no property in the books called crown copies. (*k*)

Statutes and Bibles published with notes.

And it is added that, both with respect to acts of parliament and the Bible, any one is at liberty to print them *with notes*. (*l*) And yet if the principles upon which the prerogative right is maintained, be correct—that is, on purpose to keep the acts of parliament from mutilation, and the Bible from being incorrectly printed,—that the power over them is vested in the crown; why does it not extend to the editions with notes? for both evils may arise in the editions with notes, as well as in the copies without them.

No attempt has ever been made to prevent any person from publishing a translation of one book, or *of a part* of the Bible, from the original text, and enjoying a copyright in his production.

And it was admitted by Lord Mansfield, that any person making *an abstract* of the records of the courts of law might publish it. (*m*)

5. This prerogative is supported by decisions in equity and law.

Fifthly. It is said, that the validity of the crown copies is supported by the injunctions that have continually been granted in the Court of Chancery, on the supposition of the legality of the patents, and by a decision in the Court of Queen's Bench.

To which it is answered, that many reasons

(*k*) Mod. 256. 3 Mod. 75. 4 Burr. 2347, 2402.

(*l*) Ante, p. 244. 2 Evans' Collect. Stat. Part III. Class I.

(*m*) 4 Burr. 2404. Lucas, 105. 2 Ch. Ca. 76.

may be assigned for granting of an injunction besides the legality of the patent; and that injunctions were often obtained for infringements of the patent granted to the Stationers' Company, conferring on them the sole right of printing almanacks; and yet, the first time the legality of that patent was discussed in a court of common law, the validity of it was questioned, and it ultimately was declared to be void.

It is therefore contended, by those persons who think that the patents of the University and Sovereign's printer are not founded in law, that injunctions are not authority in a common law question, particularly in the present subject, because very few of them ever came on to be heard; and that the circumstances of an injunction being granted and continued until the hearing does not furnish an argument in favour of the validity of the patent, because injunctions are now granted until the hearing, although the right may be doubtful, if there has been a long possession under it. (*n*)

But formerly an injunction was refused to a complainant, unless he had a plain right: (*o*)

(*n*) 8 Ves. 215; and see 12 Ves. 270. 17 Ves. 424.

(*o*) 1 Vern. 129. 1 Atk. 284. *Hills* v. *The University of Oxford*, 1 Vern. 275. In the year 1684, the King's printer filed a bill to restrain the University of Oxford from printing Bibles, &c.; and although the lord keeper was of opinion that it was never meant by the patent to the University that they should print more than for their own use, or at least some small number more to compensate their charge, yet he thought

and in one instance an injunction was actually denied on the motion of the Sovereign's patentees to stop the sale of English Bibles printed beyond sea, until the validity of the patent had been tried at law. (*p*) The difference arises from the alteration of the practice in the Courts of Chancery.

Respecting the authority of the opinion of a judge sitting in a Court of Equity upon a question of common law, Mr. Justice Yates observed, (*q*) that "great attention and respect were undoubtedly due to the decisions of the Lord Chancellor: but they were not conclusive the validity of the patent was a matter proper to be determined at law, and would grant an injunction until the trial had settled the right.

(*p*) Anon. 1 Vern. 120. Hil. Term, 1682. In which case it is said that the patent for law books had been adjudged good in the House of Lords. And see *Baskett* v. *Cunningham*, 1 Bla. Rep. 370. 2 Eden, 137, S. C. Cunningham and other booksellers were publishing a *Digest of the Statutes*, with notes. They had engaged the proprietors of the patent for printing law books to print the work; and it was being printed at their press. Baskett, the king's printer, moved against the proprietors and the law printers for an injunction. It was contended, that the book was not within the meaning of the letters patent, being a work of labour and industry, and in a method entirely new; and that it was printed at a privileged press. The Lord Chancellor was of opinion that the work was entirely within the patent of the king's printer, and that the notes were *merely collusive*; and he accordingly granted an injunction. But he would not interfere between the two contending patents in the summary method of injunction, but left them to adjust their respective rights in due course of law.

(*q*) 4 Burr. 2353.

upon a court of common law. Had these injunctions (which were only temporary) been perpetual they could have no effect on a court of common law, in a common law question."

On the other hand Lord Chancellor Eldon has said, (*r*) "the Court takes upon itself that which may involve it in a mistake—to determine the legal question—and the observations of Mr. Justice Yates are very material on this point; particularly if he was accurate in saying he did not consider these cases upon injunction as determining the legal question; which, if he meant as in no case determining it, is not accurate: as it is, if he meant only that it is a decision by a Judge sitting in Equity upon a legal question, and therefore not having all the authority of a decision by a court of law; but giving an opinion and pledging to maintain it, unless there should be occasion to alter it. The principle of granting injunction in those cases is, that damages do not give adequate relief."

It is further contended, that even the decision which took place in the court of common law (*s*)

(*r*) 8 Ves. 224.

(*s*) *Baskett* v. *The University of Cambridge*, 2 Burr. 661. And see 1 Bla. Rep. 105. The plaintiffs were the King's printers, and brought a bill in the Court of Chancery to restrain the defendants from printing or selling a book intituled "*An exact Abridgment of all the Acts of Parliament relating to the Excise on Beer, &c.*" It was sent unto the King's Bench for the opinion of the Court upon the acts of Parliaments and patents.

Several letters patent were insisted on by the plaintiffs;

cannot be considered as an authority in the point; for that was a question between two rival patentees, (the Sovereign's Printer and the University of Cambridge) in the discussion of which

the last bore date in the 12th year of Queen Anne, by which the *sole* power of printing all and all sorts of abridgments of all and singular statutes and acts of Parliament was given to the grantees, with a *prohibition* against all others.

The defendants contended, that by a patent granted in the 26th year of Hen. 8, they might lawfully print within the University all manner of books approved by the Chancellor and Vice-Chancellor, and three doctors: and might put them to sale wherever they pleased; and that by a patent dated 3 Car. 1, the King confirmed that right to the University, *notwithstanding* any grant or prohibition contained in the subsequent letters patent, or any of them.

The case was argued four times during the space of six years; and the following certificate was made by Lord Mansfield and the other judges.

"Having heard counsel on both sides, and considered of this case, we are of opinion that during the term granted by the letters patent dated the 13th of *October*, in the twelfth year of the reign of Queen *Anne*, the plaintiffs are entitled to the right of printing acts of Parliament, exclusive of all other persons not authorized to print the same by prior grants from the crown."

"But we think that by virtue of the letters patent bearing date the 20th day of *July*, in the 26th year of the reign of King *Henry* the Eighth, and the letters patent bearing date the 6th of February, in the third year of the reign of King *Charles* the First, the chancellor, masters and scholars of the University of *Cambridge*, are intrusted with a *concurrent authority* to print acts of Parliament and abridgments of acts of Parliament within the said *University*, upon the terms in the said letters patent." *Baskett* v. *University of Cambridge*, 1 Bla. Rep. 105. 2 Burr. 660.

the legality of the patents could not be mentioned. It was taken for granted that each of the patents was good; and then the certificate of the Judges shewed how far the respective patentees had a right to print the same books—Acts of Parliament. So much so that, upon the question being carried into the House of Lords, when one of the counsel was about to impugn the patent of the Sovereign's Printer, he was reminded that by that means he would destroy the grant to his clients. (*t*)

A similar reason may be given for the strong expressions made use of by Lord Erskine, when counsel at the bar of the House of Commons for Carnan, the opposer of the patent for almanacks, *in favour* of the prerogative copies in the Statutes, the Bible, &c. He was an advocate much too shrewd to contend before such an assembly as the House of Commons, on a bill brought in by the minister, that they ought not to revest a monopoly in the Stationers' Company, (the patent formerly granted having been declared to be invalid) *because none* of the patents of prerogative copies were founded in law or justice.

On the authority of *Baskett* v. *The University of Cambridge*, although a case between two rival patentees, Lord Mansfield, and the Court over which he presided, considered the patents of the Crown Printers and the Universities to be valid; and thence *inferred* that there was a common law

(*t*) 2 Evans' Collec. Stat. Pt. III. Cl. I. (9); and see *Bruce* v. *Bruce*, 13 Ves. 505. *Baskett* v. *Parsons*, id.

copyright in authors over their publications. (*u*) It is contended as, by the decision in *Donaldson* v. *Beckett*, it is *doubtful* whether there ever was such a common law copyright, that the *premises* of his lordship—the legality of the patents—being the converse of the proposition then to be proved, has at least been rendered *doubtful*.

The Queen's printer.

It follows as a matter of course, that if the Queen has the prerogative of the exclusive right to printing the books called Crown Copies, that her grantees may enjoy the same privileges. (*v*)

III. THE COMPANY OF STATIONERS.

To trace the rise and progress of the Company of Stationers, and to give a full account of their grants and charters, would be as tedious and irksome as it would be useless and unnecessary. It is sufficient to observe, that they were first incorporated by very important charters granted to them in the years 1556 and 1558, and that, whilst the Star Chamber was in existence, in the hands of an oppressive and tyrannical court, they were the monopolists of books and the destroyers of literature. By a charter granted to them by James the First they, for a long time, in concurrence with the universities of Oxford and Cambridge, claimed an exclusive right to print alma-

(*u*) 4 Burr. 2332, 2346.

(*v*) The first appointment of a King's printer extant, was that of Grafton, by Edw. 6.

nacks, (*w*) and frequently obtained injunctions in the Court of Chancery in support of that grant: (*x*) which, upon its being referred to a Court of Common Law, was declared to be invalid. (*y*)

At present the Company of Stationers have little more to do with literary productions than to make an entry of each work in their books, in order to secure to the authors the penalties for any infringements; and to take in and deliver to the learned bodies those copies of works to which by act of parliament, they are entitled.

1. The entry of Stationers' Hall.

That every person may know in what works a copyright is claimed, it is provided by the stat. 8 Anne, (*z*) that no person shall be subjected to the penalties for printing or reprinting any book, unless the title to the copy of such book be entered in the register book of the Company of Stationers; nor be answerable to the assignee, unless the consent of the proprietor, by which he parted with the copyright, is in a like manner entered.

(*w*) See title "*Almanacks*," ante, p. 340; and 2 Bla. Rep. 1004.

(*x*) *Stationers' Company* v. *Lee*, 2 Ch. Ca. 66, 93. 2 Show. 258, S. C. *Same* v. *Wright*, id. 76.

(*y*) *Stationers' Company* v. *Partridge*, 10 Mod. 105, and cited in 2 Bro. P. C. Toml. Ed. 137. See *Same* v. *Marlow*, 2 Show. 261. Lelly Entr. 63. 1 Mod. 256. 2 Bla. Rep. 1009. 4 Burr. 2329, 2370, 2372, 2382. *Company of Stationers* v. *Parker*, Skin. 233. *Same* v. *Seymour*, Mod. 256. 3 Keb. 279, S. C.

(*z*) 8 Ann. c. 19, s. 2.

But now, without any express repeal of the first parts of 8 Ann. c. 19, and 41 Geo. III. c. 107, which relate to the entry of the title of the book at Stationers' Hall, in order to ascertain what books may from time to time be published, it is directed (*a*) that the title to every book which is published shall be entered within one calendar month from the day of publication, if published in London; and within three calendar months for those books which are published in any other part of the British dominions, under a penalty of five pounds, and the price of eleven copies; to be recovered in an action at law by the managers of the public libraries.

It was held, though with some hesitation, that an injunction might be obtained in Chancery,(*b*) or an action maintained at law, (*c*) although the book had not been entered at Stationers' Hall; but, to remove all doubt, it was enacted that a failure in making the entry should not affect the copyright, but only subject the publisher to the penalty for not causing it to be made. (*d*)

For every entry two shillings is to be paid. (*e*) The register book may always be consulted upon payment of one shilling, and for the like sum a certificate of an entry must be granted. If the clerk refuse or neglect to make the entry, or to give a certificate of it, an advertisement in the

(*a*) 54 Geo. 3, c. 156, s. 2.
(*b*) *Baller* v. *Walker*, cited in 2 Atk. 94.
(*c*) *Beckford* v. *Hood*, 7 T. R. 620; and see ante.
(*d*) 54 Geo. 3, c. 156, s. 5. (*e*) Id.

Gazette will have the same benefits attached to it, and the clerk will forfeit twenty pounds to the proprietor of the work.

2. The copies for the public libraries.

In making entries at Stationers' Hall, of magazines, reviews, or other periodical publications, it is sufficient to make the entry within one month next after the publication of the first number or volume. (*f*)

It was also provided by the stat. of 8 Ann. (*g*) that nine copies of each book, upon the best paper, should be delivered by the printer to the warehouse-keeper of the Company of Stationers at their Hall before publication made, for the use of certain public libraries in England; to which were added two more copies for libraries in Ireland. This arrangement was afterwards altered when it was enacted (*h*) that *eleven copies* of every book of the largest impression, with all its maps and prints, should, on demand being made thereof, in writing, within twelve months of the publication, on the publisher, under the hand of the warehouse-keeper, or a person properly authorized by the manager of the library at the British Musuem, (*i*) Sion Col-

(*f*) 54 Geo. 3, c. 156, s. 5.

(*g*) 8 Ann. c. 19, s. 5.

(*h*) 41 Geo. 3, c. 107, s. 6.

(*i*) See *The Trustees of the British Museum* v. *Payne* and *Another*, 4 Bing. Rep. 540. A part of a work, to which there were twenty-six subscribers, and of which only thirty copies were printed, and published at intervals of several years, at an expense exceeding the sum to be obtained by the price of the copies, (the expense being defrayed by a testamentary

lege, (*j*) the Bodlean at Oxford, the public one at Cambridge, of that belonging to the faculty of Advocates at Edinburgh, of the four Universities in Scotland, (*j*) Trinity College, Dublin, and King's Inn (*j*) Library, Dublin; to be delivered by the publisher to the warehouse-keeper for the use of each of the libraries that should request it within one month after the demand.

The warehouse-keeper (*k*) is directed to deliver the said books within one month afterwards to the keeper of the respective libraries, or any person by them properly authorized. For neglect of duty the publishers and warehouseman are liable to a penalty of five pounds, besides the value of it, for every copy not so delivered, received, and handed over.

In the event of a *second edition* being published, (*l*) it is not to be delivered to the libraries unless it contains additions and alterations; nor even then, if the additions are delivered over by themselves.

And the warehouse-keeper of the Company of Stationers is directed every three months to transmit correct lists of the books entered, to the librarian of the eleven public libraries, and also to call on the publishers for as many copies as are demanded. (*m*) But the publisher of a book is

donation), was held by the Court not to be a book demandable by the British Museum, under 54 Geo. 3, c. 156.

(*j*) The right of these places is taken away with a compensation, 6 & 7 Will. 4, c. 110.

(*k*) 54 Geo. 3, c. 156, s. 2.

(*l*) Id. s. 3.

(*m*) Id. s. 6.

at liberty to deliver it himself to the librarians, who are authorized to give a receipt for the same; and such delivery is equivalent to one to the warehouseman. (*n*)

It was at one time imagined that, unless the title of the book was entered at Stationers' Hall, a publisher was not bound to deliver up copies for the use of the public libraries: but it was held (*o*) that the copies of each book, upon the best paper, must be delivered to the warehouse-keeper of the Company of Stationers for the use of the library of the University of Cambridge, notwithstanding the title to the copy of the book, and the consent of the proprietor to the publication, were not entered in the register-book of the Company.

By the international copyright act (*p*) the Company of Stationers are to receive a copy of each book to be protected under that act, and to keep a register of the titles of them.

IV. THE UNIVERSITIES.

The Universities of Great Britain are deeply interested in the laws respecting the publication of books. But the regulations that more particularly relate to those learned bodies are few in number. They will be explained in the following order:

(*n*) 54 Geo. 3, c. 156, s. 7.

(*o*) *The University of Cambridge* v. *Bryer*, 16 East. 317.

(*p*) 1 & 2 Vict. c. 59, and see id. sec. 5, as to British Museum.

1. The right to print Bibles.
2. The right to print the Statutes.
3. The patent respecting Almanacks.
4. The general copyright of the Universities.

Upon the introduction of the art of printing into England by Hen. VI. a press was set up at Oxford: and a great power over the publication of books was for many years very naturally assumed by that learned body. It was increased by charters and grants, made to the Universities of Oxford and Cambridge by several kings, in which were given to them powers to print and reprint Bibles, Statutes, Almanacks, &c. How far the Crown really possesses a prerogative in copyright in those works has been a subject of discussion in a former section. Supposing that those patents are valid which have not been declared to be void, it will be proper to set forth the interest in them, that is claimed by the Universities.

1. The right to print the Bible.

The right of the Universities to print Bibles is claimed under charters from several of our Sovereigns. (*q*)

The grants to the Universities are made in general words;—all manner of books and works of whatever description, not prohibited by public authority, which shall be approved of by the

(*q*) 2 Bla. Rep. 1004.

authorities in the Universities. It is under letters patent granted in the 13th year of Elizabeth that they claim to print Bibles. (*r*)

The same power is vested in the Queen's printers for England, and for Ireland. (*s*)

2. The right to print the statutes.

By similar grants full power is delegated to them to print the statutes. A question arose as to the right of the University of Cambridge to print an abridgment of the statutes; and it was decided (*t*) that by virtue of letters patent, bearing date the 28th day of July, in the twenty-sixth year of the reign of King Henry the Eighth, and the letters patent bearing date the 6th of February, in the third year of the reign of King Charles the first, the Chancellor, Masters, and Scholars, of the University of Cambridge, *are intrusted* with an authority concurrent with the Queen's printer to publish acts of parliament, and abridgments of them within the University upon the terms in the letters patent mentioned.

3. The right to print Almanacks.

We have seen that the Crown has not the privilege of a prerogative copy in almanacks; and that the grants of it by the Sovereign to the Crown

(*r*) 2 Bla. Rep. 1004.

(*s*) See *The Universities of Oxford and Cambridge* v. *Richardson*, 6 Ves. 689, and 9 Ves. 341. Irish T. R. 304. The patent for Scotland has expired, and the Bible is now printed under a commission.

(*t*) Bla. Rep. 304. 2 Burr. 661. Burn. Ecc. Law, 347. 4 Burr. 2401. 6 Ves. 697. See Skin. 234.

printer, and the Universities, were declared to be void. (*u*)

4. The copyright of the Universities generally.

Alarmed lest the seats of learning should suffer by the judgment of the House of Lords, by which the supposed common right of authors to their works was declared to be restrained by the statute of 8 Ann. the Legislature passed an act (*v*) that the Universities in England and Scotland, and the Colleges of Eton, Westminster and Winchester, should at their *respective presses* have for ever the sole liberty of printing such books as had been given or bequeathed to them, or which should thereafter, not being then published, be given to them, or in trust, for the purpose of appropriating out of the profits arising from them a fund for the advancement of useful learning, and other beneficial purposes of education; unless

(*u*) Ante, p. 340, 2 Bla. Rep. 1004. Upon a petition presented to Parliament by the Universities, stating that they had demised their supposed privilege to the Company of Stationers for 1900*l.* *per annum*, an act of Parliament was passed by which 500*l.* *per annum* of the duties arising from the stamps on sheet almanacks were given to each University, which benefit was taken away by the 4 & 5 Wm. 4, c. 57, which repealed all the stamp acts respecting almanacks.

(*v*) 15 Geo. 3, c. 53. The Syndics of the press in the University of Cambridge are the vice-chancellor, the heads of colleges, and doctors of each faculty, the orator and all public professors, with the proctors, taxors and scrutators. To these, or the major part, not less than five, of whom the vice-chancellor must be always one, full powers must be committed for the better regulating and management of the same.

the books are given or bequeathed only for a limited time.

The penalties to be inflicted on persons offending against those provisions are the same as if the books where the property of an individual. (*w*)

This exception in the favour of the Universities is to extend only to their own books, so long as they are printed at the College press, and for their sole benefit; and any delegation of the right works a forfeiture, and the privilege becomes of no effect.

A power is given to the Universities of selling or disposing of the copyrights bequeathed to them. (*x*) And the books must be registered at Stationers' Hall within two months after any such gift shall come to the knowledge of the officers of the Universities. (*y*)

The duties imposed on the Company of Stationers to take care that the two Universities are provided with copies of all new books have been mentioned. (*z*)

(*w*) 41 Geo. 3, c. 107.

(*x*) 15 Geo. 3, c. 53, s. 3.

(*y*) Id. s. 4.

(*z*) Ante, p. 451. Provision is made for the preservation of *Parish Libraries*, by 7 Ann. c. 14, s. 10, which empowers a justice of the peace to grant his warrant to search for a book that is lost. The acts of Parliament respecting the *British Museum* are, 26 Geo. 2, c. 22. 27 Geo. 2, c. 16.

V. THE COURTS OF JUSTICE.

The Courts of Justice have a controul over the publication of their own proceedings. It is claimed and exercised, not on the grounds of copyright and property, but on the principle that it is necessary for the due and *impartial administration of the laws.*

Some doubt has been thrown upon the subject. (*a*) If the right be possessed by any of the courts, it is a privilege belonging to all of them. The present inquiry will, therefore, be confined to those courts in which the right has been exercised and afterwards questioned, as where reports have been given from,

1. The House of Lords.
2. The Privy Council.
3. The Courts of Law.
4. The Mayor's Court.
5. A Coroner's Inquest.

Both Houses of Parliament treat a publication of their proceedings as a *breach of privilege;* and it is only by an indulgence in not punishing for the contempt, that the reports of the debates are allowed to appear in the newspapers. (*b*)

(*a*) In a "legal and constitutional argument against the alleged judicial right of restraining the publication of reports of judicial proceedings," by J. P. Thomas, Esq. 1822.

(*b*) See ante, p. 363; and 8 T. R. 293. 1 Bos. & Pul. 525.

Different reasons have been assigned in the several courts, for the exercise of this power over the publication of judicial proceedings, but all of them have for their ground work, the impartial administration of justice.

The House of Lords, the highest judicial court in the kingdom, has, ever since the trial of Dr. Sacheverell, considered that it was the exclusive *privilege* of the House to publish its own judicial proceedings. This is usually done by ordering the Lord Chancellor to cause the trial to be published; at the same time prohibiting all other persons from doing the like.

An order had been made by the House of Lords for the printing the trial of the Duchess of Kingston; and an injunction was granted to restrain one Kearsley who had without such permission dared to print it. (*c*)

Lord Erskine also granted an injunction until the hearing to restrain the publication of the trial of Lord Melville, which had been directed to be printed by an order of the House of Lords, and the privilege of doing it conferred on Mr. Gurney. (*d*)

His Lordship observed that he desired it to be understood, that he had not delivered any judgment in the case, farther than by granting the

(*c*) *Bathurst* v. *Kearsley*, Easter Term, 1776, cited 13 Ves. 504.

(*d*) *Gurney* v. *Longman*, 13 Ves. 493. But yet reports of legal arguments in the House of Lords are regularly given, unnoticed by their lordships.

injunction until the hearing upon the precedent of *Bathurst* v. *Kearsley*, and that he should therefore consider *the question open* in any future stage.

Neither of these cases came to a hearing: but it may be safely inferred that the House of Lords possesses the power, as a privilege of the House, to make an order restraining all persons, excepting the one appointed by the Lord Chancellor, from publishing their judicial proceedings.

2. The privy council.

On the ground of *public policy*, an injunction was once granted to restrain the publication of matters before the Privy Council. (*e*)

3. The courts of law.

A similar privilege is claimed and exercised by the Courts of Law at Westminster. Formerly no reports of their proceedings were allowed to be published, until they had received the imprimatur of the Judges. (*f*) Although decent and correct accounts of what passes in courts of justice may, it has been shewn, (*g*) be given to the public; yet it must be by the consent of the Judges implied by their not interfering to stop it. If an intimation is given from the Bench that the matter of any particular case must not be reported, it is a *contempt* of Court to publish it. The proprietor (*h*) of the Observer newspaper was fined 500*l*.

(*e*) Mentioned in argument in *Percival* v. *Phipps*, 2 Ves. & Beam. 23.

(*f*) See the Preface to Douglas's Reports.

(*g*) Ante, p. 363.

(*h*) *The King* v. *Clement*, 4 Barn. & Ald. 218. As to advertising for evidence in a cause, see *Poole* v. *Sacheverell*,

for reporting part of the trial of Thistlewood for high treason, after the court had stated that it was their wish that the whole of the proceedings might be published together, and that no part of them should be printed, until the trials of several other prisoners were over. The reasons for this power thus exercised, by courts of justice, are too obvious to need any mention being made of them.

This privilege is not claimed by the court as a right *wholly to prevent* the publication of a trial; but merely for the sake of justice, to restrain all ex-parte statements which must necessarily conduce to the detriment of one party; and, in criminal cases, more particularly to the injury of persons under trial. The publication is not an infringement of any copyright: but a *contempt* of the court.

4. The Lord Mayor's Court.

Not only have the higher courts of justice this power over the publication of their own proceedings: but it is also possessed by the *Mayor of London.*

A bill was filed by some printers, who had bought from the Lord Mayor the copies of the *Sessions Paper*; and Lord Hardwicke, upon the ground that it had always been usual for the Lord Mayor to give an order to a printer, and to take a consideration for it, granted an in-

1 P. Wms. 675; and see 4 Burr. 2329. Bac. Ab. Courts and their Jurisdiction, 3 Inst. 182.

junction until the hearing. At the hearing the injunction was made perpetual by Lord Northington. (*i*)

5. Coroner's inquest.

A criminal information will lie for publishing an *ex parte* statement of the proceedings upon a coroner's inquest. Mr. Justice Bayley (*j*) observed "this is a matter of great criminality; for the inquest before the coroner leads to a second inquiry, in which the conduct of the accused is to be considered by persons who ought to have formed no previous judgment of their case. It is a statement of evidence taken wholly *ex parte*; and where there is no opportunity for cross-examination. A jury, who are afterwards to sit upon the trial ought not to have *ex parte* accounts previously laid before them: they ought to decide solely upon the evidence which they hear upon the trial."

VI. PRINTERS.

Among the persons peculiarly interested in literary property, and the publication of books, *Printers* may be classed. The enactments and rules of law respecting them, will therefore very properly find a place in a Treatise on Copyright; and may be investigated in the following order, by stating,

(*i*) *Manby* v. *Owen*, cited in *Millar* v. *Taylor*, 4 Burr. 2330, 2404, 5.

(*j*) *The King* v. *Fleet*, 1 Barn. & Ald. 384.

1. The statutes respecting printing in general.
2. How far printers are affected by the matter of the books.
3. The rules respecting printing newspapers.
4. Their legal liabilities.
5. The proceedings to punish offenders.

1. Printing in general.

Every person, having a printing press or types for printing, must give a notice thereof, signed in the presence of and attested by one witness, to the clerk of the peace, of the place in which it is intended to be used, who will grant a certificate; and, after filing such notice, he will transmit an attested copy of to the Secretary of State. An omission in giving such notice, or a using the press in any other place, subjects the printer to a forfeiture of 20*l.* (*k*)

The name of the printer.

Upon the front of every paper, which is printed on one side only, and upon the first and last leaves of every paper or book which consists of more than one leaf, the printer, whether it be done gratis or for money, must in legible characters print his name, and that of the city, town, parish, or place, with the name of the square,

(*k*) 39 Geo. 3, c. 79, s. 23. Not to extend to his Majesty's printers or the Universities in England, id. s. 24; ante, p. 316 and p. 338, 9. But *letter-founders* must give a similar notice, id. s. 25, and keep an account of types and printing presses sold by them, which must be produced, when required by a justice, under a penalty of 20*l.* id. s. 26. See 6 & 7 Will. 4, c. 76, s. 24.

street, lane, court, or place in which his usual place of abode is situated, under a penalty of 20*l.* for every copy. (*l*) But the offender is not liable to more than twenty-five penalties for the omission, with respect to any number of copies of *one* paper or book. (*m*)

The name of the employer.

Upon a copy of every paper that is printed the printer must *write* the name and place of abode of his employer, and keep it for six calendar months; and must produce it to any justice who, within that term, may require to see it, under a penalty of twenty pounds for each omission. (*n*)

These regulations, however, do not extend to impressions of engravings; (*o*) or to printing by letter-press, names, address, business or profession of any person, and the articles in which he deals, or to any papers for sale of estate or goods by auction or otherwise; (*p*) nor to alter the regulations respecting newspapers. (*q*)

And no regulation made by 39 Geo. III. c. 79, nor by the 51 Geo. III. c. 65, (*r*) is to extend so

(*l*) 39 Geo. 3, c. 79, s. 27. Not to extend to papers printed by the authority of Parliament, id. s. 28. Sometimes an indemnity is granted for omission of the names, &c. See 49 Geo. 3, c. 69.

(*m*) 51 Geo. 3, c. 65, s. 1.

(*n*) 39 Geo. 3, c. 79, s. 29.

(*o*) See ante, p. 397.

(*p*) 39 Geo. 3, c. 79, s. 31.

(*q*) See ante, p. 356.

(*r*) 51 Geo. 3, c. 65, s. 3. Before which time, indemnity acts were passed on that account. 39 and 40 Geo. 3, c. 95, and 41 Geo. 3, (U. K.) c. 80.

far as to require the printer's name or residence to be printed on any note or post bill of the Bank of England, bill of exchange, or promissory note, or any bond or other security for payment of money, or on any bill of lading, policy of insurance, letter of attorney, deed, or agreement, or on any transfer or assignment of any public funds or securities, or of the stocks of any public corporation or company authorised by statute, or on any dividend-warrant of or for the same, or on any receipt for money or goods, or on any proceeding in law or equity, or in any inferior court, warrant, order, or other papers printed by authority of any public board, or officer, in execution of their respective offices, notwithstanding the whole or any part of such securities, &c. shall be printed.

2. Printers affected by the matter of the books.

There are many subjects offensive to morality and the government, upon which no papers whatever must be printed.

A printer is liable to a penalty of 100*l.* for printing any thing relating to insurances on marriages, births, christenings, or services; or any office under the denomination of sales of gloves, of fans, of cards, of numbers, of her Majesty's picture, for the improvement of small sums, or the like offices under that pretence: (*s*) and to a penalty of 50*l.* for printing any proposal for gambling in the lottery. (*t*)

(*s*) 10 Ann. c. 26, s. 109; and see 9 Ann. c. 6, s. 56.

(*t*) 22 Geo. 3, c. 47, s. 13; and see *The King* v. *Smith*, 4 T. R. 414. For an account of other penalties to which printers are liable, see ante, p. 360.

And a prosecution may be instituted against the printer as well as against the author and publisher of a libel, whether it be on an individual, or be of a blasphemous or seditious nature. (*u*)

A printer cannot recover against a publisher for printing a work which contains the life of a prostitute, and the history of her amours with various persons; and it is no excuse to say that the parties are in *pari delicto*. (*w*)

3. Printers of newspapers.

The method by which a newspaper is to be printed has been stated; (*x*) and the responsibility of every person engaged in its publication has been examined. (*y*)

4. Their legal liabilities.

It is doubtful whether a printer can recover in an action for work and labour for printing a work, on the first and last leaves of which his name and place of abode are not printed, according to the direction of the statute. (*z*)

(*u*) Holt on Libel.

(*w*) *Poplett* v. *Stockdale*, 2 C. & P. 198. R. & M. 337.

(*x*) Ante, p. 356.

(*y*) Ante, p. 379.

(*z*) *Bensley* v. *Bignold*, 5 B. & A. 335. *Marchant* v. *Evans*, 2 B. Moor, 14. 8 Taunt. 142, S. C. In which case it was held, that an action for work and labour cannot be maintained by a printer for printing and publishing a weekly periodical work, parts of which were *printed on stamped paper*, and distributed as newspapers, and parts on unstamped paper, which were half-yearly bound into volumes, unless such printer lodge an affidavit at the stamp office, or have his name or place of abode printed in some part of the publication, as required by the statute 38 Geo. 3, c. 78.

A printer is not, by the custom of his trade, entitled *to be paid* any thing until he has completed the book: but he is not by custom bound to *insure* for the bookseller, the paper of the work. (*a*) And he has a *lien* on the latter parts of a work published at different times for the printing of the first parts. (*b*)

5. Proceedings to punish offenders.

It is enacted, that *any person*, to whom or in whose presence any paper, not printed according to the statute, is offered for sale, or exposed to public view, may take the offender before a magistrate, who may determine upon his guilt; (*c*) and may, if he see cause, mitigate the penalty to any sum not less than 5*l.* above all reasonable costs. (*d*)

A justice of the peace, who, from information upon oath, may have reason to suspect that some presses are being used without the requisite notice having been given, or not in the place named in it, may empower an officer to search the premises, and to secure and carry away the press, and types, and the printed papers found with them. (*e*)

Justices of the peace may proceed in a summary way to enforce the payment of a penalty not exceeding the sum of 20*l.*; and, if it is not

(*a*) *Gillet* v. *Mawman*, 1 Taunt. 136; and *Mawman* v. *Gillet*, 2 Taunt. 325, n.

(*b*) *Blake* v. *Nicholson*, 3 M. & S. 167.

(*c*) 39 Geo. 3, c. 79, s. 30.

(*d*) 51 Geo. 3, c. 65, s. 2.

(*e*) 39 Geo. 3, c. 79, s. 33.

forthwith paid, may levy the same by distress and sale of the offender's goods; and if there is not sufficient under the distress, they may commit the offender to the House of Correction, for a term not exceeding six, nor less than three, calendar months. (*f*)

Limitation. All prosecutions for penalties are to be commenced within three months after the penalty is incurred; (*g*) one moiety of which is forfeited to the king, whilst the other is given to the informer. (*h*)

Appeal to sessions. Any person, aggrieved by a determination of a justice of the peace, may appeal to the Quarter Sessions next after the expiration of twenty days from the making thereof, first giving six days' notice of appeal to the person prosecuting for such penalty, and the Court may dispose of the matter with the *costs*, in any manner they may think reasonable. (*i*)

But any penalty mentioned in 39 Geo. III. c. 79, an act of the legislature to suppress unlawful assemblies, as well as to regulate the manner of printing, *exceeding* 20*l.*, may be recovered by action of debt, in any court of record at Westminster: and the plaintiff, if he recovers, will be entitled to full costs. Not one of the penalties imposed by that statute, as far as it relates to *printing*, exceeds 20*l.*; and, consequently all offences under it of that description,

(*f*) 39 Geo. 3, c. 79, s. 35.
(*g*) Id. s. 34.
(*h*) Id. s. 36.
(*i*) 51 Geo. 3, c. 65, s. 4.

must be determined by justices of the peace. An attempt was made to sue in the King's Bench for 60*l.*, or three penalties: but, after verdict for the plaintiff, the judgment was arrested. (*j*)

VII. BOOKSELLERS.

All booksellers are much interested in the laws that protect literary property; and yet the laws respecting them, merely as sellers of books, are very few in number. When they assume the characters of publishers, they are in fact assignees of the authors, of whom much has already been said. (*k*) It will be proper to examine,

1. The statutes respecting buying and selling and importing books.
2. How far booksellers are affected by the matter of a work.
3. Their legal liabilities.

(*j*) *Fleming qui tam* v. *Bailey*, 5 East, 313. Lord Ellenborough.—A common informer can have no right to sue for any penalty, but where power is given to him for that purpose by the statute. Now, the statute in question only says that a common informer may sue in any court of record for any pecuniary penalty imposed by the act exceeding 20*l.* The penalty given for this offence, each of which must be taken by itself, and cannot be reckoned accumulatively, does not exceed 20*l.*; and, therefore, it is not within the provisions of the 35th clause, which give an action. And the sense of that clause requires that the form of the declaration there afterwards given should be read the same as if the sum to be recovered were left in blank;—for how otherwise can the penalty of 100*l.* given by the 15th section be recovered?

(*k*) Ante, p. 423.

1. Buying and selling and importing books.

The vendor of a pirated work destroys literary property as much as a rival publisher; and, therefore, not only are penalties inflicted on those who print and import books protected by the statutes of copyright: but they, who knowing them to be so printed without the consent of the proprietor, will venture to sell them, are made liable to the same penalties mentioned in 8 Ann. c. 19. (*l*)

But it was further provided, that nothing in that act should extend to prohibit the importing, vending, or selling of any books in the *Greek*, *Latin*, or any other *foreign language*, printed beyond the seas. (*m*)

By the 12 Geo. II. c. 36, the importation of books reprinted abroad, and first composed or written and printed in Great Britain, is prohibited under a forfeiture, of the books to be destroyed, with a penalty of 5*l*., and double the value of the books: but it does not prevent the importation of any book *inserted among other books* or tracts, to be sold therewith, in any collection where the greatest part of such collection shall have been first composed or written and printed abroad. (*n*)

(*l*) The price of books was formerly regulated, see 25 Hen. 8, c. 15, s. 5. 8 Ann. c. 19, s. 4, and 12 Geo. 2, c. 36, s. 3.

(*m*) Sect. 7. The acts of Parliament, respecting the selling and importing books, that have become obsolete, are numerous. 1 Rich. 3, c. 9, s. 12. 25 Hen. 8, c. 15. 7 Ann. c. 14, s. 10. 12 Ann. st. 2, c. 5. Duties are imposed on pictures imported, 8 Geo. 1, c. 20. 11 Geo. 1, c. 7, and on the canvass used to paint on. *The Attorney General* v. *Brandon*, 3 Price, 360.

(*n*) See 41 Geo. 3, c. 107, s. 7; and 54 Geo. 3, c. 156.

To the same purpose is the 57th section of the statute 34 Geo. III. c. 20, which increases the penalty from 5*l.* to 10*l.*, and allows the commissioners of customs and excise to reward officers for seizing such books; in it is another *exception* on the restraint of importation, that it shall not extend to any books that shall not have been printed in this kingdom, within twenty years before the same shall have been so printed abroad.

By the wording of these statutes it seems immaterial whether the author's copyright is extinct or not, if the book has not been reprinted in England within twenty years. (*o*)

Printers and booksellers may, however, with the exceptions above mentioned, export books upon condition that all the duties upon the paper and bindings have been paid, (*p*) provided that if books are written in the Latin, Greek, oriental, or northern languages, then that they have not been printed at the press of either of the Universities in Great Britain. A drawback is allowed of the duty of the paper.

On the stat. 12 Geo. II. c. 36, it has been decided that two penalties might be incurred in the same day. A sale by the defendant in the morning, and another by his wife in the afternoon of the same day, were considered by the

(*o*) 2 Bla. Com. 407, n. Ed. Christian.

(*p*) The acts of Parliament respecting the duties on paper are very numerous.

Court to be two distinct acts of sale, for which two penalties might be recovered. (*q*)

2. How far booksellers are affected by the contents of a book.

Booksellers have always been made answerable for the contents of the works which they may sell. It was formerly a grievous offence to sell, or import for sale, any work which was considered heretical. (*r*)

The laws respecting libels very materially affect booksellers; for it has been decided that the circumstance of buying a libel in the shop of a known bookseller is sufficient *primâ facie* evidence to convict him of the publication. (*s*)

There is a duty payable on the importation of books. It varies according as the works are in sheets or bound up; (*t*) and its amount has been altered by many acts of Parliament.

3. Their legal liabilities.

The liabilities to which booksellers are peculiarly subjected are not very numerous.

Not only can a bookseller in general be made a bankrupt, but it was adjudged that a person

(*q*) *Brooke* v. *Milliken*, 3 T. R. 509. By a late order in council, the duty on books from the colonies to the same as from a foreign country, *viz.* pence by pound weight.

(*r*) See 3 & 4 Edw. 6, c. 10. 1 Mar. s. 2, c. 2. 1 Jac. 1, c. 25. 3 Jac. 1, c. 5, &c.

(*s*) *Rex* v. *Almon*, 5 Burr. 2686.

(*t*) The trade of a *bookbinder* was known in England previous to 5 Eliz. c. 4, and was within that statute: and, consequently, before the repeal of that statute, to employ a journeyman who had not served an apprenticeship in any substantive part of that business, was a violation of it. *Pratt* v. *Fraser*, 3 Campb. N. P. C. 14; and see *Martins* v. *Galloway*, 3 Campb. N. P. C. 121.

who was daily accustomed to buy the whole impression of a newspaper from the proprietor, and to resell it at a profit bearing the loss arising from the copies unsold might become a bankrupt. (*u*)

(*u*) *Gillingham* v. *Lang*, 6 Taunt. 532. 2 Marsh. 236.

CHAP. VIII.

OF THE REMEDIES FOR AN INFRINGEMENT OF A COPYRIGHT.

HAVING described the different kinds of literary and scientific works, stated the nature of the property which exists in them, and given an account of the several persons peculiarly interested in publications, it becomes necessary to proceed, lastly, to point out the several *remedies* that may be pursued for injuries done to literary property.

As the property in the productions of the FINE ARTS is not vested in the inventors by the statutes which relate to the copyright in books, I have for the sake of perspicuity, and in order to make each chapter as complete in itself as the nature of the subject would admit, already given statements of the penalties by which the property in engravings or prints is guarded; (*a*) and described the actions that may be maintained for piracies of patterns for linen, &c., (*b*) and of sculptures (*c*) or models.

(*a*) Ante, p. 404. (*b*) Ante, p. 412.
(*c*) Ante, p. 420.

It is now therefore proper to investigate the remedies for an infringement of the copyright of a *book*, which may be

I. *By a suit for penalties.*
II. *By an action on the case for damages.*
III. *By proceedings in equity.*

I. THE SUIT FOR PENALTIES.

What conduct amounts to a piracy of the different kinds of literary works in particular, as of books on general subjects, (*d*) abridgments, (*e*) musical compositions, (*f*) and dramatic pieces, (*g*) has been incidentally described, when treating on those subjects. A piracy.

But it will be convenient before investigating the remedies for an infringement of a copyright, to collect the general principles respecting the piracy of works in general.

The identity of any literary works consists entirely in the *sentiments* and *language*. The same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition, to the ear or to the eye, by *recital* or by *writing*, or by *printing*, in any number of copies, or at any period of time, the property of another person has been violated; for the new book is still the identical work of the real author. (*h*)

(*d*) Ante, p. 343.
(*e*) Ante, p. 346.
(*f*) Ante, p. 387.
(*g*) Ante, p. 389.
(*h*) 2 Bla. Com. 406.

Thus, therefore, a transcript of nearly all the sentiments and language of a book is a glaring piracy. To copy part of a work, either by taking a few pages *verbatim*, where the sentiments are not new, (*i*) or by imitation of the principal ideas, although the treatises in other respects are different, is also considered to be illegal.

Although it was held (*j*) by Ellenborough, C.J., that a variance in *form* and *manner* is a variance in *substance*, and that any material alteration which is a *melioration* cannot be considered as a piracy; yet a piracy is committed, whether the author attempt an original work, or call his book an abridgment; if the *principal parts* of a book are servilely copied, or unfairly varied.

But if the main design be not copied, the circumstance that part of the composition of one

(*i*) *Trusler* v. *Murray*, 1 East, 363, n. This was an action for pirating a book of chronology. It was proved by the plaintiff that some parts of the defendant's work were different; yet in general it was the same, and particularly from page 20 to 34, it was a literal copy.

Kenyon, C. J., was of opinion, that if such were the fact, the plaintiff must recover, though other parts of the work were original. He said Lord Bathurst had been of that opinion; and he thought rightly with respect to an abridgment of *Cook's Voyages round the World*. The main question here was, whether in substance the one work is a copy and imitation of the other; for, undoubtedly, in a chronological work, the same facts must be related. The books were then referred to an arbitrator to be compared. Mich. Term, 1789; and see *Pinnock* v. *Rose*, cov. Sir J. Leach, V. C. 2 Bro. C. C. 85, n. Belt. Ed.

(*j*) In *Cary* v. *Kearsley*, 4 Esp. N. P. C. 169.

author is found in another, is not of itself piracy sufficient to support an action. A man may fairly adopt part of the work of another; he may so make use of another's labours for the promotion of science, and the benefit of the public: but having done so, the question will be—Was the matter so taken used fairly with that view, and without what may be termed the *animus furandi?* (*k*)

Quotations.

In judging of a quotation, whether it is fair and candid, or whether the person who quotes it has been *swayed* by the *animus furandi*; the *quantity* taken, and the *manner* in which it is adopted, of course must be considered.

If the work complained of is *in substance* a copy, then it is not necessary to shew the *intention* to pirate; for the greater part of the matter of the book having been purloined, the intention is apparent, and other proof is superfluous. A piracy has *undoubtedly* been committed.

But if only a *small portion* of the work be quoted, then it becomes necessary to prove that it was done *animo furandi;* with the intention of depriving the author of his just reward, by giving his work to the public in a cheaper form. And then the mode of doing it becomes a subject for inquiry. For it is not sufficient to constitute a piracy, that part of one author's book is found in that of another, unless it be nearly the whole; or so much as will shew (being a question of fact

(*k*) *Roworth* v. *Wilkes*, 1 Campb. 97; and see 17 Ves. 424.

for the jury) that it was done with a bad intent, and that the matter which accompanies it has been colourably introduced.

3. Obscenity, immorality. libels, &c.

The courts of common law, and of equity, strive to protect the *morals* of the public. It is a principle on which this part of the law rests, that there cannot be a copyright in any work, the tendency of which is *obscene* or *immoral*. And whether the offensive matter be represented in prints (*l*) or pictures, (*m*) or expressed in a book, it makes no difference.

Bad public tendency.

And if a work be of such a libellous or mischievous nature as to affect the *public morals*, so that the author cannot maintain an action at law (*n*) upon it, a court of equity will not interpose with an injunction, to protect that which by the policy of the law cannot be called property, not eveu upon a *submission* in the answer to a bill. Not only will the Court not interfere when it *plainly* sees that the work is obscene or im-

(*l*) *Fores* v. *Johnes*, Esq. 4 Esp. N. P. C. 97. Lawrence, J. For prints, whose objects are general satire, or ridicule of prevailing fashions or manners, I think the plaintiff may recover: but I cannot permit him to do so for such whose tendency is immoral or obscene; nor for such as are libels on individuals, and for which the plaintiff might have been rendered criminally answerable for a libel.

(*m*) 2 Camp. 511.

(*n*) *Hime* v. *Dale*, 2 Camp. 27, n. See 2 Meriv. 427, where it is said that evidence of Priestley's MSS., which were burnt in the Birmingham riots, being libels on government, would have been admitted by Eyre, C. J., and see 60 Geo. 3, c. 9.

moral: but even, if there be *a doubt* as to its evil tendency, the Lord Chancellor will not be prevailed on to grant an injunction. (*o*)

And protection has been denied to a translation of an immoral work. (*p*)

Libels on private individuals.

It seems that neither the courts of equity nor of law, will support a copyright in any work which is a *libel on an individual*, and for which the author might have been rendered civilly or criminally answerable. In an action for destroying a picture, from the exhibition of which great profits were derived, Lord Ellenborough observed, (*q*) that the only plea on the record being the general issue of not guilty, it was unnecessary to consider whether the destruction of the picture might or might not have been justified. The material question was, as to the value to be set upon the article destroyed. If it were a libel upon the persons introduced into it, the law could not consider it valuable as a picture. He directed the jury, in assessing damages, not to consider it as a work of art, but merely to give the value of the canvass and paint.

The principle of law, that no action can be maintained for pirating a work calculated to do

(*o*) *Walcot* v. *Walker*, 7 Ves. 1. *Southey* v. *Sherwood*, 2 Meriv. 438. *Murray* v. *Benbow*, MSS. *Lawrence* v. *Smith*, MSS. And see an article in Quarterly Review for April, 1822, p. 123, and Blackwood's Mag. for July, 1822.

(*p*) *Burnet* v. *Chetwood*, 2 Meriv. 441, n.

(*q*) *Du Bost* v. *Beresford*, 2 Campb. N. P. C. 511; and see 4 Esp. N. P. C. 97.

injury to the public, and that no injunction will be granted to protect the author, although his character as an individual may suffer by the publication, was fully recognized in *Southey* v. *Sherwood.* (*r*) In that case, Lord Eldon observed, "It is very true, that in some cases it may operate so as to multiply copies of mischievous publications, by the refusal of the Court to interfere by restraining them: but to this my answer is, sitting here as a judge upon a mere question of property, I have nothing to do with the nature of the property, nor with the conduct of the parties, except as it relates to their civil interests. If the publication be mischievous, either on the part of the author, or of the bookseller, it is not my business to interfere with it."

And so strong is this objection, that Lord Ellenborough has held an *apprehension of a prosecution* for the immorality or illegality of a work, proved to be well founded by the production of the part printed, would justify a person for refusing to supply a bookseller with the remainder of the manuscript agreeable to a contract. (*s*)

But there seems to be an exception to the general rule, that equity will not interfere to protect a book of *bad* tendency, when the author *repents* of his work, and wishes to suppress it. In that case Lord Eldon has intimated that he might grant an injunction. (*t*)

(*r*) *Southey* v. *Sherwood*, 2 Meriv. 438; see ante, 213, n. (*z*).
(*s*) *Gale and Another* v. *Leckie*, 2 Stark. 107, post, Ch. VII.
(*t*) *Southey* v. *Sherwood*, 2 Meriv. 438.

The penalties given by the stat. of Anne against piracy are, that every offender shall forfeit the book, and every sheet, being part of it, to the proprietor of the copy of it, who shall forthwith damask, and make waste paper of them; (*u*) and further, that every such offender shall forfeit one penny (now three pence) (*v*) for every sheet which shall be found in his possession, either printed or printing, published or exposed to sale; one moiety to the Queen, the other to the informer. (*w*) The Penalties.

That no person, however, may, through ignorance, offend against that act, none of its penalties can be imposed on any one, unless the title of the book, before its publication, be entered in the register book of the Company of Stationers. The consent to publish,—that is, every assignment of t[he] copyright,—must also be entered.

If, on the other hand, any person be prosecuted for violating the statute of 8 Anne, he may plead the general issue, and under it give any special matter in evidence. If he obtain a verdict, or the plaintiff be nonsuited, or discontinue his action, then he is to have his full costs.

Any proprietor, bookseller, or printer, or the warehouse-keeper of the Stationers' Company,

(*u*) To be done on motion to the Court, 41 Geo. 3, c. 107, s. 1.

(*v*) 40 Geo. 3, c. 107, s. 1, and repealed in 54 Geo. 3, c. 156, s. 4.

(*w*) 8 Ann. c. 19, s. 1.

not observing the directions of the act respecting delivering the copies to the libraries, and making default therein, is liable to forfeit *five pounds* for every copy not delivered, besides the value of the printed copies not so delivered, to be recovered with full costs.

Independent of the remedies at law necessary to recover a compensation for an injury done to the copyright in a book, there are some works, periodical publications, such as the newspapers, which may be the subjects of legal proceedings peculiar to themselves, that have been before investigated. (*x*)

The action for them.

These penalties are recoverable in actions to be maintained in the courts at Westminster. The time limited for bringing them has in the several statutes been continually altered. It is now twelve months. (*y*)

II. THE ACTION ON THE CASE FOR DAMAGES.

Literary property is not only protected by penalties for which few persons would sue, but the proprietor may maintain a special action on the case, for any injury he may have received by a piracy of his book. (*z*)

It was for some time doubted whether an author, whose work had not been entered at Stationers' Hall, could maintain an action on the

(*x*) Ante, 379.

(*y*) 8 Ann. c. 19, s. 10. 41 Geo. 3, c. 107, s. 8. 54 Geo. 3, c. 156, s. 10.

(*z*) 54 Geo. 3, c. 156, s. 4.

case for damages (independent of the statute) against the person who had pirated his work. It was first decided in equity that no objection could be taken to a bill for an injunction and an account, because the book had not been registered at Stationers' Hall. (*a*)

And afterwards at common law it was decided, that the stat. 8 Anne, by creating a right in authors, also gave to them the concomitant remedy (an action on the case for damages) for any injury done to it, although it were not entered at Stationers' Hall, or had not the author's name affixed to it. The penalties, it was observed, were given to the informer; and the author, who might be anticipated in suing for them, ought to be otherwise reasonably defended. (*b*)

(*a*) *Baller* v. *Walker*, see *Blackwell* v. *Harper*, 2 Atk. 94.

(*b*) *Beckford* v. *Hood*, 7 T. R. 620; see 2 Wils. 145. This was an action on the case for publishing without the consent of the plaintiff, his book called "*Thoughts upon Hunting.*" Neither of its editions had been entered at Stationers' Hall.

By the Court.—The question is, "Whether the right of property being vested in authors for certain periods, the common law remedy for a violation of it does not attach within the times limited by the act of Parliament. Within those periods the act says, that the author shall have the sole right and liberty of printing, &c.; that the statute having vested this right in the author, the common law gives the remedy by action on the case, for the violation of it. Of this no doubt could have been made, had the statute stopped there: but it has been argued, that as the statute in the same clause that creates the right, has prescribed a particular remedy, that remedy and no other can be resorted to. But the meaning of the legislature in creating the penalties in the latter part of

But now by the 54 Geo. III. c. 156, the doubt as to the necessity of an entry to vest the copyright is removed; and it is provided that a

the clause was to give an accumulative remedy. Nothing could be more incomplete as a remedy than penalties alone; for without dwelling upon the incompetency of the sum, the right of action is not given to the party aggrieved, but to any common informer. Now the action for the penalties given to a common informer can only be considered as an additional protection: but not intended to oust the common law right to prosecute by action any one who injures this species of property, which would otherwise necessarily attach upon the right of property so conferred. Where an act of Parliament vests property in a party, the other consequently follows of course, unless the legislature make a special provision. The penalties to be recovered may indeed operate as a punishment upon the offenders: but they afford no redress to the injured party. The action is not given to him, but to any person who may get the start of him. It is no redress for the civil injury sustained by the author in the loss of his just profits. It is also to be observed, that the penalties to be given by the act attach only during the first fourteen years of the copyright; and during that time only is the offender liable to such penalties if he invade the author's right: but he is liable during the whole period prescribed by the act to make good in an action for damages any civil injury to the author. If this construction were not to prevail, during the last fourteen years of the term, the author would be without remedy from any invasion of his property. Although six to five of the judges who delivered their opinions in *Donaldson* v. *Becket* were of opinion that the common law right on action was taken away by the statute of Anne, it appears that the amount of their opinions went only to establish that the common law right of action could not be exercised beyond the time limited by the statute."

"In respect to the entry at Stationers' Hall, it has always

special action on the case may be maintained by the proprietor of a book against any person for printing, reprinting, or importing or publishing, or exposing it to sale, by which he may recover such damages as the jury may think proper to assess. (*c*)

The pleadings. In the pleadings in an action for damages for infringing a copyright, there is nothing to distinguish it from actions on the case in general. (*d*)

Plea. The plea allowed by the statutes is the general issue, Not Guilty, with liberty to give the special matter in evidence under it. (*e*)

The time limited for bringing an action has been altered in the several statutes. It is now twelve months next after the offence has been committed. (*f*)

been holden that such entry was only necessary to enable the party to bring his action for the penalty. The entry serves as a notice and warning to the public, that they may not ignorantly incur the forfeitures or penalties before enacted against such as pirate the works of others."

(*c*) The first publisher of a libellous or immoral work cannot maintain an action against any person for publishing a pirated edition. *Stockdale* v. *Onwhyn*, 5 B. & C. 173, and 2 C. & P. 163; and see ante, p. 478.

(*d*) For the precedents of the declaration, see 8 Went. 420, 434. 2 Chit. Pl. 351. 7 T. R. 518, 620.

(*e*) Upon an action by several plaintiffs for piracy of copyright, it appeared that the defendant had published the work in question pursuant to the conditions of a cognovit given by him to one of the plaintiffs, and one P., in an action for not performing an agreement to write the work in question, and the Court held it to be a sufficient defence. *Sweet and Another* v. *Archbold*, 10 Bing. 33.

(*f*) Ante, p. 482.

Evidence.

The books are usually adduced in evidence, that by comparison it may appear to the Court and jury that the one is an infringement of the copyright of the other work. The circumstance of the same errors being found in two publications on the same subject, is reasonable *primâ facie* evidence of a piracy. (*g*)

Judgment, costs, &c.

There is nothing particular in the judgment. Double costs are given to the plaintiff when successful in maintaining a special action on the case: but if he discontinue, or is nonsuited, then costs are to be allowed to the defendant.

III. THE PROCEEDINGS IN EQUITY.

The jurisdiction of the courts of equity over literary property is similar to that exercised over patents for inventions; and arises from an anxiety to give effect to the legal right, and to restrain, by means of the short process of an *injunction*, any violation which might become an injury irremediable by the slow proceedings of the common law. (*h*)

Motion for an injunction.

Clear title.

At first the courts of chancery would not give assistance, unless the complainant had a clear *legal right*. (*i*) It was considered that injunctions to restrain an infringement of a copyright were of the same nature as those for staying waste;

(*g*) 4 Esp. N. P. C. 168.

(*h*) Ante, p. 250; and see 6 Ves. 705. 3 Bac. Ab. Injunctions.

(*i*) See Eden on Injunctions, 284. Anon, 1 Vern. 120. *Hills* v. *University of Oxford*, id. 275.

and never to be granted but upon a clear legal title. If moved for upon filing the bill, the right must have appeared clearly by affidavit; if moved for upon answer, it must have been clearly admitted by the answer, or at least not denied. (*j*)

Lord Northington in one case refused to interpose between two contending parties: (*k*) and in another, where the great question of the common law right of an author to his own productions after the expiration of the term allowed by the statute of Anne (upon which there was at that time no decision at law) came before him, he refused to interpose before there had been a trial at law, on the ground of the right being so extremely doubtful. (*l*)

And though we shall presently see that the law has been altered, yet still, where there is no possession, and the title depends upon the effect of an agreement, an injunction has been refused until the recovery in an action. (*m*)

It often happens that the question is referred to a court of common law. Many examples may be given.

Where the copyright of a work has been assigned by the author to the plaintiff, and the plaintiff and author swear that a person (a stranger to the suit) has only a qualified interest

(*j*) *Millar* v. *Taylor*, 4 Burr. 2303, 2325, 2328, 2400, 2407.

(*k*) *Basket* v. *Cunningham*, 2 Eden, 137. 1 Bla. Rep. 370.

(*l*) *Osborne* v. *Donaldson*. *Miller* v. *Donaldson*, 2 Eden, 327.

(*m*) *Walcot* v. *Walker*, 7 Ves. 1.

in the work, but a person in an affidavit filed by the defendant, swears, that under a bargain between him and the author, he has the entire copyright of the work, but does not state any deed of assignment; the plaintiff cannot obtain an injunction till he has established his right at law. (*n*)

An injunction was refused to restrain an alleged infringement of copyright before trial at law, where the conduct of the plaintiffs had been such as, in the opinion of the Court, was calculated to induce the defendant to believe that the course taken by them would not be objected to by the plaintiffs. (*o*)

An injunction was granted to restrain the publication and sale of a book, which appeared on the answer and affidavits to contain some portion of matter selected and copied from a prior work, and it was continued until the trial of an action at law to try the question of piracy.

Where the plaintiff states circumstances which are not denied, shewing him to be entitled to an equitable copyright in a work, the Court, in directing an action to be brought by him, to determine the question of piracy, will direct the defendant, for the purposes of the action, to admit a legal copyright in the plaintiff. (*p*)

Where a person made a copy of a print in-

(*n*) *Lowndes* v. *Duncombe*, 1 Law Journal Rep. 51.

(*o*) *Saunders and Another* v. *Smith and Another*, 3 Mylne & C. 711, and 16 Law Journal Rep. 227. Quere, whether it is not piracy to print at full length cases contained in the law reports, although with the addition of notes however voluminous.

(*p*) *Sweet* v. *Shaw*, 17 Law Journal Rep. 216.

vented by another person in colours, and of larger dimensions, and exhibited it as a diorama, the Court refused to restrain the exhibition, until the right had been established at law. (*q*)

Possession under colour of title.

Although the severity of the rule respecting the legal title was relaxed, yet aid was not afforded to a plaintiff unless he could shew *possession under colour of title*. Thus when the University of Cambridge in the year 1743, claimed the right of printing acts of Parliament, although they had never exercised such a privilege, Lord Hardwicke said, that whilst the question was so doubtful, he would not grant an injunction in favour of persons who never had possession. (*r*)

What time shall be considered as sufficient length of possession appears to be uncertain: for Lord Clare refused to grant an injunction at the instance of the king's printer in Ireland, until his right to the sole publication of Bibles had been established at law, although for forty years there had been *possession under colour of title*. (*s*)

Possession without title.

The practice in the courts of equity received a third modification; and it appears that now injunctions are granted and continued until the hearing upon possession alone, although the title to the book or patent may be very doubtful. (*t*)

(*q*) *Martin* v. *Wright*, 6 Simons' Rep. 297.

(*r*) *Basket* v. *University of Cambridge*, 1 Bl. Rep. 105. 2 Bur. 661, and cited in 6 Ves. 710; and see 6 Ves. 607, and 2 Evans' Collec. Stat. p. 610.

(*s*) *Grierson* v. *Jackson*, Irish T. R. 304.

(*t*) 6 Ves. 689. Id. 707. 8 Ves. 505.

It has been shewn, if the right should be clear, and there has not been any possession, that an injunction will be refused. Nor will the Court interfere when there *has been possession*; if the colour of title, by the imprudence of the real proprietor, is with another person; as when several individuals have been permitted to publish and sell the subject of the copyright without any interposition on the part of the proprietor: although that circumstance cannot be alleged as a justification of the infringement of another man's right; yet it is a sufficient ground to induce a court of equity not to interpose an injunction until the copyright has been established at law. (*u*)

Cases in equity. In an elementary work on copyright, it would be useless to go very particularly into the practice of the courts of equity respecting injunctions in general. On that head reference must be made to the books on Chancery Practice. (*v*) It will be sufficient to describe those parts which more immediately relate to injunctions for copyright, the following cases have been arranged in as much order as the subjects of them will admit.

The Court will not interfere to prevent trivial trespasses; and does not exercise its jurisdiction by injunction for the purpose of acting on legal

(*u*) *Walcot* v. *Walker*, 7 Ves. 1. *Platt* v. *Button*, 19 Ves. 447. Cooper Rep. 303.

(*v*) Eden on Injunctions, Chap. XVII. 2 Maddox. Chan. Chap. VII. Cooper's Pleadings in Chancery. Mitford's Pleadings, 111 and 119. 2 Ves. Jun. 486. Smith's, Daniel's, and Grant's Treatises on the Practice of the Court of Chancery.

rights, but interposes in order either to enforce legal rights, or to prevent mischief, until the time shall arrive when those legal rights may be ascertained. A court of equity, therefore, frequently refuses an injunction where it acknowledges a right, when the conduct of the complaining party has led to the state of things which occasions the application. If the owner of a copyright has, for some time past, acquiesced in different individuals transcribing cases from his works, the Court will not interpose in his favour by injunction against other parties who have subsequently transcribed the cases from the same work, until the owner of the copyright has established his legal right. It is not only the quantity, but the quality of the matter extracted by a defendant from the work of which the plaintiff has the copyright, that is to be considered in an application to the Court for its interposition by injunction. (*w*)

A plaintiff who complains of a piracy of his work, has no remedy in equity, unless he establish a title to an injunction, and then the account will follow. Thus the Court will not grant an injunction, but will leave the plaintiff to seek his legal remedy, where the matter, which is the subject of the alleged piracy, forms but a very inconsiderable part of the plaintiff's work, and contains merely calculations, and when the

(*w*) *Saunders* v. *Smith*, 16 Law Journal Rep. 227, and 3 Mylne & C. 711. See *Bramwell* v. *Halcomb*, id. 737.

work complained of has been published some years. (*x*)

The question of minuteness in value of the original matter extracted from a work for purposes of criticism, will have great weight with the Court, in influencing its decision on the application for an injunction. And the Court is averse to the practice of its time being occupied by applications for injunctions to restrain infringements of copyrights, in which it is difficult, if not impossible, to take an account of the loss complained of. (*y*)

Where a considerable portion of a publication has been shewn to be pirated, the Court will grant an injunction to restrain the publication of the parts which are pirated, without waiting till all the parts pirated can be ascertained. (*z*)

If a plaintiff, who has obtained an injunction, misrepresents to the public what has been done by the Court, and the defendant, to correct that misrepresentation, does an act which, in strictness, is a breach of the injunction, the Court will not entertain any complaint against him on the part of the plaintiff, for such a breach.

If A. sells a work to B., and covenants not to do anything which may be detrimental to the sale or circulation of that work, and if afterwards A. and a partner publish a rival work on the

(*x*) *Bailey* v. *Taylor*, 1 R. & M. 73, and 3 Law Journal Rep. 66.

(*y*) *Bell* v. *Whitehead*, 17 Law Journal Rep. 141.

(*z*) *Lewis* v. *Fullarton*, 17 Law Journal Rep. 291.

same subject, the partner will be restrained as well as A. (*a*)

If A. having entered into such a covenant with B. sells the materials of a rival work to C., who concludes his agreement and pays his money without any notice of the covenant, an injunction on the ground of that covenant cannot be maintained against C.

If an injunction has been granted against a work, which is proposed to be published in successive numbers, on the ground of piracy in the published numbers, the injunction will not be modified so as to permit the publication of the future numbers, while the question of piracy as to the others remains undetermined.

If A. sells to B. the copyright of a work containing letter press and plates which are to be found in prior works, and if A. subsequently furnishes the same letter press and similar plates to C. for the purpose of a rival work, C.'s publication will not, in respect of such letter press and plates, be held to be a piracy upon B.'s work.

The person who forms the plan of a work, to be composed by the labours of various persons, who employs different writers to contribute to it, and who pays them for their contributions, is the author and proprietor of such a work, within the statute of Anne. (*a*)

An injunction was granted until the hearing to restrain the publication of *Milton's Poems*,

(*a*) *Barfield* v. *Nicholson*, 2 Law Journal Rep. 90.

with *Dr. Newton's Notes*, notwithstanding a small addition of original commentary. (*b*)

We have seen that equity loathes all impurity, and that it will never protect such a publication as that on which an action at law could not be maintained. In such a case it will not decree an account even on submission in the answer. (*c*)

An injunction was granted to restrain the infringement of the copyright in a work as to which it appeared doubtful whether it did not tend to impugn the doctrines of the Scriptures. (*d*)

The question respecting the validity of the injunction next comes on to be argued, when an order that meets the justice and equity of the case is made. If the injunction is continued, the cause is seldom ever heard of again; for it is almost as impossible as it is useless to obtain an account of the profits.

Affidavit of title.

Having shewn that some sort of title either clear or colourable, with possession, is necessary to obtain an injunction, the affidavit, which is considered strong enough to claim a title, must next be investigated.

We have seen that the assignment must be in writing, and under what circumstances relief will be given; and, therefore, to support the bill of an assignee of a copyright, there must be an affidavit that the assignment was made in writing. (*e*)

(*b*) *Tonson* v. *Walker*, 3 Swanst. 672.

(*c*) *Lawrence* v. *Smith*, 1 Jacob's Rep. 471.

(*d*) 7 Ves. 1. *Southey* v. *Sherwood*, 2 Meriv. 435; and see ante, 480.

(*e*) See ante, p. 428.

An affidavit, in which it was stated generally that the copy had been purchased or legally acquired by a person, was held insufficient, as it did not mention that he had purchased it of the author. (*f*)

An instance has occurred in which the *agent of a writer* of great reputation who was abroad made an affidavit that a work of which he had strong reasons to believe that the poet was not the author, was advertised to be published in his name: and an injunction was granted and ordered to be continued, until, upon notice thereof, the defendant would swear (as to his belief) that the work was not the compilation of the agent's employer. (*g*)

It is also the practice, that an affidavit as to facts, filed *after* the answer, may be read at the hearing; but that an affidavit as to title cannot be received. (*h*)

It very seldom happens that an answer is put into a bill alleging a piracy; for the question in dispute is generally settled on the motion for an injunction. Answer.

The practice with respect to the hearing of the motion for an injunction to protect a right, whether in a patent or a book, has been mentioned. (*i*) The hearing of the cause.

The defendant is at liberty immediately to

(*f*) *Gilliver* v. *Snaggs*, 4 Vin. Ab. 278.
(*g*) *Lord Byron* v. *Johnston*, 2 Meriv. 29.
(*h*) *Platt* v. *Button*, 19 Ves. 447. Cooper, 303.
(*i*) Ante, p. 256.

move that the injunction may be dissolved; and in case of an imitation or piracy, the Lord Chancellor will read the works; or a reference to one of the masters will be made, for him to examine if the books are the same, or whether they differ in any and what respect. (*j*) But the Lord Chancellor in general prefers, if it be convenient, to compare the works, and then immediately to dissolve or to continue the injunction; or he will make any other order which in his judgment and discretion he thinks will meet the justice of the case.

(*j*) *Jeffery* v. *Bowles*, 1 Dick. 429. *Trusler* v. *Comyns*, cit. id. —— v. *Leadbetter*, 4 Ves. 681.

APPENDIX.

APPENDIX.

No. I.

A Form of the Petition for Patent.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

The humble petition of , of, &c.

Sheweth,

That your petitioner, after considerable application and expense, hath invented or found out, [*here state the title of the invention*].

That he is the first and true inventor thereof; and that the same hath never been practised or used by any other person or persons whomsoever, to his knowledge or belief.

Your petitioner, therefore, humbly prays that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent, under the great seal of the United Kingdom of Great Britain and Ireland, for the sole working, constructing, making, selling, using, and exercising, of his said invention, and all other benefit and advantage thereof, within that part of your Majesty's United Kingdom of Great Britain and Ireland called England, your dominion of Wales, and town of Berwick-upon-Tweed, [and also in all your Majesty's colonies and plantations abroad] for the term of fourteen years, according to the statute in that case made and provided. And your petitioner shall ever pray, &c.

No. II.

The Declaration to support the Petition.

I, A. B. of in the county of (profession) do solemnly and sincerely declare that I have invented (*a*) That I am the first and true inventor (*b*) thereof, and that the same have never been practised by any other person or persons whomsoever, to my knowledge or belief. *And* (*c*) *I further declare, that it is my intention to obtain patents in Scotland and Ireland.* And I make this declaration conscientiously, believing the same to be true, and by virtue of the provisions of an act made and passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present session of Parliament, intituled, 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

A. B. { Declared at this day of 184 Before me, A Master in Chancery. (*d*)

(*a*) Here the title given to the invention is to be inserted.

(*b*) In case the invention be a communication from abroad, that circumstance is stated, and it is declared that the same has never been practised in this kingdom, to the knowledge or belief of the party making the declaration.

(*c*) The words in italics are to be omitted when such is not the intention, and they are also to be omitted when the declaration is meant for Ireland or Scotland.

(*d*) Or, a Master Extraordinary in Chancery, or justice of the peace when in Scotland.

No. III.

The Form of a Patent.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all to whom these presents shall come, greeting. Whereas A. B. of hath, by his petition, humbly represented unto us, that (*e*) The petitioner, therefore, most humbly prayed we would be graciously pleased to grant (*f*) And we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request. Know ye, therefore, that we, of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents, for us, our heirs, and successors, do give and grant, unto the said A. B., his executors, administrators, and assigns, our especial license, full power, sole privilege, and authority, that he, the said A. B., his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy or deputies, servants or agents, or such others as he, the said A. B., his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter, during the term of years herein expressed, shall and lawfully may make, use, exercise, and vend his said invention, within that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed, (*g*) in such manner as to him, the said A. B., his executors, administrators, and assigns, or any of them, shall, in his or their discretions, seem meet. And that he the said A. B., his executors, administrators, and assigns, shall and lawfully may have and enjoy, the whole profit, benefit, commodity, and advantage, from time to time, coming, growing, accruing, and arising, by reason of the said invention, for and

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(*e*) For the allegations of the petition.

(*f*) For the prayer of the petition.

(*g*) For the words "and also within all our colonies and plantations abroad."

during the said term of years herein mentioned, To have, hold, exercise, and enjoy, the said license, powers, privileges, and advantages, hereinbefore granted, or mentioned to be granted, unto the said A. B., his executors, administrators, and assigns, for and during, and unto the full end and term of fourteen years, from the date of these presents next and immediately ensuing, and fully to be complete and ended, according to the statute in such case made and provided. And to the end that he, the said A. B., his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit, and the sole use and exercise of the said invention, according to our gracious intention hereinbefore declared: We do, by these presents, for us, our heirs and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within that said part of the United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed, (*g*) aforesaid, that neither they, nor any of them, at any time, during the continuance of the said term of fourteen years hereby granted, either directly or indirectly, do make, use, or put in practice the said invention, or any part of the same, so attained unto, by the said A. B. as aforesaid, nor in any wise counterfeit, imitate, or resemble the same, nor shall make, or cause to be made, any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the license, consent, or agreement of the said A. B., his executors, administrators, or assigns, in writing, under his or their hands and seals, first had and obtained in that behalf, upon such pains and penalties, as can or may be justly inflicted on such offenders for their contempt of this our royal command, and further to be answerable to the said A. B., his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned. And moreover we do by these presents, for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables,

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(*g*) For the words—"and also within all our colonies and plantations abroad."

headboroughs, and all other officers and ministers whatsoever of us, our heirs and successors, for the time being, that they or any of them do not, nor shall at any time hereafter, during the said term hereby granted, in any wise molest, trouble, or hinder the said A. B., his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or any thing relating thereto.

Provided always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall be made appear to us, our heirs or successors, or any six or more of our or their privy council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention, as to the public use and exercise thereof, in that said part of our United Kingdom of Great Britain and Ireland, called England, our dominion of Wales, and town of Berwick-upon-Tweed, aforesaid, or not invented or found out (*h*) by the said A. B. as aforesaid; then upon signification thereof, to be made by us, our heirs or successors, under our or their signet or privy seal, or by the lords of our or their privy council, or any six or more of them, under their hands, these our letters patent shall forthwith cease, determine, and be utterly void, to all intents and purposes.

Provided also that these our letters patent and any thing hereinbefore contained, shall not extend, or be construed to extend, to give privilege unto the said A. B., his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been invented or found out by any other of our subjects whatsoever, and publicly used and exercised in that said part of our United Kingdom of Great Britain and Ireland called England, of the dominion of Wales and town of Berwick-upon Tweed

aforesaid, unto whom our like letters patent or privileges have been already granted, for the sole use, exercise, and benefit thereof; it being our will and pleasure that the said

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(*h*) In case it be for an invention communicated from abroad, then the patent is as follows—"or not first introduced therein by the said, &c."

A. B., his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions, by them invented or found out, according to the true intent and meaning of the said respective letters patent, and of these presents.

Provided likewise, nevertheless, and these our letters patent are upon this condition, that if, at any time hereafter these our letters patent, or the liberty and privileges hereby as granted, shall become vested in or in trust for more then the number of twelve persons, or their representatives, at any one time, as partners, dividing or entitled to divide, the benefit or profit obtained, by reason of these our letters patent, reckoning executors or administrators as and for the single person whom they represent, as to such interest as they are or shall be entitled to, in right of their testator or intestate.

And also, that if the said A. B. shall not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be enrolled in our High Court of Chancery, within
calendar months next and immediately after the date of these our letters patent. And also, that if the said A. B., his executors, administrators, or assigns, shall not supply, or cause to be supplied for our service, all such articles of the said invention as he or they shall be required to supply, by the officers or commissioners administering the department of our service, for the use of which, the same shall be required in such manner, at such price, and at and upon such reasonable price and terms as shall be settled for that purpose by the said officers or commissioners so requiring the same, then these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. Provided that nothing herein contained shall prevent the granting of licenses, in such manner, and for such considerations, as they may, by law, be granted.

And, lastly, we do by these presents for us, our heirs and successors, grant unto the said A. B., his executors, ad-

ministrators, and assigns, that these our letters patent, or the enrolment or exemplification thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law, according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense, for the best advantage of the said A. B., his executors, administrators, and assigns, as well in all our courts of record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in that part of our said United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed (*i*) aforesaid, and amongst all and every the subjects of us, our heirs and successors whatsoever and wheresoever, notwithstanding the not full and certain describing the nature or quality of the said invention, or of the materials thereto conducing and belonging.

In witness whereof, we have caused our letters to be made patent. Witness ourself at Westminster, this of in the year of our reign.

By writ of Privy Seal.

No. IV.

A Form for the Specification.

To all to whom these presents shall come, I, A. B., of [*&c.*] send greeting. Whereas her most excellent Majesty Queen Victoria, by her letters patent, under the great seal (*k*) of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the day of , in the year of her reign, did for herself, her heirs and successors, give and

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(*i*) For the words—"and also within all our colonies and plantations abroad."

(*k*) For Scotland, "under the seal appointed by the treaty of union to be used in place of the great seal of Scotland bearing date at Edinburgh."

grant unto me the said A. B. her especial license, that I, the said A. B., my executors, administrators, and assigns, or such others as I, the said A. B. my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times during the term of years therein expressed, should and lawfully might make, use, exercise, and vend, within England, Wales, and the town of Berwick-upon-Tweed (*l*), [*and also within all her Majesty's colonies and plantations abroad,*] my invention of [*here describe the invention in the words of the patent.*] * * * In which said letters patent there is contained a proviso, obliging me, the said A. B., by an instrument in writing, under my hand and seal, particularly to describe and ascertain the nature of my said invention, and in what manner the same is to be performed; and to cause the same to be enrolled in her Majesty's High Court of Chancery, within calendar months next, and immediately after the date of the said recited letters patent, as in and by the same, reference being thereunto had, will more fully and at large appear. Now know ye that, in compliance with the said proviso, I, the said A. B. do hereby declare that the nature of my said invention, and the manner in which the same is to be performed, are described and ascertained by the drawing in the margin hereof, and the words following; that is to say, [*here are stated the particulars*]. In witness whereof, I, the said A. B., have hereunto set my hand and seal, the day of , in the year of our Lord one thousand eight hundred and forty.

A. B. (L. S.)

Taken and acknowledged by the above-named A. B., at the Public Office, Southampton Buildings, Chancery-lane, this day of , one thousand eight hundred and forty, before me,

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(*l*) For Scotland, "within that part of her said Majesty's United Kingdom of Great Britain and Ireland called Scotland."

Rules of Practice laid down by Mr. Attorney and Mr. Solicitor-General.

Until further directions are given the following is to be the mode of proceeding by a party, in order to obtain leave to enter a disclaimer, or alteration of any part, either of the title of his invention or of the specification, pursuant to the 5th and 6th of Wm. 4, c. 83, s. 1.

The person applying must present a petition to the Attorney-General or Solicitor-General, stating what the proposed disclaimer or alteration is, when a time will be appointed for hearing the applicant. The petition is in general to be accompanied by a copy of the original specification, and of the proposed disclaimer or alteration.

If, on the hearing, the Attorney or Solicitor-General should think fit to disallow the proposed alteration or disclaimer, no further proceeding is necessary. If he should think fit to allow it without any advertisement, then, on being applied to for the purpose, he will put his signature to the fiat, authorizing the clerk of the patent to make the required enrolment.

If it appears to the Attorney or Solicitor-General that any advertisement or advertisements ought to be inserted, then he will give such directions as he may think fit relative thereto, and will fix any time not sooner than ten days from the first publication of any such advertisement for resuming the consideration of the matter.

Caveats may be lodged at any time before the actual issuing of the fiat, and any party lodging a caveat is to have seven days' notice of the next meeting.

The fiat must be written or engrossed on the same parchment, with the disclaimer or alteration at the foot thereof.

No. V.

Mode of proceeding before the Attorney or Solicitor, under the first section of the Act 5th and 6th Wm. 4, c. 83, in order to obtain a fiat to enrol disclaimers or alterations.

Form of Petition to Her Majesty's Attorney or Solicitor-General.

The petition of A. B. of , in the county of , profession

Sheweth,

That your petitioner obtained her Majesty's royal letters patent, bearing date at Westminster, the day of in the year of her reign, for [*here is inserted the title of the invention.*] And whereas your petitioner duly enrolled a specification of his said invention.

[Here set forth some of the particulars, sufficient to lead to the nature of the claims of invention, then set forth the disclaimer or alterations, and the reasons for the same.]

Your petitioner therefore prays leave of her Majesty's Attorney or Solicitor-General, certified by his fiat and signature, as by the said act provided, to enter with the clerk of the patents of England, the said disclaimer and memorandums of alteration, a copy of which, signed by your petitioner, is left herewith, in the form in which your petitioner is desirous the same should be so entered as aforesaid (*m*).

(*m*) **In the event of the petition being in behalf of an assignee of a patent, that circumstance must be stated, and the petition be in his name.**

No. VI.

Form of Disclaimer of part of the Title of a Patent.

(See 5 & 6 Will. 4, c. 83, s. 1.)

Form of disclaimer of part of the title of a patent.

[Copy the form for the specification down to * * * and proceed]—And whereas I am desirous, for good and sufficient reasons hereinafter mentioned, to enter a disclaimer of that part of the title of my said invention hereinafter next mentioned, and have obtained for that purpose the leave of her Majesty's Attorney-General, certified by his fiat and signature, according to the form of the statute in such cases made and provided: Know ye, therefore, that I do hereby disclaim the following part of the title of my said invention; that is to say,

[*State the part disclaimed.*]

And I, the said A. B., do further declare that my reasons for making the above disclaimer are as follows; that is to say,

[*State them.*]

And I, the said A. B. further declare and protest, that the above disclaimer does in no wise extend, or purpose to extend the exclusive right granted to me by the said letters patent.

In witness whereof, &c.

[*It will be easy to adapt this form to the case of a disclaimer of part of the specification, or to that of a memorandum of an alteration either of the title or specification.*]

No. VII.

Form of a Notice for a Prolongation of Patent.

A. B. of

Gentleman, hereby give notice that I intend forthwith to apply to her Majesty in Council for a prolongation, for the further term of seven years, or such other term, not exceeding seven years, as her Majesty shall please, of the term of sole using and vending his, the said A. B.'s invention of granted to him, the said A. B. by certain letters patent, bearing date the day of in the year of her reign, within that part of the United Kingdom of Great Britain and Ireland, called England, the dominion of Wales, and town of Berwick-upon-Tweed; and the said A. B. hereby gives further notice, that I intend to apply on the day of next, to the Right Honourable the Lords, comprising the Judicial Committee of her Majesty's Honourable Privy Council, for a time to be fixed for hearing the matters of the said petition for such prolongation of the said term as hereinbefore mentioned. And all persons desirous of being heard in opposition to the prayer of the said petitioner, are hereby required to enter caveats at the Privy Council Office on or before the said day of next.

Signed by the Patentee.

Witnessed by the Solicitor.

VIII.

Form of Petition for a Prolongation of the Term of a Patent.

See sec. 4 of 5 & 6 Will. 4, c. 83.

To the Queen's most excellent Majesty in Council.

The humble petition of A. B., of

Sheweth,

Form of a petition for a prolongation of the term of a patent.

That your petitioner, after much labour and considerable expense, invented . That your Majesty, by letters patent, dated the day of in the

year of your reign, granted to your said petitioner his executors, administrators, and assigns, the sole use and exercise of his said invention within that part of the United Kingdom of Great Britain and Ireland, called England, the dominion of Wales, and the town of Berwick-upon-Tweed, and also in all your Majesty's colonies and plantations abroad, for the term of fourteen years from the date of the said letters patent, which term has not yet expired. That your petitioner—

[*State the special circumstances warranting the application.*] That your petitioner hath advertised in the *London Gazette*, three times, and three times in the *Morning Herald*, *Courier*, and *Morning Post*, being three London papers: and three times in the *Lancaster Gazette*, being a country paper, published in the city of Lancaster, where your said petitioner resides and carries on the manufacture of his said invention; that it his intention to apply to your said Majesty in council for a prolongation of his said term of sole using and vending his said invention.

Your petitioner therefore humbly prays your Majesty to grant to him new letters patent for the sole use and exercise of his said invention, within that part of your Majesty's kingdom of Great Britain and Ireland, called England, the dominion of Wales, and town of Berwick-upon-Tweed, for a term of seven years after the expiration of the said term of fourteen years first above mentioned, according to the form of the statute in such case made and provided.

And your petitioner shall ever pray, &c.

No. IX.

Form of Petition for Confirmation of Letters Patent, under section 2 of 5 & 6 Will. 4, c. 83.

To the Queen's most excellent Majesty in Council.

The humble petition of A. B., of

Sheweth,

That your petitioner having after great labour and considerable expense invented [*state invention*], which invention is

Form of petition for confirmation of letters patent.

of general benefit and advantage, your Majesty was graciously pleased in consideration thereof to grant to your said petitioner, his executors, administrators, and assigns, your royal letters patent, under the great seal of Great Britain, for the sole use and exercise of his said invention within that part of your Majesty's United Kingdom of Great Britain and Ireland, called England, your dominion of Wales, and town of Berwick-upon Tweed, which said letters patent bear date upon the day of in the year of your Majesty's reign.

That it hath since been proved and specially found by the verdict of the jury, in a certain action brought by your petitioner against C. D., and tried before the Right Honourable Lord Denman, the Chief Justice of your Majesty's Court of Queen's Bench, at Westminster, on the day of in the year of our Lord that your petitioner was not the *first* inventor of the said by reason of one B. C. having invented the same before the date of the said letters patent.

That the said B. C. never at any time before the date of the said letters patent published or made known the said invention; and that your said petitioner was until, and long after, the date of the said letters patent, wholly ignorant that the said B. C. had invented the said or any part thereof, but verily believed himself to be the *first* and true inventor thereof.

Your petitioner therefore humbly prays that your Majesty will be graciously pleased to confirm the said letters patent and make the same available to give your petitioner the sole right of using, making, and vending the said invention, as against all persons whatsoever, within that part of your Majesty's said United Kingdon of Great Britain and Ireland, called England, the dominion of Wales, and town of Berwick-upon-Tweed.

And your petitioner shall ever pray, &c.

No. X.

Forms of Caveats.

Caveat against any person taking out Letters Patent for any improvement relating to without notice being first given to A. of &c.

Under 5 & 6 Will. 4, c. 83, s. 1.

Caveat against any person entering a disclaimer or alteration in a title or specification relating to without notice to

Under Id. s. 4.

Caveat against A. B. having any extension of his patent dated the day of 184 , for certain improvements in without notice to

No. XI.

Notice of Objections required by 5 & 6 *Will.* 4, *c.* 83, *s.* 5.

In the

A. B. or *C. D.*

Take notice that on the trial of this cause the defendant (*or* plaintiff) will insist on the following objections to the validity of the patent mentioned in the declaration:—

Notice of objections required by 5 & 6 Wm. 4, c. 83, s. 5.

1st. That &c.

[*State the objections in order.*]

Dated the day of 184 .

Signed *C. D.*, attorney for the { defendant / *or* / plaintiff.

To Mr. *R. R.*, the { plaintiff's attorney / *or* / defendant's

No. XII.

21 James 1, c. 3.

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

All monopolies, &c., shall be void.

'Forasmuch as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God One thousand six hundred and ten, publish in print to the whole realm, and to all posterity, that all grants and monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm? And whereas your Majesty was further graciously pleased expressly to command, that no suitor should presume to move your Majesty for matters of that nature; yet nevertheless upon misinformations, and untrue pretences of public good, many such grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of your Majesty's subjects, contrary to the laws of this your realm, and contrary to your Majesty's most royal and blessed intention, so published as aforesaid:' For avoiding whereof, and preventing of the like in time to come, may it please your excellent Majesty, at the humble suit of the lords spiritual and temporal, and the commons in this present parliament assembled, That it may be declared and enacted: and be it declared and enacted by authority of this present parliament, That all monopolies, and all commissions, grants, licenses, charters, and letters patent heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of any thing within this realm, or the dominion of Wales, or of any other monopolies, or of power, liberty, or faculty, to dispense with any others, or to give license or toleration to do, use, or exercise any thing against the tenor or purport of any law or statute; or to give or make any warrant for any such dispensation, license, or toleration to be had or made; or to agree or compound with any others for

any penalty or forfeitures limited by any statute; or of any grant or promise of the benefit, profit or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute, before judgment thereupon had; and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same or any of them; are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect, and in no wise to be put in ure or execution.

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

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

All persons disabled to use monopolies,&c.

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

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

IV. And be it further enacted by the authority aforesaid, That if any person or persons at any time after the end of forty days next after the end of this present session of Parliament, shall be hindered, grieved, disturbed, or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken, carried away or detained, by occasion or pretext of any monopoly, or of any such commission, grant, license, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises; that then and in every such case, the same person and persons shall and may have his and their remedy for the same at the common law, by any action or actions to be grounded upon

this statute; the same action and actions to be heard and determined in the courts of King's Bench, Common Pleas, and Exchequer, or in any of them, against him or them by whom he or they shall be so hindered, grieved, disturbed, or disquieted, or against him or them by whom his or their goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained, wherein all and every such person and persons, which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, carried away, or distrained, shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed, or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away, or detained, and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid, prayer privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than one imparlance: And

He that delayeth an action grounded upon this statute procure a pre- cure

if any person or persons shall, after notice given, that the action depending is grounded upon this statute, cause or procure any action at the common law, grounded upon this statute, to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of or upon any such judgment to be stayed or delayed by colour or means of any order, warrant, power, or authority, save only by writ of error or attaint; that then the said person and persons so offending shall incur and sustain the pains, penalties, and forfeitures, ordained and provided by the statute of provision and *præmunire* made in the sixteenth year of the reign of king Richard the Second.

16 R. 2, c. 5.

Letters patents to use new manufactures, saved

V. Provided nevertheless, and be it declared and enacted, That any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of one and twenty years or under, heretofore made, of the sole working or making of any manner of new manufacture within this realm, to the first and true inventor or inventors of such manufactures, which others at the time of the making of such letters patents and grants did not use, so they be not contrary to the law, nor mischievous to the state, by raising the prices of commodities at home, or hurt of trade, or generally inconvenient, but that

the same shall be of such force as they were or should be, if this act had not been made, and of none other; and if the same were made for more than one and twenty years, that then the same for the term of one and twenty years only, to be accounted from the date of the first letters patents and grants thereof made, shall be of such force as they were or should have been, if the same had been made but for term of one and twenty years only, and as if this act had never been had or made, and of none other.

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

VII. Provided also, and it is hereby further intended, declared, and enacted by authority aforesaid, that this act or any thing therein contained shall not in any wise extend, or be prejudicial to any grant or privilege, power, or authority whatsoever heretofore made, granted, allowed, or confirmed by any act of Parliament now in force, so long as the same shall so continue in force.

Warrants granted to justices saved.

VIII. Provided also, That this act shall not extend to any warrant or privy seal, made or directed, or to be made or directed by his Majesty, his heirs or successors, to the justices of the courts of the King's Bench or Common Pleas, and barons of the Exchequer, justices of assize, justices of *oyer and terminer* and gaol-delivery, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeiture of any penal statute, depending in suit and question before them, or any of them respectively, after plea pleaded by the party defendant.

Charters granted to corporations, saved.

IX. Provided also, and it is hereby further intended, declared and enacted, That this act or any thing therein contained shall not in any wise extend or be prejudicial unto the city of *London*, or to any city, borough, or town corporate within this realm, for or concerning any grants, charters, or letters patents, to them or any of them made or granted, or for or concerning any custom or customs used by or within them or any of them; or unto any corporations, companies or fellowships of any art, trade, occupation, or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade of merchandize; but that the same charters, customs, corporations, companies, fellowships, and societies, and their liberties, privileges, powers, and immunities, shall be and continue of such force and effect as they were before the making of this act, and of none other; any thing before in this act contained to the contrary in any wise notwithstanding.

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

X. Provided also, and be it enacted, That this act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before-mentioned, shall not extend to any letters patents or grants of privilege heretofore made, or hereafter to be made, of, for, or concerning printing, nor to any commission, grant or letters patents, heretofore made, or hereafter to be made, of, for, or concerning the digging, making, or compounding of saltpetre or gunpowder, or the casting or making of ordnance, or shot for ordnance, nor to any grant or letters patents heretofore made, or hereafter to be made, of any office or offices heretofore erected, made, or ordained, and now in being, and put in execution, other than such offices as have been decried by any his Majesty's proclamation or proclamations: but that all and every the same grants, commissions, and letters patents, and all other matters and things tending to the maintaining, strengthening, and furtherance of the same, or any of them, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties and forfeitures contained in this act, as if this act had never been had nor made, and not otherwise.

This act shall not extend to commissions for alum mines.

XI. Provided also, and be it enacted, That this act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before mentioned, shall not extend to any commission, grant, letters patents or privilege heretofore made, or here-

after to be made, of, for or concerning the digging, compounding, or making of alum or alum mines, but that all and every the same commissions, grants, letters patents and privileges, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this act, as if this act had never been made, and not otherwise.

XII. [Nor to the liberties of Newcastle-upon-Tyne, nor to licenses of keeping taverns.]

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

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

No. XIII.

5 & 6 Wm. 4, c. 83.

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

Whereas it is expedient to make certain additions to and alterations in the present law touching letters patent for inventions, as well for the better protecting of patentees in the rights intended to be secured by such letters patent, as for the more ample benefit of the public from the same: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that any person who, as grantee, assignee, or otherwise, hath obtained or who shall hereafter obtain letters patent, for the sole making, exercising, vending, or using of any invention, may, if he think fit, enter with the clerk of the patents of *England*, *Scotland*, or *Ireland*, respectively, as the case may be, having first obtained the leave of his Majesty's Attorney-General or Solicitor-General in case of an *English* patent, of the Lord-Advocate or Solicitor-General of *Scotland* in the case of a *Scotch* patent, or of his Majesty's Attorney-General or Solicitor-General for *Ireland* in the case of an *Irish* patent,

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

certified by his fiat and signature, a disclaimer of any part of either the title of the invention or of the specification, stating the reason for such disclaimer, or may, with such leave as aforesaid, enter a memorandum of any alteration in the said title or specification, not being such disclaimer or such alteration as shall extend the exclusive right granted by the said letters patent; and such disclaimer or memorandum of alteration, being filed by the said clerk of the patents, and enrolled with the specification, shall be deemed and taken to be part of such letters patent or such specification in all courts whatever:

Caveat may be entered as heretofore.

Provided always, that any person may enter a caveat, in like manner as caveats are now used to be entered, against such disclaimer or alteration; which caveat being so entered shall give the party entering the same a right to have notice of the application being heard by the Attorney-General or Solicitor-General or Lord-Advocate respectively: Provided also, that no such disclaimer or alteration shall be receivable in evidence in any action or suit (save and except in any proceeding by scire facias) pending at the time when such disclaimer or alteration was enrolled, but in every such action or suit the original title and specification alone shall be given in evidence, and deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: Provided also, that it shall be lawful for the Attorney-General or Solicitor-General or Lord Advocate, before granting such fiat, to require the party applying for the same to advertise his disclaimer or alteration in such manner as to such Attorney-General or Solicitor General or Lord-Advocate shall seem right, and shall, if he so require such advertisement, certify in his fiat that the same has been duly made.

Disclaimer not to affect actions pending at the time.

Attorney-General may require the party to advertise his disclaimer.

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

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

for such patentee or his assigns to petition his Majesty in council to confirm the said letters patent or to grant new letters patent, the matter of which petition shall be heard before the Judicial Committee of the Privy Council; and such committee, upon examining the said matter, and being satisfied that such patentee believed himself to be the first and original inventor, and being satisfied that such invention or part thereof had not been publicly and generally used before the date of such first letters patent, may report to his Majesty their opinion that the prayer of such petition ought to be complied with, whereupon his Majesty may, if he think fit, grant such prayer; and the said letters patent shall be available in law and equity to give to such petitioner the sole right of using, making, and vending such invention as against all persons whatsoever, any law, usage, or custom to the contrary thereof notwithstanding: Provided, that any person opposing such petition shall be entitled to be heard before the said judicial committee: Provided also, that any person, party to any former suit or action touching such first letters patent, shall be entitled to have notice of such petition before presenting the same.

If in any action or suit a verdict or decree shall pass for the patentee, the judge may grant a certificate, which being given in evidence in any other suit shall entitle the patentee, upon a verdict in his favour, to receive treble costs.

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

Mode of proceeding in case of application

IV. And be it further enacted, that if any person who now hath or shall hereafter obtain any letters patent as aforesaid

for the prolongation of the term of a patent.

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

In case of action, &c. notice of objections to be given.

V. And be it enacted, that in any action brought against any person for infringing any letters patent the defendant on pleading thereto shall give to the plaintiff, and in any scire facias to repeal such letters patent the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action, and no objection shall be allowed to be made in behalf of such defendant or plaintiff respectively at such trial unless he prove the objections stated in such notice: Provided always, that it shall and may be lawful for any judge at chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant respectively

to show cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections, on such terms as to such judge shall seem fit.

As to costs in actions for infringing letters patent.

VI. And be it enacted, that in any action brought for infringing the right granted by any letters patent, in taxing the costs thereof regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the judge before whom the same shall be had, and the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections, as well as the counts in the declaration, and without regard to the general result of the trial.

Penalty for using, unauthorised, the name of a patentee, &c.

VII. And be it enacted, that if any person shall write, paint, or print, or mould, cast, or carve, or engrave or stamp, upon any thing made, used, or sold by him, for the sole making or selling of which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without leave in writing of such patentee or his assigns, or if any person shall upon such thing, not having been purchased from the patentee or some person who purchased it from or under such patentee, or not having had the license or consent in writing of such patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word "patent," the words "letters patent," or the words "by the King's patent," or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall in any other manner imitate or counterfeit the stamp or mark or other device of the patentee, he shall for every such offence be liable to a penalty of fifty pounds, to be recovered by action of debt, bill, plaint, process, or information in any of his Majesty's Courts of Record at *Westminster* or in *Ireland*, or in the Court of Session in *Scotland*, one half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same: Provided always, that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "patent" upon any thing made, for the sole making or vending of which a patent before obtained shall have expired.

No. XIV.

2 & 3 Vict. c. 67.

An Act to amend an Act of the fifth and sixth years of the Reign of King William the Fourth, intituled an Act to amend the Law touching Letters Patent for Inventions.

5 & 6 Wm. 4, c. 83.

**Whereas by an act passed in the fifth and sixth years of the reign of his Majesty, King William the Fourth, intituled, *An Act to amend the Law touching Letters Patent for Inventions*, it is amongst other things enacted, that if any person having obtained any letters patent as therein mentioned shall give notice as thereby required of his intention to apply to his Majesty in Council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in council to that effect, it shall be lawful for any person to enter a caveat at the Council office, and if his Majesty shall refer the consideration of such petition to the judicial committee of the privy council, and notice shall be first given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses, whereupon, and upon hearing and inquiry of the whole matter, the judicial committee may report to his Majesty that a further extension of the term in the said letters patent shall be granted, not exceeding seven years, and his Majesty is thereby authorized and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary notwithstanding; provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent, and whereas it has happened since the passing of the said act, and may again happen, that parties desirous of obtaining an extension of the term granted in letters patent, of which they are possessed, and who may have presented a petition for such purposes in manner by the said recited act directed, before the expiration of the said term, may nevertheless be prevented by causes over which they have no control from prosecuting with effect their application before the Judicial Committee of the

Privy Council; and it is expedient therefore that the said Judicial Committee should have power, when under the circumstances of the case they shall see fit, to entertain such application, and to report thereon, according to the provisions of the said recited act, notwithstanding that before the hearing of the case before them the terms of the letters patent sought to be renewed or extended may have expired: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that so much of the said recited act as provides that no entension of the term of letters patent shall be granted as therein mentioned if the application by petition for such extension be not prosecuted with effect before the expiration of the term originally granted in such letters patent, shall be and the same is hereby repealed.

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

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

Term of patent right may be extended in certain cases though the application for such extension not prosecuted with effect before the expiration thereof.

reason shall be shown to the satisfaction of the said Judicial Committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

No. XV.

8 Anne, c. 19.

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.

Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting and publishing, or causing to be printed, reprinted and published, books, and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families:" for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books: may it please your Majesty, that it may be enacted, and 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 and after the tenth day of April, one thousand seven hundred and ten, the author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books, share or shares thereof, or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have the sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of April, and no longer; and that the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing

After 10 April, 1710, the authors of books already printed, who have not transferred their rights, and the booksellers, &c. who have purchased copies, shall have the sole right of printing them for the term of 21 years.

And the authors of books not printed, to have the sole right of printing for 14 years.

the same, and no longer; and that if any other bookseller, printer, or other person whatsoever, from and after the tenth day of April, one thousand seven hundred and ten, within the times limited and granted by this act as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted, without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained as aforesaid; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the Queen's most excellent Majesty, heir heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance shall be allowed.

Punishment of bookseller, &c. printing without consent of the proprietor.

II. And whereas many persons may through ignorance offend against this act, unless some provision be made, whereby the property in every such book, as is intended by this act to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books, may from time to time be known; be it therefore further enacted by the authority aforesaid, that nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered

Copies of books to be entered before publication in the register book of the Company of Stationers; which may be inspected at any time without fee.

in the register book of the Company of Stationers, in such manner as hath been usual, which register book shall at all times be kept at the hall of the said company, and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid, for every of which several entries sixpence shall be paid, and no more; which said register book may, at all seasonable and convenient times, be resorted to, and inspected by any bookseller, printer, or other person, for the purposes before-mentioned, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence.

Penalty of the clerk refusing so to do.

III. Provided nevertheless, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register, or make such entry or entries, or to give such certificate, being thereunto required by the author or proprietor of such copy or copies, in the presence of two or more credible witnesses, that then such person and persons so refusing, notice being first duly given of such refusal, by an advertisement in the *Gazette*, shall have the like benefit, as if such entry or entries, certificate or certificates had been duly made and given; and that the clerks so refusing shall, for any such offence, forfeit to the proprietor of such copy or copies the sum of twenty pounds, to be recovered in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

After 25 March the archbishop of Canterbury, &c. to settle the prices of books, upon complaint made that they are unreasonable.

IV. Provided nevertheless, and it is hereby further enacted by the authority aforesaid, That if any bookseller or booksellers, printer or printers, shall, after the said five and twentieth day of *March* one thousand seven hundred and ten, set a price upon, or sell, or expose to sale, any book or books at such a price or rate as shall be conceived by any person or persons to be too high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury*, for the time being, the Lord Chancellor or Lord Keeper of the Great Seal of *Great Britain* for the time being, the Lord Bishop of *London* for the time being, the Lord Chief Justice of the Court of *Queen's*

Bench, the Lord Chief Justice of the Court of *Common Pleas*, the Lord Chief Baron of the Court of *Exchequer* for the time being, the Vice-Chancellors of the two Universities for the time being, in that part of *Great Britain* called *England*; the Lord President of the Sessions for the time being, the Lord Justice General for the time being, the Lord Chief Baron of *Exchequer* for the time being, the Rector of the College of *Edinburgh* for the time being, in that part of *Great Britain* called *Scotland*; who, or any one of them, shall and have hereby full power and authority, from time to time, to send for, summon, or call before him or them such bookseller or booksellers, printer or printers, and to examine and inquire of the reason of the dearness and inhancement of the price or value of such book or books by him or them so sold or exposed to sale; and if upon such inquiry and examination it shall be found, that the price of such book or books is enhanced, or any wise too high or unreasonable, then and in such case the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice-Chancellors of the Universities, in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or any one or more of them, so inquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer or printers, to award and order such bookseller and booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto, by reason of such complaint, and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop *of London*, two Chief Justices, Chief Baron, Vice Chancellors of the two Universities, in that part of *Britain* called *England*, and the said Lord President of the *Great* Sessions, Lord Justice General, Lord Chief Baron, and Rector of the college of *Edinburgh*, in that part of *Great Britain* called

and if altered from the price the bookseller set, may order him to pay costs to the party complaining.

Scotland, or any one of them, by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the *Gazette*; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell or expose to sale any book or books, at a higher or greater price than what shall have been so limited and settled as aforesaid, then and in every such case such bookseller and booksellers, printer and printers, shall forfeit the sum of five pounds for every such book so by him, her, or them sold or exposed to sale; one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit, in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

Penalty on booksellers selling at higher rates. This clause repealed by 15 Geo. 2, c. 36.

V. Provided always, and it is hereby enacted, That nine copies of each book or books, upon the best paper, that from and after the said tenth day of April, one thousand seven hundred and ten shall be printed and published as aforesaid, or reprinted and published with additions, shall, by the printer and printers thereof, be delivered to the warehouse-keeper of the said Company of Stationers for the time being, at the hall of the said company, before such publication made for the use of the Royal Library, the libraries of the Universities of *Oxford* and *Cambridge*, the libraries of the four Universities in *Scotland*, the library of *Sion College* in *London*, and the library commonly called the Library belonging to the faculty of advocates at *Edinburgh* respectively; which said warehouse-keeper is hereby required, within ten days after demand by the keepers of the respective libraries, or any person or persons by them or any of them authorized to demand the said copy to deliver the same for the use of the aforesaid libraries; and if any proprietor, bookseller, or printer, or the warehouse-keeper of the said Company of Stationers, shall not observe the direction of this act therein, that then he and they so making default in not delivering the said printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered, as also

After 10 April, nine copies of each book shall be delivered to the warehouse keeper of the Company of Stationers, for the use of the university libraries, &c.

Warehouse-keeper to deliver the books ten days after demand.

Penalty of proprietor, &c. not observing the directions of this act.

the value of the said printed copy not so delivered; the same to be recovered by the Queen's Majesty, her heirs and successors, and by the chancellor, masters, and scholars of any of the said Universities, and by the president and fellows of *Sion College*, and the said faculty of advocates at *Edinburgh*, with their full costs respectively.

Penalties in Scotland how recoverable.

VI. Provided always, and be it further enacted, That if any person or persons incur the penalties contained in this act, in that part of *Great Britain* called *Scotland*, they shall be recoverable by any action before the court of session there.

This act not to hinder the importation, &c. of books in Greek, &c. printed beyond sea, &c.

VII. Provided, that nothing in this act contained do extend, or shall be construed to extend, to prohibit the importation vending, or selling of any books in *Greek*, *Latin*, or any other language printed beyond the seas; any thing in this act contained to the contrary notwithstanding.

General issue.

VIII. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing or causing to be done any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict be given for the defendant, or the plaintiff 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.

This act not to prejudice the right of the universities.

IX. Provided, that nothing in this act contained shall extend, or be construed to extend, either to prejudice or confirm any right that the said Universities, or any of them, or any person or persons have, or claim to have, to the printing or reprinting any book or copy already printed, or hereafter to be printed.

Actions for offences against this act, to be brought in three months.

X. Provided nevertheless, 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 three months next after such offence committed, or else the same shall be void and of none effect.

After the fourteen years, the right of printing, &c. to return to the author for other fourteen years.

XI. Provided always, that after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living for another term of fourteen years.

No. XVI.

8 Geo. II. c. 13.

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 and Engravers, during the Time herein mentioned.

'Whereas divers persons have by their own genius, industry, 'pains, and expense, invented and engraved, or worked in '*mezzotinto* or *chiaro oscuro*, sets of historical and other prints, 'in hopes to have reaped the sole benefit of their labours: and 'whereas printsellers and other persons have of late, without 'the consent of the inventors, designers and proprietors of such 'prints, frequently taken the liberty of copying, engraving and 'publishing, or causing to be copied engraved and published, 'base copies of such works, designs and prints, to the very 'great prejudice and detriment of the inventors, designers, and 'proprietors thereof;' For remedy thereof, and for preventing such practices for the future, may it please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that

Property of prints vested in the inventor for fourteen years.

from and after the twenty-fourth day of *June* which shall be in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch or work in *mezzotinto* or *chiaro oscuro*, or from his own works and inventions shall cause to be designed and engraved, etched or worked in *mezzotinto* or *chiaro oscuro* any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor

Proprietor's name to be affixed to each print.

Penalty on printsellers or others pirating the same.

on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-five, within the time limited by this act, shall engrave, etch, or work as aforesaid, or in any other manner

copy and sell, or cause to be engraved, etched or copied and sold, in the whole or in part, by varying, adding to or diminishing from the main design, or shall print, reprint or import for sale or cause to be printed, reprinted or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them respectively in the presence of two or more credible witnesses, or knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale, or otherwise, or in any other manner dispose of, or cause to be published, sold or exposed to sale, or otherwise, or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of, or whereon such print or prints are or shall be so copied and printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be found in his, her, or their custody, either printed or published, and exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act: the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of his Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed.

Not to extend to purchasers of plates from the original proprietors.

II. Provided nevertheless, That it shall and may be lawful for any person or persons, who shall hereafter purchase any plate or plates for printing, from the original proprietors thereof, to print and reprint from the said plates, without incurring any of the penalties in this act mentioned.

Limitation of actions.

III. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this act, the same shall be brought within the space of three months after so doing;

and the defendant and defendants in such action or suit shall
General issue. or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

IV. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards; any thing in this act contained to the contrary notwithstanding.

'V. And whereas *John Pine* of *London*, engraver, doth 'propose to engrave and publish a set of prints, copied from 'several pieces of tapestry in the house of Lords, and his 'Majesty's wardrobe, and other drawings relating to the '*Spanish* invasion, in the year of our Lord one thousand five 'hundred and eighty-eight;' Be it further enacted by the authority aforesaid, That the said *John Pine* shall be entitled to the benefit of this act, to all intents and purposes whatsoever,
Clause relating to J. Pine. in the same manner as if the said *John Pine* had been the inventor and designer of the said prints.

VI. And be it further enacted by the authority aforesaid, That this act shall be deemed, adjudged and taken to be a
Public act. public act, and be judicially taken notice of as such by all Judges, Justices and other persons whatsoever, without specially pleading the same.

No. XVII.

12 Geo. 2, c. 36.

An Act for prohibiting the Importation of Books reprinted Abroad, and first composed or written, and printed in Great Britain; and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen Anne, as empowers the limiting the Prices of Books.

'Whereas the duties payable upon paper imported into this 'kingdom to be made use of in printing, greatly exceed the 'duties payable upon the importation of printed books, whereby 'foreigners and others are encouraged to bring in great numbers 'of books originally printed and published in this kingdom and 'reprinted abroad, to the diminution of his Majesty's revenue, 'and the discouragement of the trade and manufacture of this 'kingdom;' For the preventing thereof for the future, may it please your most excellent Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-ninth day of *September* one thousand seven hundred and thirty-nine, it shall not be lawful for any person or persons whatsoever, to import or bring into this kingdom for sale, any book or books first composed or written, and printed and published in this kingdom, and reprinted in any other place or country whatsoever; and if any person or persons shall import or bring into this kingdom for sale, any printed book or books, so first composed or written, and printed in this kingdom, and reprinted in any other place or country as aforesaid; or knowing the same to be so reprinted or imported, contrary to the true intent and meaning of this act, shall sell, publish, or expose to sale any such book or books; then every such person or persons so doing or offending, shall forfeit the said book or books, and all and every sheet or sheets thereof; and the same shall be forthwith damasked, and made waste paper; and further, that every such offender or offenders shall forfeit the sum of five pounds, and double the value of every book which he or they shall so import or bring into this kingdom, or shall

Preamble.

knowingly sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety to any person or persons that shall sue for the same; to be recovered with costs of suit in any of his Majesty's Courts of Record at *Westminster* by action of debt, bill, plaint or information: in which no wager of law, essoin, or protection, or more than one imparlance shall be allowed; and if the offence be committed in *Scotland*, to be recovered before the Court of Session there, by summary action: provided that this act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty years before the same shall be imported.

II. Provided always, That nothing in this act contained shall extend to prevent or hinder the importation of any book first composed or written, and printed in this kingdom, which shall or may be reprinted abroad, and inserted among other books or tracts, to be sold therewith, in any collection, where the greatest part of such collection shall have been first composed or written, and printed abroad; any thing in this act contained to the contrary notwithstanding.

Clause in 8 Anne, c. 19, repealed.

III. And be it further enacted by the authority aforesaid, That so much of an act made in the eighth year of the reign of her late 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*, whereby it was provided and enacted, That if any bookseller or booksellers, printer or printers shall, after the said five and twentieth day of *March* one thousand seven hundred and ten, set a price upon, or sell, or expose to sale any book or books, at such a price or rate as shall be conceived by any person or persons to be high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury* for the time being, the Lord Chancellor, or Lord Keeper of the Great Seal of *Great Britain* for the time being, the Lord Bishop of *London* for the time being, the Lord Chief Justice of the Court of *Queen's Bench*, the Lord Chief Justice of the Court of *Common Pleas*, the Lord Chief Baron of the Court of *Exchequer* for the time being, the Vice-Chancellors of the two

Universities for the time being, in that part of *Great Britain* called *England*, the Lord President of the Sessions for the time being, the Lord Justice General for the time being, the Lord Chief Baron of the *Exchequer* for the time being, the Rector of the College of *Edinburgh* for the time being, in that part of *Great Britain* called *Scotland*, who, or any one of them, shall, and have hereby full power and authority from time to time, to send for, summon, or call before him or them, such bookseller or booksellers, printer or printers, and to examine and inquire of the reason of the dearness and enhancement of the price or value of such book or books by him or them so sold, or exposed to sale; and if, upon such inquiry and examination, it shall be found that the price of such book or books is enhanced, or any ways too high and unreasonable, then, and in such case, the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice-Chancellors of the Universities in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one or more of them, so inquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto by reason of such complaint, and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury*, Lord Chancellor, or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice-Chancellors of the two Universities in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or any one of them by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the

Gazette; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell, or expose to sale, any book or books at a higher or greater price than what shall have been so limited and settled as aforesaid; then and in every such case, such bookseller or booksellers, printer or printers, shall forfeit the sum of five pounds for every such book so by him, her or them, sold or exposed to sale, one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit, in any of her Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed; and every part of the said clause shall be and the same is hereby repealed.

Farther continued by 27 Geo. 2, c. 18, and 33 Geo. 2, c. 16.

IV. And be it further enacted, That this act (except so much thereof as repeals the beforementioned clause in the said act of the eighth year of the reign of the late Queen *Anne*, relating to the prices of books) shall continue and be in force from the said twenty-ninth day of *September* one thousand seven hundred and thirty-nine, for and during the space of seven years, and from thence to the end of the then next session of Parliament, and no longer.

No. XVIII.

7 Geo. 3, c. 38.

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.

7 Geo. 3, c. 38.
8 Geo. 2, c. 13.

'Whereas an act of Parliament passed in the eighth year of 'the reign of his late Majesty King George the Second, inti- 'tuled, *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, and Engravers, during* '*the time therein mentioned*, has been found ineffectual for the 'purposes thereby intended;' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the first day of *January*, one thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or, from his own work, design, or invention, shall cause or procure 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, shall have, and are hereby declared to have, the benefit and protection of the said act and this act, under the restrictions and limitations hereinafter mentioned.

Original inventors, &c. of prints, &c.

II. And be it further enacted by the authority aforesaid, that from and after the said first day of *January*, one thousand seven hundred and sixty-seven, all and every person and persons who shall engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved, etched, or worked, any print, taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said act, and this act, for the term hereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former act, every such person shall be liable to the penalties contained in the said act, to be recovered as therein and hereinafter is mentioned.

Entitled to the benefit of recited and present act, &c.

"The sole right of printing and reprinting the late *W. Hogarth*'s prints, vested in his widow and executrix for twenty years. Penalty of copying, &c. any of them, before expiration of the term; such copies excepted as were made and exposed to sale after the term of fourteen years, for which the said works were first licensed, &c."

V. And be it further enacted by the authority aforesaid,

that all and every the penalties and penalty inflicted by the said act, and extended and meant to be extended, to the several cases comprised in this act, shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said act is declared and appointed; and the plaintiff or common informer, in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former act,) shall recover the same, together with his full costs of suit.

VI. Provided also, that the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

The right intended, vested in the proprietors for 28 years.

VII. And be it further enacted by the authority aforesaid, that the sole right and liberty of printing and reprinting intended to be secured and protected by the said former act and this act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former act mentioned.

Limitation of actions.

VIII. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action

General issue.

or suit shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

No. XIX.

15 Geo. 3, c. 53.

An Act for enabling the two Universities in* England, *the four Universities in* Scotland, *and the several Colleges of* Eton, Westminster, *and* Winchester, *to hold in perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning, and other purposes of Education; and for amending so much of an Act of the eighth year of the Reign of Queen* Anne, *as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the use of the several Libraries therein mentioned.

15 Geo. 3, c. 53.

'Whereas authors have heretofore bequeathed or given, and 'may hereafter bequeath or give the copies of books composed 'by them, to or in trust for one of the two universities in that 'part of *Great Britain* called *England*, or to or in trust for 'some of the colleges or houses of learning within the same, 'or to or in trust for the several colleges of *Eton*, *Westminster*, 'and *Winchester*, and in and by their several wills or other 'instruments of donation, have directed or may direct, that the 'profits arising from the printing and reprinting such books 'shall be applied or appropriated as a fund for the advancement 'of learning, and other beneficial purposes of education, within 'the said universities and colleges aforesaid: And whereas 'such useful purposes will frequently be frustrated, unless the 'sole printing and reprinting of such books, the copies of which 'have been or shall be so bequeathed or given as aforesaid, 'be preserved and secured to the said universities, colleges, 'and houses of learning respectively, in perpetuity:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said universities and colleges respectively shall, at their respective presses, have, for ever, the sole liberty of printing and reprinting all such books as shall at any time hereafter have been, or (having not been heretofore published or assigned) shall at any time hereafter

Universities, &c. to have, for ever, the sole right of printing, &c.

be bequeathed, or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in *Scotland*, or to or in trust for the said colleges of *Eton*, *Westminster*, and *Winchester*, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term; any law or usage to the contrary hereof in any wise notwithstanding.

Persons printing or selling such books, shall forfeit the same, and also 1*d.* for every sheet;

II. And it is hereby further enacted, that if any bookseller, printer, or other person whatsoever, from and after the twenty-fourth day of *June*, one thousand seven hundred and seventy-five, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books; and all and every sheet or sheets, being part of such book or books, to the university, college, or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any persons who shall sue for the same; to be recovered in any of his Majesty's courts of record at *Westminster*, or in the court of session in *Scotland*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

one moiety to his Majesty, and the other to the prosecutor.

III. Provided nevertheless, That nothing in this act extend to grant any exclusive right, otherwise than so long as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage: and that if any university or college

shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted or any part thereof, or shall allow, permit, or authorize any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void and of no effect, in the same manner as if this act had not been made; but the said universities and colleges, as aforesaid, shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of her Majesty Queen Anne.

'And whereas many persons may through ignorance offend 'against this act, unless some provision be made, whereby 'the property of every such book as is intended by this act 'to be secured to the said universities, colleges, and houses 'of learning within the same, and to the said universities in '*Scotland*, and to the respective colleges of *Eton*, *Westminster*, 'and *Winchester*, may be ascertained and known;' Be it therefore enacted by the authority aforesaid, That nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, unless the title to the copy of such book or books, which has or have been already bequeathed or given to any of the said universities or colleges aforesaid, be entered in the register book of the Company of Stationers, kept for that purpose, in such manner as hath been usual, on or before the twenty-fourth day of June, one thousand seven hundred and seventy-five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such register, within the space of two months after any such bequest or gift shall have come to the knowledge of the vice-chancellors of the said universities, or head of houses and colleges of learning, or of the principal of any of the said four universities respectively; for every of which entries so to be made as aforesaid, the sum of sixpence shall be paid and no more; which said register book shall and may, at all seasonable and convenient times, be referred to, and inspected by any bookseller, printer, or other person, without any fee or reward; and the clerk of the said Company of

No person subject to penalties, unless entered before, &c. Books must be entered within two months after bequest.

Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence.

If clerk neglect to make entry, &c. proprietor to have like benefit, &c.

V. And be it further enacted, That if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate, being thereunto required by the agent of either of the said universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by advertisement in the *Gazette*,) shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for every such offence, forfeit twenty pounds to the proprietor or proprietors of every such copyright; to be recovered in any of his Majesty's Courts of Record at *Westminster*, or in the Court of Session in *Scotland*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, protection, or more than one imparlance shall be allowed.

8 Anne, c. 19.

VI. 'And whereas in and by an act of parliament made in the 'reign of her late 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*, it is enacted, That nine copies of each book 'or books, upon the best paper, that, from and after the tenth 'day of April, one thousand seven hundred and ten, should be 'printed and published, as therein mentioned, or reprinted 'and published with additions, shall by the printer or printers 'thereof be delivered to the warehouse keeper of the said Com-'pany of Stationers for the time being, at the Hall of the 'said Company, before such publication made, for the use of 'the royal library, the libraries of the four universities in '*Scotland*, and the library of *Sion College* in *London*, and 'the library commonly called *The Library belonging to 'the Faculty of Advocates* in *Edinburgh*, respectively; which 'such warehouse keeper was thereby required, within ten 'days after demand by the keepers of the respective libraries, 'or any person or persons by them, or any of them, autho-'rised to demand the said copy, to deliver the same for the 'use of the aforesaid libraries; and if any proprietor, book-

'seller, or printer, or the said warehouse keeper of the said Com-
'pany of Stationers, should not observe the direction of the said
'act therein, that then he and they so making default, in not de-
'livering the said printed copies as aforesaid, should forfeit as
'therein mentioned; and whereas the said provision has not
'proved effectual, but the same hath been eluded by the entry
'only of the title to a single volume, or of some part of such
'book or books so printed and published or reprinted and repub-
'lished as aforesaid;' be it enacted by the authority aforesaid, That no person or persons whatsoever shall be subject to the penalties in the said act mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, without the consent mentioned in the said act, unless the title to the copy of the whole of such book, and every volume thereof, be entered, in manner directed by the said act, in the register book of the Company of Stationers, and unless nine such copies of the whole of such book or books, and every volume thereof printed and published, or reprinted or republished, as therein mentioned, shall be actually delivered to the warehouse keeper of the said Company, as therein directed, for the several uses of the several libraries in the said act mentioned.

No person subject to penalties in the said act, unless the title to the copy of the whole be entered, &c.

VII. And be it further enacted, by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict, or if the same shall be brought in the Court of Session in *Scotland*, a judgment be given for the defendant, or the plaintiff become nonsuited, and 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.

Limitation of actions.

General issue.

VIII. And be it further enacted by the authority aforesaid, That this act shall be adjudged, deemed, and taken to be a public act; and shall be judicially taken notice of as such by all Judges, Justices, and other persons whatsoever, without specially pleading the same.

Public act.

No. XX.

17 Geo. 3, c. 57.

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.

17 Geo. 3, c. 57. 8 Geo. 2.

'Whereas an act of parliament 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 De-* 'signing, Engraving, and etching Historical and other Prints, by 'vesting the Properties thereof in the Inventors and Engravers, 'during the time therein mentioned: And whereas by an act of

7 Geo. 3.

'parliament, passed in the seventh year of the reign of his present 'Majesty, *for amending and rendering more effectual* the afore- 'said act, and for purposes therein mentioned, it was (among 'other things) enacted, That, from and after the first day of 'January one thousand seven hundred and sixty-seven, all 'and every person or persons who should engrave, etch, or 'work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved, 'etched, or worked, any print taken from any picture, drawing, 'model, or sculpture, either ancient or modern, should have, 'and were thereby declared to have, the benefit and protection 'of the said former act, and that act, for the term therein after 'mentioned, in like manner as if such print had been graved or 'drawn from the original design of such graver, etcher, or 'draughtsman: and whereas the said acts have not effectually 'answered the purposes for which they were intended, and it 'is necessary for the encouragement of artists, and for securing 'to them the property of and in their works, and for the ad- 'vancement and improvement of the aforesaid arts, that such 'further provisions should be made as are hereinafter mentioned 'and contained;' may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That, from and after the twenty-fourth day of *June*, one thousand seven hundred and seventy-seven, if any engraver, etcher, printseller, or other person, shall, within the time limited by

the aforesaid acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked in *Mezzotinto* or *Chiaro Oscuro*, or otherwise, or in any other manner copy in the whole, or in part, by varying, adding to, or diminishing from, the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of 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, which hath or have been, or shall be, engraved, etched, drawn, or designed, in any part of *Great Britain*, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of, and attested by, two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a 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.

If any engraver, &c. shall engrave, &c. any print, without the consent of the proprietor, he shall be liable to damages and double costs.

No. XXI.

27 Geo. 3, c. 38.

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.

'Whereas it may be expedient, for the encouragement of 'the arts of designing original patterns for linens, calicoes, 'cottons, and muslins, to vest the property thereof in the de- 'signers, printers, or proprietors, for a limited time; for which 'purpose may it please your Majesty, that it may be enacted;'

27 Geo. 3, c. 38. Preamble.

and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of *June*, one thousand seven hundred and eighty-seven, every person who shall 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, shall have the sole right and liberty of printing and reprinting the same for the term of two months, to commence from the day of the first publishing thereof, which shall be truly printed, with the name of the printer or proprietors at each end of every such piece of linen, cotton, calico, or muslin; and that if any calico-printer linen-draper, or other person whatsoever, from and after the first day of *June*, one thousand seven hundred and eighty-seven, within the time limited by this act, shall print, work, or copy, such original pattern or patterns, or cause to be printed, worked, or copied, such original pattern or patterns, or shall print or reprint, or cause to be printed or reprinted, any such pattern or patterns, and shall publish, sell, or expose to sale, or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or in any other manner disposed of, any linen, cotton, calico, or muslin, so printed without the consent of the proprietor or proprietors thereof, first had and obtained in writing, signed by him or them respectively, in the presence of two or more credible witnesses, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors of such pattern, then every such proprietor or proprietors shall and may, if the offence be committed in *England*, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with costs of suit, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed; and if the offence be committed in *Scotland*, every such proprietor or proprietors shall and may, by an action to be brought before the Court of Session, or any Judge competent to try civil causes within his bounds, recover such damages as the said Court of Session,

From June 1, 1787, the proprietor of any original pattern for printing linens to have the sole right of printing it for two months from first publication;

and whoever shall within that period print the same, to be liable to an action for damages;

or the said Judge, shall give or assess, and for payment whereof decree shall be issued, with full costs of suit, on which all such execution shall pass as is competent by the laws and practice of *Scotland* in the like cases: Provided nevertheless, that it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates, block or blocks, for printing, from the proprietors thereof, to print, reprint, and expose to sale, or cause to be printed, reprinted, and exposed to sale, from the said plates or blocks, without being liable to any action on that account.

but any person purchasing plates from the proprietors may print therefrom.

II. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for any offence committed against this act, the same shall be brought within the space of six months after so doing, and the defendant or defendants, in such action or suit, if brought in *England*, shall and may plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue, his, her, or their action or actions, then the defendant or defendants shall have and receive full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law; and if such action be brought in *Scotland*, and not insisted in, or if the defendant be assoilzied, then the defendant shall be entitled to full costs, for the recovery whereof he shall have the same remedy as herein-before is given to the pursuer.

Mode of prosecuting offences against this act.

III. And be it further enacted by the authority aforesaid, That this act shall continue in force for one year, and from thence to the end of the then next session of parliament; and shall be deemed, adjudged, and taken to be a public act, and be judicially taken notice of as such by all Judges, Justices, and other persons whatsoever, without specially pleading the same.

Act to continue in force for one year, and to the end of the then next session.

Continued by 29 Geo. 3, c. 19.

No. XXII.

34 Geo. 3, c. 23.

An act for amending and making perpetual an act made in the twenty-seventh Year of the Reign of his present Majesty, intituled, **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.
27 Geo. 3.

'Whereas an act was made in the twenty-seventh year of 'the reign of his present Majesty (intituled, *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

29 Geo. 3.

'limited time); which said act was, by another act made in 'the twenty-ninth year of the reign of his present Majesty, 'continued from the expiration thereof until the first day of 'July one thousand seven hundred and ninety four: And 'whereas the said first recited act hath by experience been

Expedient to extend time limited by 27 Geo. 3.

'found to be useful and beneficial: And whereas it is expe- 'dient that the time limited by the said first recited act for 'vesting the property of new and original patterns for printing 'linens, cottons, calicoes, or muslins, in the designers, printers, 'and proprietors thereof, should be extended for a longer 'time:' May it please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of *July* one thousand seven hundred and ninety-four, every person who shall 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

Term further extended.

printing linens, cottons, calicoes, or muslins, shall have the sole right and liberty of printing and reprinting the same for the term of three months, to commence from the day of the first publishing thereof, which shall be truly printed with the name of the printer or proprietors at each end of every such piece of linen, cotton, calico, or muslin; and that if any calico-

printer, linen-draper, or other person whatsoever, from and after the said first day of *July* one thousand seven hundred and ninety-four, within the time limited by this act, shall print, work, or copy such original pattern or patterns, or cause to be printed, worked, or copied such original pattern or patterns, or shall print or reprint, or cause to be printed or reprinted, any such pattern or patterns, and shall publish, sell, or expose to sale, or any other manner dispose of, any linen, cotton, calico or muslin, so printed, (without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them respectively in the presence of two or more, credible witnesses,) knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors of such pattern; then every such proprietor or proprietors shall and may, if the offence be committed in *England*, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with costs of suit, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed: And that in all other respects the said first recited act, and all the clauses, matters and things therein contained, (except so far as the same is varied by this act,) shall be, and the same is hereby made perpetual.

Act made perpetual.

No. XXIII.

38 Geo. 3, c. 71.

An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned.

'Whereas divers persons have, by their own genius, industry, 'pains, and expense, improved and brought the art of making 'new models and casts of busts, and of statues of human figures, 'and of animals, to great perfection, in hopes to have reaped 'the sole benefit of their labours; but that divers persons have

'(without the consent of the proprietors thereof) copied and 'made moulds from the said models and casts, and sold base 'copies and casts of such new models and casts, to the great 'prejudice and detriment of the original proprietors, and to the 'discouragement of the art of making such new models and 'casts as aforesaid:' For remedy whereof, and for preventing such practices for the future, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, every person who shall make or cause to be made any new model, or copy or cast made from such new model, of any bust, or any part of the human figure, or any statue of the human figure, or the head of any animal, or any part of any animal, or the statue of any animal; or shall make or cause to be made any new model, copy, or cast from such new model, in alto or basso relievo, or any work in which the representation of any human figure or figures, or the representation of any animal or animals shall be introduced, or shall make or cause to be made any new cast from Nature of any part or parts of the human figure, or of any part or parts of any animal, shall have the sole right and property in every such new model, copy, or cast, and also in every such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, and also in every such new cast from Nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same: Provided always, that every person who shall make or cause to be made any such new model, copy, or cast, or any such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, or any new cast from Nature as aforesaid, shall cause his or her name to be put thereon, with the date of the publication, before the same shall be published and exposed to sale.

The sole right and property of making models or casts shall be vested in the original proprietor for fourteen years.

II. And be it further enacted, that if any person shall, within the said term of fourteen years, make or cause to be made any copy or cast of any such new model, copy, or cast, or any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from Nature as aforesaid, either by adding to or diminishing from any such new model copy, or cast, or adding to or diminishing from any such new

Person making copies of any model or cast, without the written consent of the proprietor, may be prosecuted for damages, by a special action on the case.

model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or adding to or diminishing from any such new cast of Nature, or shall cause or procure the same to be done, or shall import any copy or cast of such new model, copy, or cast, or copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work aforesaid, or any copy or cast of any such new cast from Nature as aforesaid, for sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to sale, or otherwise disposed of, any copy or cast of any such new model, copy, or cast, or any copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from Nature as aforesaid, without the express consent of the proprietor or proprietors thereof first had and obtained, in writing signed by him, her, or them respectively, with his, her, or their hand or hands, in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid, every proprietor or proprietors of any such original model, copy, or cast, and every proprietor or proprietors of any such original model, or copy or cast in alto or basso relievo, or any such work as aforesaid, or the proprietor or proprietors of any such new cast from Nature as aforesaid respectively, shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with full costs of suit.

Except such persons who shall purchase the same of the original proprietor.

III. Provided nevertheless, that no person who shall hereafter purchase the right, either in any such model, copy, or cast, or in any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from Nature, of the original proprietor or proprietors thereof, shall be subject to any action for vending or selling any cast or copy from the same; any thing contained in this act to the contrary hereof notwithstanding.

Limitation of actions.

IV. Provided also, that all actions to be brought as aforesaid, against any person or persons for any offence committed against this act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

No. XXIV.

41 Geo. 3, c. 107.

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 herein mentioned.

Authors of books already composed, and not printed or published, and of books to be hereafter composed, and their assigns, shall have the sole right of printing them for fourteen years.

'Whereas it is expedient that further protection should be 'afforded to the authors of books, and the purchasers of the 'copies and copyright of the same, in the United Kingdom of '*Great Britain and Ireland*;' may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the author of any book or books already composed, and not printed or published, and the author of any book or books which shall hereafter be composed, and the assignee or assigns of such authors respectively, shall have the sole liberty of printing and reprinting of such book and books, for the term of fourteen years, to commence from the day of first publishing the same, and no longer; and that if any other bookseller, printer, or other person whosoever, in any part of the said United Kingdom, or in any part of the *British* dominions in *Europe*, shall, from and after the passing of this act, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors of the copyright of and in such book or books first had and obtained in writing, signed in the presence of two or more credible witnesses, or, knowing the same to be so printed, reprinted, or imported, without such consent of such proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the proprietor or proprietors of the copyright of

Booksellers, &c. in any part of the United Kingdom, or British European dominions, who shall print, reprint, or import, &c. any such book without consent of the proprietor, shall be liable to an action for damages, and shall also forfeit the books to the proprietor, and 3d. per sheet, half to the king, and half to the informer.

such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this act; and every such proprietor and proprietors shall and may, by and in such special action upon the case to be so brought against such offender or offenders in any court of record in that part of the said United Kingdom, or of the *British* dominions in *Europe*, 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 wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed; and all and every such offender or offenders shall also forfeit such book or books, and all and every sheet and sheets being part of such book or books, and shall deliver the same to the proprietor or proprietors of the copyright of such book or books, upon order of any court of record in which any action or suit, in law or equity, shall be commenced or prosecuted by such proprietor or proprietors, to be made on motion or petition to the said Court; and the said proprietor or proprietors shall forthwith damask or make waste paper of the said book or books, and sheet or sheets respectively; and all and every such offender or offenders shall also forfeit the sum of threepence for every sheet which shall be found in his or their custody, 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 the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such court of record, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed: Provided always, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

Authors have a second fourteen years' term, if living.

II. Provided also, and be it further enacted, that nothing in this act contained shall extend, or be construed to extend, to any book or books heretofore composed, and printed or published in any part of the said United Kingdom, nor to

Act shall not extend to books ready published, nor indemnify against penalties under

former acts in force at the union of Great Britain and Ireland, 39 & 40 Geo. 3, c. 67.

exempt or indemnify any person or persons whomsoever, from or against any penalties or actions, to which he, she, or they shall or may have become, or shall or may hereafter be liable for or on account of the unlawful printing, reprinting, or importing such book or books, or the selling, publishing, or exposing the same to sale, or the having the same in his or their possession for sale, contrary to the laws and statutes in force respecting the same, at the time of the passing an act in the session of Parliament of the thirty-ninth and fortieth years of the reign of his present Majesty, intituled, *An Act for the Union of Great Britain and Ireland.*

Trinity College, Dublin, shall for ever have the sole right of printing books given or bequeathed to them, unless they are given, &c. for a limited time only.

III. 'And whereas authors have heretofore bequeathed, 'given, or assigned, and may hereafter bequeath, give, or assign, 'the copies or copyrights of and in books composed by them, 'to or in trust for the college of the Holy Trinity of *Dublin*; 'and, in and by their several wills or other instruments, have 'directed or may direct, that the profits arising from the printing 'or reprinting such books, shall be applied or appropriated as 'a fund for the advancement of learning, and other beneficial 'purposes of education, within the college aforesaid: and 'whereas such useful purposes will frequently be frustrated, 'unless the sole right of printing and reprinting of such books 'the copies of which shall have been or shall be so bequeathed, 'given, or assigned as aforesaid, be preserved and secured to 'the said college in perpetuity;' be it therefore further enacted, that the said college shall, at their own printing press, within the said college, have for ever the sole liberty of printing and reprinting all such books as shall at any time hereafter have been, or (not having been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given or assigned by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said college for the purposes aforesaid, unless the same shall have been bequeathed, given or assigned, or shall hereafter be bequeathed, given, or assigned for any term of years, or any other limited term; any law or usage to the contrary thereof in anywise notwithstanding; and that if any printer, bookseller, or other person whosoever, shall, from and after the passing of this act, unlawfully print, reprint, or import, or cause to be printed, reprinted, or imported, or knowing the same to be so unlawfully printed, reprinted, or imported, shall

Penalty on persons printing such books the same as under s. 1.

sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his or their possession for sale, any such last mentioned book or books, such offender or offenders shall be subject and liable to the like actions, penalties, and forfeitures as are hereinbefore mentioned and contained with respect to offenders against the copyrights of authors and their assigns: Provided nevertheless, that nothing in this act shall extend to grant any exclusive right to the said college of the Holy Trinity of *Dublin*, otherwise than so long as the books or copies belonging to the said college, are and shall be printed only at the printing press of the said college, within the said college, and for the sole benefit and advantage of the said college; and that if the said college shall delegate, grant, lease, or sell the copyrights or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorise any person or persons, or bodies corporate, to print or reprint the same, then the privilege hereby granted shall become void and of no effect, in the same manner as if this act had not been made; but the said college shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors can or may lawfully do under the provisions of this act, or any other act now in force.

To extend only to books printed at the college press.

But the college may sell their copyrights.

IV. Provided also, and be it further enacted, that no bookseller, printer, or other person whosoever, shall be liable to the said penalty of threepence per sheet, for or by reason of the printing, reprinting, importing, or selling of any such book or books, or the having the same in his or their custody for sale, without the consent of the proprietor or proprietors of the copyright thereof as aforesaid, unless before the time of the publication of such book or books by the proprietor or proprietors thereof (other than the said college) the right and title of such proprietor or proprietors shall be duly entered in the register book of the Company of Stationers, in *London*, in such manner as hath been usually heretofore done by the proprietors of copies and copyrights in *Great Britain*; nor if the consent of such proprietor or proprietors for the printing, reprinting, importing, or selling such book or books, shall be in like manner entered; nor unless the right and title of the said college to the copyright of such book or books as has or have been already bequeathed, given, or assigned to the said college,

Booksellers, &c. shall not be liable to the penalty of 3*d.* per sheet, unless the title to the copyright be entered by the proprietor, &c. at Stationers' Hall, London; nor if the consent of the proprietor be so entered.

be entered in the said register book before the twenty-ninth day of *September*, one thousand eight hundred and one, and of all and every such book or books as may or shall hereafter be bequeathed, given or assigned as aforesaid, be entered in the said register book within the space of two months after any such bequest, gift, or assignment shall have come to the knowledge of the provost of the said college; for every of which several entries sixpence shall be paid, and no more; which said register book shall at all times be kept at the hall of the said Company, and shall and may at all seasonable and convenient times be resorted to and inspected by any bookseller, printer, or other person, for the purposes before mentioned, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence; and the said clerk shall also, without fee or reward, within fifteen days next after the thirty-first day of *December* and the thirtieth day of *June* in each and every year, make or cause to be made, for the use of the said college, a list of the titles of all such books, the copyright to which shall have been so entered in the course of the half-year immediately preceding the said thirty-first day of *December* and the thirtieth day of *June* respectively, and shall upon demand deliver the said lists or cause the same to be delivered to any person or persons duly authorised to receive the same for and on behalf of the said college.

Clerk of the Company shall give certificates of entries, and make a half-yearly list of the books so entered for the use of Trinity College.

V. Provided also, and be it further enacted, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate or certificates, being thereunto respectively required by the author or authors, proprietor or proprietors of such copies or copyrights, or by the person or persons to whom such consent shall be given, or by some person on his or their behalf, in the presence of two or more credible witnesses, then such party or parties so refused, notice being first duly given by advertisement in the *London Gazette*, shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for any such offence, forfeit to the author or proprietor of such copy or copies, or to the person or per-

If the clerk refuses to make entries, &c. parties may give notice in the *London Gazette*, and the clerk shall forfeit 20*l*.

sons to whom such consent shall be given, the sum of twenty pounds; or if the said clerk shall refuse or neglect to make the list aforesaid, or to deliver the same to any person duly authorised to demand the same on behalf of the said college, the said clerk shall also forfeit to the said college the like sum of twenty pounds; which said respective penalties shall and may be recovered in any of his Majesty's courts of record in the said United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlace, shall be allowed.

Two additional copies of books entered at Stationers' Hall, shall be delivered there for the use of the libraries of Trinity College, and the King's Inns, Dublin.

VI. Provided also, and be it further enacted, That from and after the passing of this act, in additon to the nine copies now required by law to be delivered to the warehouse-keeper of the said Company of Stationers, of each and every book and books which shall be entered in the register book of the said Company, one other copy shall be in like manner delivered for the use of the library of the said college of the Holy Trinity of *Dublin*, and also one other copy for the use of the library of the Society of the King's Inns, *Dublin*, by the printer or printers of all and every such book and books as shall hereafter be printed and published, and the title to the copyright whereof shall be entered in the said register book of the said Company; and that the said college and the said society shall have the like remedies for enforcing the delivery of the said copies, and that all proprietors, booksellers, and printers, and the warehouse-keeper of the said Company, shall be liable to the like penalties for making default in delivering the said copies for the use of the said college and the said society, as are now in force with respect to the delivering or making default in delivering the nine copies now required by law to be delivered in manner aforesaid.

No person shall import into any part of the United Kingdom, for sale, any book first composed, &c. within the United Kingdom, and reprinted elsewhere.

VII. And be it further enacted, That, from and after the passing of this act, it shall not be lawful for any person or persons whomsoever to import or bring into any part of the said United Kingdom of *Great Britain* and *Ireland*, for sale, any printed book or books, first composed, written, or printed, and published in any part of the said United Kingdom, and reprinted in any other country or place whatsoever; and if any person or persons shall import or bring, or cause to be imported or brought for sale, any such printed book or books into any part of the said United Kingdom, contrary to the

true intent and meaning of this act, or shall knowingly sell, publish, or expose to sale, or have in his or their possession for sale, any such book or books, then every such book or books shall be forfeited, and shall and may be seized by any officer or officers of customs or excise, and the same shall be forthwith made waste paper; and all and every person and persons so offending, being duly convicted thereof, shall also, for every such offence, forfeit the sum of ten pounds, and double the value of each and every copy of such book or books which he, she, or they shall so import or bring, or cause to be imported or brought into any part of the said United Kingdom, or shall knowingly sell, publish, or expose to sale, or shall cause to be sold, published, or exposed to sale, or shall have in his or their possession, for sale, contrary to the true intent and meaning of this act; and the commissioners of customs in *England*, *Scotland*, and *Ireland* respectively (in case the same shall be seized by any officer or officers of customs) and the commissioners of excise in *England*, *Scotland*, and *Ireland* respectively (in case the same shall be seized by any officer or officers of excise) shall also reward the officer or officers who shall seize any books which shall be so made waste paper of, with such sum or sums of money as they the said respective commissioners shall think fit, not exceeding the value of such books; such reward respectively to be paid by the said respective commissioners out of any money in their hands respectively arising from the duties of customs and excise: provided that no person or persons shall be liable to any of the last mentioned penalties or forfeitures, for or by reason or means of the importation of any book or books which has not been printed or reprinted in some part of the said United Kingdom, within twenty years next before the same shall be imported, or of any book or books reprinted abroad, and inserted among other books or tracts to be sold therewith in any collection, where the greatest part of such collection shall have been first composed or written abroad.

Penalty on importing, selling, or keeping for sale, any such books, forfeiture thereof, and also 10*l.* and double the value.

Books may be seized by officers of customs or excise, who shall be rewarded.

Exceptions as to books not having been printed in the United Kingdom for 20 years, &c.

General issue.

VIII. And be it further 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 anything in pursuance of this act, the 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 de-

fendant, or the plaintiff 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 that shall be committed against this act, shall be brought, sued, and commenced within six months next after such offence committed, or else the same shall be void and of none effect.

Limitations of actions under this act six months.

No. XXV.

54 Geo. 3, c. 56.

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.

'Whereas by an act passed in the thirty-eighth year of the 'reign of his present Majesty, intituled, *An Act for encou-* '*raging the Art of Making New Models and Casts of Busts,* '*and other things therein mentioned;* the sole right and pro- 'perty thereof were vested in the original proprietors, for a 'time therein specified: and whereas the provisions of the said 'act having been found ineffecual for the purposes thereby 'intended, it is expedient to amend the same, and to make 'other provisions and regulations for the encouragement of 'artists, and to secure to them the profits of and in their works, 'and for the advancement of the said arts:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this act, every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of

38 Geo. 3, c. 1, s. 1.

Sole right and property of all new and original sculpture, models, copies, and casts, vested in proprietors for fourteen years.

any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or any cast from Nature of the human figure, or of any part or parts of the human figure, or of any cast from Nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure and human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy and cast of any subject, being matter of invention in sculpture, and of all and in every new and original sculpture, model, copy and cast in alto or basso-relievo, representing any of the matters or things hereinbefore mentioned, and of every such cast from Nature, for the term of fourteen years from first putting forth or publishing the same; provided, in all and every case the proprietor or proprietors do cause his, her or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy or cast, and on every such cast from Nature, before the same shall be put forth or published.

Name and date affixed.

Works published under act, vested in proprietors for fourteen years.

II. And be it further enacted, that the sole right and property of all works, which have been put forth or published under the protection of the said recited act, shall be extended, continued &c and vested in the respective proprietors thereof, for the term of fourteen years, to commence from the date when such last mentioned works respectively were put forth or published.

Putting forth pirated copies or pirated casts prosecuted.

III. And be it further enacted, that if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise

disposed of any pirated copy or pirated cast of any such new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any such bust or busts, or of any such part or parts of the human figure, clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from Nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matters or things put forth or published under the protection of this act, or of any works which have been put forth or published under the protection of the said recited act, the right and property whereof is and are secured, extended and protected by this act, in any of the cases aforesaid, to the detriment, damage or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

Damages.
Double costs.

IV. Provided nevertheless, that no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from Nature, or of any of the matters and things published under or protected by virtue of this act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying or casting, or vending the same; any thing contained in this act to the contrary notwithstanding.

Purchasers of copyright secured in same.

V. Provided always, and be it further enacted, that all actions to be brought as aforesaid, against any person or persons for any offence committed against this act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

Limitation of actions.

Additional term of fourteen years, in case maker of original sculpture, &c. shall be living.

VI. Provided always, and be it further enacted that, from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model, or copy or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself or themselves, of such right of making or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this act.

No. XXVI.

54 Geo. 3, c. 156.

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.

8 Anne, c. 19, s. 5.

'Whereas by an act, made in the eighth year of the reign 'of her late Majesty Queen Anne, intituled *An Act for the en-* '*couragement of Learning, by vesting the Copies of printed Books* '*in Authors or Purchasers of such Copies, during the Times* '*therein mentioned*, it was among other things provided and 'enacted, that nine copies of each book or books, upon the best 'paper, that from and after the tenth day of April one thousand 'seven hundred and ten should be printed and published as in 'the said act mentioned, or reprinted and published with ad- 'ditions, should, by the printer and printers thereof, be de- 'livered to the warehouse-keeper of the Company of Stationers 'for the time being, at the hall of the said Company, before 'such publication made, for the use of the Royal Library, the 'libraries of the Universities of *Oxford* and *Cambridge*, the

'libraries of the four Universities in *Scotland*, the library of
'*Sion* College in *London*, and the library of the Faculty of Ad-
'vocates a *Edinburgh*; which said warehouse-keeper is by the
'said act required to deliver such copies for the use of the said
'libraries; and that if any proprietor, bookseller or printer, or
'the said warehouse-keeper, should not observe the directions
'of the said act therein, that then he or they so making default
'in not delivering the said printed copies, should forfeit, be-
'sides the value of the said printed copies, the sum of five
'pounds for every copy not so delivered: and whereas by an
'act made in the forty-first year of the reign of his present
'Majesty, 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 herein*
'*mentioned*, it is amongst other things provided and enacted, that
'in addition to the nine copies required by law to be delivered
'to the warehouse-keeper of the said Company of Stationers, of
'each and every book and books which shall be entered in the
'register books of the said Company, two other copies shall in
'like manner be delivered for the use of the library of the
'College of the *Holy Trinity*, and the library of the Society of
'the *King's Inns*, in *Dublin*, by the printer and printers of all
'and every such book and books as should thereafter be printed
'and published, and the title of the copyright whereof should
'be entered in the said register book of the said Company:
'and whereas it is expedient that copies of books hereafter
'printed or published should be delivered to the libraries here-
'inafter mentioned, with the modifications that shall be provided
'by this act;' May it therefore please your Majesty that it may
be enacted; and be it enacted by the King's most excellent
Majesty, by and with the advice and consent of the Lords
Spiritual and Temporal, and Commons, in this present Parlia-
ment assembled, and by the authority of the same, that so
much of the said several recited acts of the eighth year of
Queen Anne, and of the forty-first year of his present Majesty,
as requires that any copy or copies of any book or books which
shall be printed or published, or reprinted and published with
additions, shall be delivered by the printer or printers thereof,
to the warehouse-keeper of the said Company of Stationers, for
the use of any of the libraries in the said act mentioned, and

41 Geo. 3, (U. K.) c. 107, s. 6.

as requires the delivery of the said copies by the said warehouse-keeper, for the use of the said libraries, and as imposes any penalty on such printer or warehouse-keeper for not delivering the said copies, shall be, and the same is, hereby repealed.

repealed.

Eleven printed copies delivered on demand, within twelve months after publication, for use of public libraries.

II. And be it further enacted, That eleven printed copies of the whole of every book, and of every volume thereof, upon the paper upon which the largest number or impression of such book shall be printed for sale, together with maps and prints belonging thereto, which, from and after the passing of this act, shall be printed and published, on demand thereof being made in writing to, or left at the place of abode of the publisher or publishers thereof, at any time within twelve months next after the publication thereof, under the hand of the warehouse-keeper of the Company of Stationers, or the librarian, or other person thereto authorized by the persons or body politic and corporate, proprietors or managers of the libraries following; *videlicit*, the *British Museum*, *Sion College*, the *Bodleian Library* at *Oxford*, the *Public Library* at *Cambridge*, the Library of the *Faculty of Advocates* at *Edinburgh*, the Libraries of the four Universities of *Scotland*, *Trinity College Library*, and the *King's Inns Library* at *Dublin*, or so many of such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof respectively, within one month after demand made thereof in writing as aforesaid, to the warehouse-keeper of the said Company of Stationers for the time being; which copies the said warehouse-keeper 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 warehouse-keeper is hereby required, within one month after any such book or volume shall be so delivered to him as aforesaid, to deliver the same for the use of such library: and if any publisher, or the warehouse-keeper of the said Company of Stationers, shall not observe the directions of this act therein, that then he and they so making default in not delivering or receiving the said eleven printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for each copy not so delivered or received, together with the full costs of suit; the same to be recovered by the person or persons, or body politic or corporate, pro-

Publishers, &c. neglecting.

Penalty.

prietors or managers of the library for the use whereof such copy or copies ought to have been delivered or received; for which penalties and value such person or persons, body politic or corporate, is or are now hereby authorized to sue by action of debt or other proper action, in any Court of Record in the United Kingdom.

No copies of second, &c. edition, without addition or alteration, demanded.

III. Provided always, and be it further enacted, That no such printed copy or copies shall be demanded by or delivered to or for the use of any of the libraries hereinbefore mentioned, of the second edition, or of any subsequent edition of any book or books so demanded and delivered as aforesaid, unless the same shall contain additions or alterations: and in case any addition after the first, of any book so demanded and delivered as aforesaid, shall contain any addition or alteration, no printed copy or copies thereof shall be demanded or delivered as aforesaid, if a printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be delivered to each of the libraries aforesaid, for whose use a copy of the former edition shall have been demanded and delivered as aforesaid: Provided also, that the copy of every book that shall be demanded by the *British Museum*, shall be delivered of the best paper on which such work shall be printed.

Additions printed, and delivered separate.

Proviso for British Museum.

8 Anne, c. 19, s. 1.
41 Geo. 3, (U.K.) c. 107, s. 1.

IV. And whereas by the said recited acts of the eighth year of Queen Anne, and the forty-first year of his present Majesty's reign, it is enacted, that the author of any book or books, and the assignee or assigns of such author respectively, should have the sole liberty of printing and reprinting such book or books for the term of fourteen years, to commence from the day of first publishing the same, and no longer; and it was provided, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years: And whereas it will afford further encouragement to literature, if the duration of such copyright were extended in manner hereinafter mentioned; Be it further enacted, That from and after the passing of this act, the author of any book or books composed and not printed and published, or which shall hereafter be composed, and be printed and published, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to com-

Instead of copyright for fourteen years, and contingently for fourteen more, authors, &c. shall have 28 year's copyright in works, and for residue of life.

mence from the day of first publishing the same; and also, if the author shall be living at the end of that period, for the residue of his natural life; and that if any bookseller or printer, or other person whatsoever, in any part of the United Kingdom of *Great Britain* and *Ireland*, in the isles of *Man*, *Jersey*, or *Guernsey*, or in any other part of the *British* dominions, shall, from and after the passing of this act, within the terms and times granted and limited by this act as aforesaid, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent of the author or authors, or other proprietor or proprietors of the copyright of and in such book and books, first had and obtained in writing; or, knowing the same to be so printed, reprinted, or imported, without such consent of such author or authors, or other proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the author or authors, or other proprietor or proprietors of the copyright of every such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this act. And every such author or authors, or other proprietor or proprietors, shall and may by and in such special action upon the case, to be so brought against such offender or offenders, 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 wager of law, essoin, privilege, or protection, nor more than one imparlance shall be allowed; and all and every such offender and offenders shall also forfeit such book or books, and all and every sheet, being part of such book or books, and shall deliver the same to the author or authors, or other proprietor or proprietors of the copyright of such book or books, upon order of any Court of Record, in which any action or suit in law or equity shall be commenced or prosecuted by such author or authors, or other proprietor or proprietors, to

Booksellers, &c. in any part of United Kingdom, or British dominions, who shall print, &c. any book, without consent of proprietor, liable to action for damages.

Penalty.

be made on motion or petition to the said Court; and the said author or authors, or other proprietor or proprietors shall forthwith damask or make waste paper of the said book or books and sheet or sheets: and all and every such offender and offenders 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 the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such Court of Record, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed: Provided always, that in *Scotland* such offender or offenders 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 such action, where damages shall be awarded, double costs of suit, or expenses of process, shall be allowed.

Penalty.

Offenders in Scotland.

V. And, in order to ascertain what books shall be from time to time published, be it enacted, That the publisher or publishers of any and every book demandable under this act, which shall be published at any time after the passing of this act, shall within one calendar month after the day on which any such book or books respectively shall be first sold, published, advertised, or offered for sale, within the bills of mortality, or within three calendar months, if the said book shall be sold, published or advertised in any other part of the United Kingdom, enter the title to the copy of every such book, and the name or names, and place of abode of the publisher or publishers thereof, in the register book of the Company of Stationers in *London*, in such manner as hath been usual with respect to books, the title whereof hath heretofore been entered in such register book, and deliver one copy, on the best paper as aforesaid, for the use of the *British Museum*; which register book shall at all times be kept at the hall of the said Company; for every of which several entries the sum of two shillings shall be paid, and no more: which said register book may at all seasonable and convenient times be resorted to and inspected by any person; for which inspection the sum of one shilling shall be paid to the ware-

Within what time title of books entered at Stationers' Hall.

Copy for British Museum.

Inspection of Register Book.

house-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 for every such certificate the sum of one shilling shall be paid; and in case such entry of the title of any such book or books shall not be duly made by the publisher or publishers of any such book or books within the said calendar month, or three months, as the case may be, then the publisher or publishers of such book or books shall forfeit the sum of five pounds, together with eleven times the price at which such book shall be sold or advertised, to be recovered, together with full costs of suit, by the person or persons, body politic or corporate, authorized to sue, and who shall first sue for the same, in any Court of Record in the United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed: Provided always, that in the case of Magazines, Reviews, or other periodical publications, it shall be sufficient to make such entry in the register book of the said Company, within one month next after the publication of the first number or volume of such Magazine, Review, or other periodical publication: Provided always, that no failure in making any such entry shall in any manner affect any copyright, but shall only subject the person making default to the penalty aforesaid, under this act.

Certificate.

Title of book not entered.

Penalty.

Proviso for Magazines, &c.

Proviso.

Warehouse-keeper of Stationers' Hall to transmit to librarians lists of books entered; and call on publisher for copies.

VI. And be it further enacted, That the said warehouse-keeper of the Company of Stationers shall from time to time and at all times, without any greater interval than three months, transmit to the librarian or other person authorized on behalf of the libraries before-mentioned, correct lists of all books entered in the books of the said Company, and not contained in former lists; and that, on being required so to do by the said librarians, or other authorized person, or either of them, he shall call on the publisher or publishers of such books for as many of the said copies as may have been demanded of them.

Publishers to deliver books at library.

VII. Provided always, and be it further enacted, That if any publisher shall be desirous of delivering the copy of such book or volume as aforesaid, as shall be demanded on behalf of any of the said libraries, at such library, it shall and may be lawful for him to deliver the same at such library, to the librarian or other person authorized to receive the

same, (who is hereby required to receive and to 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 warehouse-keeper.

What deemed delivery.

VIII. And whereas it is reasonable that authors of books already published, and who are now living, should also have the benefit of the extension of copyright; be it further enacted, That if the author of any book or books, which shall not have been published fourteen years at the time of passing this act shall be living at the said time, and if such author shall afterwards die before the expiration of the said fourteen years, then the personal representative of the said author, and the assignees or assigns, of such personal representative, shall have the sole right of printing and publishing the said book or books, for the further term of fourteen years after the expiration of the first fourteen years: Provided that nothing in this act contained shall affect the right of the assignee or assigns of such author to sell any copies of the said book or books, which shall have been printed by such assignee or assigns, within the first fourteen years, or the terms of any contract between such author and such assignee or assigns.

Authors of books published, now living, to have benefit of extension of copyright.

Proviso.

IX. And be it also further enacted, That if the author of any book or books which have been already published, shall be living at the end of twenty-eight years after the first publication of the said book or books, he or she shall for the remainder of his or her life have the sole right of printing and publishing the same: Provided that this shall not effect the right of the assignee or assigns of such author, to sell any copies of the said book or books, which shall have been printed by such assignee or assigns within the said twenty-eight years, or the terms of any contract between such author and such assignee or assigns.

Authors living at end of 28 years, sole right of publication for life.

X. Provided nevertheless, and be it further 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, or else the same shall be void and of no effect.

Limitation of actions.

No. XXVII.

5 & 6 Wm. 4, c. 65.

An Act for preventing the Publication of Lectures without consent.

Whereas printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects, without the consent of the authors of such lectures, or the persons delivering the same in public, to the great detriment of such authors and lecturers: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *September* one thousand eight hundred and thirty-five the author of any lecture or lectures, or the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in short hand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts thereof, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published, or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to his Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same, to be recovered in any of

Authors of lectures, or their assigns, to have the sole right of publishing them.

Penalty on other persons publishing, &c. lectures without leave.

his Majesty's Courts of Record in *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance shall be allowed.

Penalty on printers or publishers of newspapers publishing lectures without leave.

II. And be it further enacted, That any printer or publisher of any newspaper who shall, without such leave as aforesaid, print and publish in such newspaper any lecture or lectures, shall be deemed and taken to be a person printing and publishing without leave within the provisions of this act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing.

Persons having leave to attend lectures not on that account licensed to publish them.

III. And be it further enacted, That no person allowed for certain fee or reward, or otherwise, to attend and be present at any lecture delivered at any place, shall be deemed and taken to be licensed or to have leave to print, copy, and publish such lectures only because of having leave to attend such lecture or lectures.

Act not to prohibit the publishing of lectures after expiration of the copyright.

IV. Provided always, That nothing in this act shall extend to prohibit any person from printing, copying, and publishing any lecture or lectures which have or shall have been printed and published with leave of the authors thereof or their assignees, and whereof the time hath or shall have expired within which the sole right to print and publish the same is given by an act passed in the eighth year of the reign of 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 by another act passed in the fifty-fourth year of the reign of 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*, or to any lectures which have been printed or published before the passing of this act.

8 Ann. c. 19.

54 Geo. 3, c. 156.

Act not to extend to lectures delivered in unlicensed places, &c.

V. Provided further, That nothing in this act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to two justices living within five miles from the place where such lecture or lectures shall be delivered two days at the least before delivering the same, or to any lecture or lectures delivered in any University or public school or college, or on

any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this act had not been passed.

No. XXVIII.

6 & Wm. 4, c. 59.

An Act to extend the Protection of Copyright in Prints and Engravings to Ireland.

17 Geo. 3, c. 57.

Whereas an act was passed in the seventeeth 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 whereas it is desirable to extend the provisions of the said act to *Ireland;* be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act all the provisions contained in the said recited act of the seventeenth year of the reign of his late Majesty King *George* the third, and of all the other acts therein recited, shall be and the same are hereby extended to the united kingdom of *Great Britain* and *Ireland.*

Provisions of recited act extended to Ireland.

Penalty on engraving or publishing any print without consent of proprietor.

II. And be it further enacted, that from and after the passing of this act, if any engraver, etcher, printseller, or other person shall, within the time limited by the aforesaid recited acts, engrave, etch, or publish, or cause to be engraved, etched, or published any engraving or print of any description whatever, either in whole or in part, which may have been or which shall hereafter be published in any part of *Great Britain* or *Ireland,* without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more

credible witnesses, then every such proprietor shall and may, by and in a separate action upon the case, to be brought against the person so offending in any Court of Law in *Great Britain* or *Ireland*, recover such damages as a 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.

XXIX.

6 & 7 Wm. 4, c. 110.

An Act to repeal so much of an Act of the Fifty-fourth Year of King George the Third, respecting Copyrights, as requires the delivery of a Copy of every published Book to the Libraries of Sion College, the Four Universities of Scotland, and of the King's Inns in Dublin.

Whereas by an act passed in the fifty-fourth year of the reign of his late Majesty King *George* the third, intituled *An Act to amend the s[illegible]l Acts for the encouragement of Learning by securing the Copies and Copyright of printed Books to the Authors of such Books or their Assigns*, it is amongst other things enacted, that eleven copies of every published book shall be gratuitously delivered to eleven public libraries named in the said act: and whereas the provisions of the said act have in certain respects operated to the injury of authors and publishers, and have in some cases checked or prevented the publication of works of great utility and importance, and it is therefore expedient that the said act should be amended: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said recited act as requires that a copy of every book which shall be printed and published shall be delivered in manner therein mentioned to the warehouse-keeper of the Company of Stationers for the use of the library of *Sion College*, the libraries

54 Geo. 3, c. 146.

So much of recited act as requires the delivery of copies of books for the libraries herein mentioned repealed.

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

Compensation to be made to the said libraries 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 compensation.

III. And be it further enacted, that the person or persons or body politic or coporate, 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.

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.

Wrongful first publication may be amended by Court of Chancery.

III. And be it enacted, that every such entry 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, 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.

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

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

Certificate by warehouse-keeper.

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.

Warehouse-keeper to deposit books in the British Museum.

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.

Second or subsequent editions.

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.

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

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.

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

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

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 af 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.

Whereas by an act passed in the twenty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An*

27 Geo. 3, c. 38.

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

34 Geo. 3, c. 23.

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

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(*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.

Commencement 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 committed.

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

Conditions of copyright.

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

Proprietor explained.

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

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.

Transfer of copyright and register thereof.

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;

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.'

For preventing piracy.

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.)

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.

Registrar, &c. of designs to be appointed.

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's duties.

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

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.

Penalty for extortion.

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.

Letters, &c. to and from the office of registrar of designs exempt from postage.

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.

1 Vict. c. 35.

1 Vict. c. 36.

Interpretation clause.

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

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.

Commencement 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.

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. (1839.)	An act passed during the present session of Parliament, "for extending the copyright 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 *primâ 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.
*R. B. Bate.
*E. S. Swaine.
J. Tulloch.
* L. W. Wright.
W. R. Vigors and Others.
* J. Russell.
*J. Kay.
*R. Dowton.
*Orpheus, commonly called Pierre Erard.
C. Macintosh.
*W. Southworth and Others.
*H. Shuttleworth and Others.
*D. Stafford.
J. G. Bodmer.
*G. A. Kollman.
*R. Roberts.

A

SUPPLEMENT TO GODSON'S

Practical Treatise

ON

THE LAW

OF

PATENTS FOR INVENTIONS,

AND OF

COPYRIGHT

IN LITERATURE, THE DRAMA, MUSIC, ENGRAVING AND SCULPTURE,

AND ALSO IN ORNAMENTAL AND USEFUL DESIGNS FOR

THE PURPOSES OF SALE AND EXHIBITION.

BY

PETER BURKE, Esq.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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PREFACE.

THIS Supplement to the "Practical Treatise on the LAW of PATENTS for INVENTIONS and of COPYRIGHT," by the late Mr. GODSON, is ingrafted on one which that author added to his second edition a few years before his lamented decease. The present editor has brought the whole work down to this time with as little infringement as possible on the original plan. The portion of the supplement thus completed, which treats of patents, includes all the recent cases and statutable enactments relating to them. With the latter half of the supplement containing the law of copyright, it became necessary that more should be done, in consequence of the many changes recently occurring in that branch of our jurisprudence. The editor has, therefore, entirely reviewed and remodelled the matter touching on copyright, so that this supplement, in effect, embraces the whole law on the subject, new or altered, as it now is, whether in regard to literature, music, the drama, engraving, or sculpture, or to designs, useful and ornamental, for the purposes of sale or exhibition. These extensive changes, it cannot but be observed, have happened in every instance

for the better. Rich and abundant fruits have already come of the efforts of those salutary spirits of Parliament, the Broughams, the Talfourds, the Bulwers, and others—distinguished actors themselves on the great stage of knowledge—who have thus reformed the copyright law. Nor will the good they have done stop here. The country has yet to experience the incalculable benefits likely to arise from the fair protection of its industry and intelligence, from the due fostering of its genius, and the liberal encouragement of its letters, its music, and its arts. For the perfection of such a system, little now seems wanted as far as copyright is concerned; and it is only to be hoped that in a short time the law of patents may have to boast of a reformation equally prosperous and beneficial. The important subject of patents and copyright in all its bearings has, for many years, been one of deep interest to the present editor, and he will feel only too glad if his labours here help in any way its further development, study, and appreciation.

INNER TEMPLE,
Feb. 1851.

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TO PATENTS FOR INVENTIONS.

CHAPTER 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 Chapter 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 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* (*b*).

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

(*b*) See a report of that case by Charles Shearman, gentleman, of Gray's Inn; and also 1 Webster's Rep. 433.

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.

CHAPTER II.

Of the Inventor (*a*).

The following cases with reference to the question—who is the first inventor? have recently occurred.

Where an invention is described in a work publicly circulated in England, a party who afterwards takes out a patent for it is not the true and first inventor, whether he derives his knowledge from such publication or not. (*Stead* v. *Williams*, 7 Manning & G. 318). But the work must be publicly circulated here. The mere private importation of a foreign book containing a description of the invention, would not be sufficient to defeat the patent for it. The book must be first actually published and sold, or deposited in a public library such as the British Museum. See *Heurteloup's Case*, 1 Web. R. 553.

The use of an invention in England, prior to the date of letters patent granted for Scotland, will invalidate the Scotch patent; and the Judicial Committee of the Privy Council, under the 5 & 6 Wm. 4, c. 83, s. 2, accordingly refused to confirm a Scotch patent, the invention being used in England before the date of the Scotch patent. *Robinson's Patent*, 12 Jur. 507. A patentee coming for confirmation of his letters patent, under the above act, is bound to satisfy the Court that he considered himself the first inventor; as, for instance, by evidence of the course of experiments by which he arrived at the knowledge of the invention. *Card's Patent*, 12 Jur. 507. And in the same case, although it was proved that the invention was not publicly and generally known prior to the patent, yet, where two individuals were proved to have systematically used an article identical with

(*a*) See p. 26 of the Practical Treatise, 2nd Edition.

the patent article for several years prior to the patent, and that the patent article was little more than a new application of a well known article, the Committee declined exercising its discretionary power to confirm the letters patent.

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.

With regard to an invention imported from abroad, the case of *Beard* v. *Egerton* (3 C. B. R. 97), is very important. According to that case a patent granted to a British subject in his own name for an invention communicated to him by a foreigner, the subject of a state in amity with this country, is not void, although such patent be in truth taken out and held by the grantee in trust for such foreigner. And in such case, the grantee is the true and first inventor within this realm, within the statute 21 Jac. 1, c. 3.

According also to *Beard* v. *Egerton*, in case for an alleged infringement of a patent so granted, the defendant pleaded, that, by an agreement made in France between the original inventor and the King of the French, the former, for the considerations mentioned therein, assigned the invention to the French government, and that by virtue of that agreement, and by the laws of France, the invention became vested in the King of the French in right of his crown, who thereby became entitled by the laws of France to vend and publish the invention as well in that country as in Great Britain and Ireland, and in any other country or place where he should think fit, without any licence from the inventor—concluding "wherefore the said letters patent were and are void, &c."—It was held that the plea was bad in substance, inasmuch as it contained no denial of the allegation that the patentee was the true and first inventor within this realm, which is all that is necessary to sustain the validity of the letters patent in respect of the granting thereof.

It was also held in the same case that the circumstance of the original inventor having for a valuable consideration parted with his interest in the discovery to a person in France, was no bar to his right to take out a patent for the same invention in this

country. A further plea, also in the same case, contained an additional allegation, that the King of the French had openly published and made known the invention, and the manner of performing the same, to the people of France, for the use and benefit of that people, and of all other nations and people in the world, as a free gift and benefaction for the benefit of all mankind, without limitation or restriction; whereby, according to the laws of France, the defendants became and were entitled to use, exercise, and vend the said invention in any country or place, at their free will and pleasure,—without the leave, or licence, or hindrance, of the original inventor, &c.—It was held that this plea afforded no answer to the action.

CHAPTER 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

(*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.

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 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 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 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,

(*a*) 8 Clark & F. 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. I, 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."

vel a dicto Jacobo Brown ut prædicitur 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* (9 Meeson & Welsby's Rep. 300), 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 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 (*b*), 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* (5 Bing. N. C. 592, and also 1 Beavan, 535, and in the House of Lords, 8 Clark & F. Rep. 245). A patent had been obtained for new and improved machinery for preparing and spinning flax, hemp and other

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

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

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 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, that *Morgan* v. *Seaward* is reported in 2 Meeson & W. Rep. 544.

See also as to want of novelty in an invention the case of *Dobbs* v. *Penn*, 3 Ex. R. 427.

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. *Nelson and others*, respondents, in the House of Lords. (Webster's Cases, p. 673).

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 (*b*).—In the treatise many arguments (*c*) were urged to prove that it is doubtful whether a *mere* method of making a thing, or a process, or a manner of operating, can be the subject of a patent. That doubt has been strengthened by the case of *Gibson* v. *Brand* (4 M. & G. 179), 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

(*a*) See p. 52 of The Practical Treatise, 2nd Ed.
(*b*) Page 84 of The Practical Treatise, 2nd Ed.
(*c*) Id. from p. 84 to p. 91.

was a new thing invented. The jury found specially—that the new invention was not new, but an improved process, and not a 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 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*), 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 plaintiffs

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

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* (4 M. & G. 580). 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 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.

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 falls 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.,

(*a*) 2 B. & Ald. 350. (*b*) 3 Meriv. 629.

"There may be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of applying such materials; but, in order to its being effectual, the specification must clearly express that it is in respect of such new combination or application."

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 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

(*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.

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

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

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."

The adoption by an inventor of a suggestion made, in the course of experiments, of something calculated more easy to carry his conceptions into effect, does not affect the validity of the patent. *Allen* v. *Rawson* (1 C. B. R. 551).

3. *Patent for a method, but the subject is something material* (*a*). —So in *Neilson* v. *Harford* (8 Meeson & Welsby's Rep. 806), 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.

CHAPTER IV.

Of the Specification (*b*).

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 (*c*).—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* (4 Manning & Granger's Rep. 170. See ante, p. 8). 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.

(*a*) See p. 91, of The Practical Treatise.
(*b*) See p. 106 of The Practical Treatise, 2nd Edition.
(*c*) Id. p. 108 to p. 117.

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

General Rules (*b*).—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, *Neilson* v. *Harford* (8 Meeson & W. 806), contain an untrue statement in a material circumstance, of such a nature that, if literally acted upon by a *competent work-*

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

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

man, 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 (*a*).—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 (*Beckford* v. *Shewes*, 1 Gale & D. 736), 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 this 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 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 pro-

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

ceeded 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 (*Macnamara* v. *Hulse & Others*, 1 Car. & M. 471), in which it was held that 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.

When the patent was taken out for improvements in carriages, and the invention was, in fact, an improvement in German shutters, which were used in only some kind of carriages, it was held by the Court of Exchequer Chamber, reversing the judgment of the Court of Queen's Bench, that, where the title is not inconsistent with the specification, and no fraud is practised on the Crown or the subject, it is not a fatal objection that the title is so general as to be capable of comprising a different invention from that for which the patent is claimed. That the title for improvements in carriages might be taken to mean improvements in some kind of carriages, and did not necessarily imply any untrue assertion, though, in fact, the improvements were not applicable to all carriages, and that the patent was valid. (*Cook* v. *Pearce*, 8 Q. B. R. 1044). Where the specification of a patent for a chemical process contained words that, taken in their ordinary natural sense, directed an act to be done which would be fatal to the success of the process, although the meaning, indeed, might be gathered from the context, it was held by *Wilde*, C. J., that the specification was insufficient to sustain the patent. (*Brand* v. *Egerton*, 2 C. & K. 667). See also *Barber* v. *Grace* (1 Ex R. 339; 17 L. J. R. Ex. 122). A specification to a patent is insufficien' and bad if it describe the patent as capable of being

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

made use of by the application of either of two different mechanical processes, one of which in quality is wholly ineffectual for the purpose required. (*Reg.* v. *Cutler*, 12 L. J. 512, Q. B.).

The specification of a patent for a process or method of combining various materials, so as to form stuccoes, plasters, and cements, and for the manufacture of artificial stones, marbles, &c. used in buildings; after stating the invention to consist in producing certain hard cements of the combination of the powders of gypsum, powder of limestone and chalk, with other materials, such combination being (subsequent to their mixing) submitted to heat, described the method or process of making a cement from gypsum, to consist in mixing with powdered gypsum strong alkali (*ex gr.* best American pearl ash) dissolved in a certain proportion of water, this solution to be neutralized with acid (sulphuric acid being the best), the mass to be kept in agitation, and the acid to be added gradually till the effervescence should cease; and then a certain proportion of water be added (if other alkali was used, the quantity to be varied in proportion to its strength), and the mixture having been brought to a proper consistence by the further addition of powdered gypsum, to be dried in moulds, and finally subjected to a furnace capable of producing a red heat. The description of making the cement differed little from that of the preceding process. The specification, after proceeding to state the mode of using the cement so made, concluded by stating, that other alkalies and acids besides those before mentioned would answer the purposes of the invention though not so well, and that the inventor claimed the method or process thereinbefore described. It was held that the specification was bad, for that either the inventor claimed all acids and alkalies, or only those which would answer the purpose; in the former of which cases, as some acids and alkalies would not answer the purposes of the invention, the specification was therefore bad; and in the latter it was bad, for not specifying those acids and alkalies which would be found to succeed. (*Stevens* v. *Keating*, 2 Exch. 772). A patent was taken out for "a new and improved mode of manufacturing silk, cotton, linen, and woollen fabrics." The specification and a disclaimer, subsequently filed under the statute 5 & 6 Wm. 4, c. 83, set forth that the patentees claimed "the mode hereinbefore described of producing or preparing stripes of silk, cotton,

woollen, or linen, or of a mixture of two or more of those materials, in such a manner that the weft or lateral fabrics of both cut edges of each stripe are all brought up on one side, and into close contact with each other, and the reweaving of such stripes with the whole fur or pile uppermost, into the surfaces of carpets, &c." It appeared that one of these processes was old. The Judge directed the jury, that if one was new, the patent could be supported for the combination of them, and would only be invalid if there had been a public use of both before the date of the patent. It was held that this direction was erroneous, and that the patent was void. (*Templeton* v. *M'Farlane*, 1 H. L. Ca. 595).

As to two patents being alike, and there consequently arising a want of novelty, see *Dobbs* v. *Penn* (3 Exch. R. 427).

As to the specification claiming more than granted by the letters patent, see *Crowl* v. *Edge* (15 L. J. R. 66 C. P., 39 L. O. 443).

As to the validity of a specification, see *Stovens* v. *Keating* (19 L. J. Exc. 57; *Allen* v. *Rawson*, 1 C. B. R. 551).

The terms of the specification of a patent are to be read altogether, and a fair and reasonable interpretation to be given to it; and if it be sufficiently plain to be understood by an operator of fair intelligence, the specification is good. (*Beard* v. *Egerton*, 19 L. J. R., C. P. 36). But a specification is bad which casts upon the public the expense and labour of experiment and trial. (*Stevens* v. *Keating*, 19 L. J. R., C. P. 57). See also *Crowl* v. *Edge*, (39 Leg. Obs. C. B. 443). And as to the construction of a specification, see *Elliott* v. *Turner* (2 C. B. 446; 15 L. J. R., C. P. 49).

Enrolment of Specification in Enrolment Office.—By the 12 & 13 Vict. c. 109, s. 15 (see the act in the Appendix to Supplement), "every specification or instrument in writing for describing or ascertaining any invention, and to be enrolled in Chancery in pursuance of Letters Patent, under the Great Seal, shall be enrolled in the Enrolment Office of the Court of Chancery; and every disclaimer and memorandum of alteration to be enrolled in pursuance of 5 & 6 Wm. 4, c. 83, shall also be enrolled in the said Enrolment Office, whether the specification of the invention to which such disclaimer or memorandum of alteration shall relate, shall or shall not have been enrolled in such Enrolment Office;

and the enrolment of every such disclaimer and memorandum of alteration in the said Enrolment Office shall be, and be deemed to be the enrolment thereof in the proper office, in pursuance of the provisions of the said act."

Disclaimers (*a*).—The rules of practice, and the forms respecting them, will be found in the Appendix of the Practical Treatise (*b*). In addition to which see the recent case of *Davis* v. *Mill*, 20 L. J. R., C. P. 16, and more fully cited below.

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

When the specification has been once enrolled, the power of

(*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:

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.

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

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

But when under the 5 & 6 Wm. 4, c. 83 (*a*), 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 to the petitioner, the Master of the Rolls held that he had no jurisdiction to order such memorandum of alteration to be expunged. *In Re Sharp's Patent ex parte Wordsworth*, 3 Beavan's Rep. 245.

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

(*a*) See the Practical Treatise, 2nd Ed., p. 165.

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

(*c*) See p. 109 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.

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 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. This power was doubted in the case of *Wright's Patent*, 1 Webs. R. 561, but the question is now set at rest by the 7 & 8 Vict. c. 69, s. 4, cited here below, p. 26,

5th. The time of the extension will depend upon all the circumstances of the case, and if it be granted to an assignee, he

(*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.

may be put under terms to do justice to the patentee or his family.

The 7 & 8 Vict. c. 69 (passed the 6th August, 1844), which gives power of extending the prolongation to fourteen years, is a very important statute with regard to patents. That act, as far as relates to patents, is as follows:

Sect. 1. Whereas the act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the better Administration of Justice in his Majesty's Privy Council," (3 & 4 Wm. 4, c. 41), hath been found beneficial to the due administration of justice: and whereas another act, passed in the sixth year of the said reign, intituled "An Act to amend the Law touching Letters Patent for Inventions," (5 & 6 Wm. 4, c. 83), hath been also found advantageous to inventors and to the public: and whereas the Judicial Committee acting under the authority of the said acts had been found to answer well the purposes for which it was so established by Parliament, but it is found necessary to improve its proceedings in some respects, for the better despatch of business, and expedient also to extend its jurisdiction and powers.

Sect. 2. And whereas it is expedient, for the further encouragement of inventions in the useful arts, to enable the time of monopoly in patents to be extended in cases in which it can be satisfactorily shown that the expense of the invention hath been greater than the time now limited by law will suffice to reimburse; be it enacted, that if any person, having obtained a patent for any invention, shall before the expiration thereof present a petition to her Majesty in council, setting forth that he has been unable to obtain a due remuneration for his expense and labour in perfecting such invention, and that an exclusive right of using and vending the same for the further period of seven years, in addition to the term in such patent mentioned, will not suffice for his reimbursement and remuneration, then, if the matter of such petition shall be by her Majesty referred to the Judicial Committee of the privy council, the said committee shall proceed to consider the same after the manner and in the usual course of its proceedings touching patents, and if the said committee shall be of opinion, and shall so report to her Majesty, that a further period greater than seven years' extension of the said patent term ought to be granted to the petitioner, it shall be

lawful for her Majesty, if she shall so think fit, to grant an extension thereof for any time not exceeding fourteen years, in like manner and subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said act of the sixth year of the reign of his late Majesty.

Sect. 3. Provided always, and be it enacted, that nothing herein contained shall prevent the said Judicial Committee from reporting that an extension for any period not exceeding seven years should be granted, or prevent her Majesty from granting an extension for such lesser term than the petition shall have prayed.

Sect. 4. And whereas doubts have arisen touching the power given by the said recited act of the sixth year of the reign of his late Majesty in cases where the patentees have wholly or in part assigned their right; be it enacted, that it shall be lawful for her Majesty, on the report of the Judicial Committee, to grant such extension as is authorized by the said act and by this act, either to an assignee or assignees or to the original patentee or patentees, or to an assignee or assignees and original patentee or patentees conjointly.

Sect. 5. And be it enacted, that in case the original patentee or patentees hath or have departed with his or their whole or any part of his or their interest by assignment to any other person or persons, it shall be lawful for such patentee, together with such assignee or assignees if part only hath been assigned, and for the assignee or assignees if the whole hath been assigned, to enter a disclaimer and memorandum of alteration under the powers of the said recited act; and such disclaimer and memorandum of such alteration, having been so entered and filed as in the said recited act mentioned, shall be valid and effectual in favour of any person or persons in whom the rights under the said letters patent may then be or hereafter become legally vested: and no objection shall be made in any proceeding whatsoever on the ground that the party making such disclaimer or memorandum of such alteration had not sufficient authority in that behalf.

Sect. 6. And be it enacted, that any disclaimer or memorandum of alteration before the passing of this act, or by virtue of the said recited act, by such patentee with such assignee or by such assignee as aforesaid, shall be valid and effectual to bind

any person or persons in whom the said letters patent might then be or have since become vested; and no objection shall be made in any proceeding whatsoever that the party making such disclaimer or memorandum of alteration had not authority in that behalf.

Sect. 7. And be it enacted, that any new letters patent which before the passing of this act may have been granted, under the provisions of the above-recited act of the sixth year of the reign of his late Majesty, to an assignee or assignees, shall be as valid and effectual as if the said letters patent had been made after the passing of this act, and the title of any party to such new letters patent shall not be invalidated by reason of the same having been granted to an assignee or assignees; provided always, that nothing herein contained shall give any validity or effect to any letters patent heretofore granted to any assignee or assignees where any action or proceeding in scire facias or suit in equity shall have been commenced at any time before the passing of this act, wherein the validity of such letters patent shall have been or may be questioned.

Sect. 8. Provided always, and be it enacted, that in the case of any matter or thing being referred to the Judicial Committee, it shall be lawful for the said committee to appoint one or other of the clerks of the privy council to take any formal proofs required to be taken in dealing with the matter or thing so referred, and shall, if they so think fit, proceed upon such clerk's report to them as if such formal proofs had been taken by and before the said Judicial Committee.

The principles upon which prolongations are granted were nearly all explained by *Lord Brougham* in the case of *Whitehouse's Patent* (1 Webs. Rep. 473; 2 Mo. P. C. C. 496), who said,—"Their Lordships having taken the whole of this matter into account, retain the opinion which they have 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 on 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 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 realized in others, but that a considerable profit has been realized, 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 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 (*b*).

In the case of *Jones's Patent* (Webster's Cases, p. 579), *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 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

(*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 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.

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

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* (Webster's Cases, 727), "Now it appears, that improvements were made in the float, such manifest improvements, that no person would after these ever think of persisting in using the invention as it originally stood, but would have recourse to the improvements. That, however, is no reason against the claim of the original inventor, it is only saying that his invention, though useful, has been capable of improvement, and its having been improved affords no reason for denying him an extension of the patent, if upon other grounds he has merit, and if upon other grounds he 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* (Webster's Cases, 733), 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 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 gravitation itself, and the fractional calculus itself, down to the

most trifling step that ever has been made, is one continued illustration of the slow progress by which the human mind makes its advance in discovery; it is hardly perceptible, so little has been made by any one step in advance of the former state of things, because generally you find that just before there was something very nearly the same thing discovered or invented."

In *Morgan's case* (Webster's Cases, 737), *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 (Webster's Cases, 738),—"Their Lordships do not consider that this invention is entirely without merit, but it seems of a very moderate degree, being the substitution of the chemical process of washing with sulphuric acid for the scaling process by fire, making a cheaper and somewhat better article. It is not without merit, at the same time it cannot be said to be of 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, (*Kay's Patent*, 3 Moore, P. C. Rep. 24). 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 shewn the patentee ought to have some extension, their Lordships would advise such for the period of three years (*a*).

The extension of a patent was granted to a foreigner who had no residence in Britain. (*Derosne's Patent*, May, 1844, 4 E. F. Moo. 16).

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

(*a*) 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.

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 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.

The inventor of and patentee of an article likely to command a large sale, had lost money by it. His assignees had lately made large profits. The term was extended on condition that the price should be limited, and that the inventor should have half the profits. (*Hardy's Patent*, 13 Jur. 177); Privy Council. In the same case, in estimating the profits, those arising from the sale for exportation were included.

In the case of *Baxter's Patent*, 13 Jur. 593, Privy Council, the extension was opposed by the apprentices of the patentee, who alleged that they should not be able to get employment in another branch of the trade; no condition was imposed on the patentee on that account, as it appeared that they had been so instructed as to be able to get employment in another branch of the trade. In the case of *Patterson's Patent*, 13 Jur. 593, P. C., where the patent, owing to disputes between the patentee and other persons, had not been worked till a short time before the expiration of the term, an extension was refused. See also *Bell's Patent*, 10 Jur. 363, P. C., where the extension of the term was refused to a patent article unprofitable for ten years after the date of the patent, in consequence of a defect which was not cured until then. As to the extension of the term refused to an invalid patent, but granted to one of doubtful validity, see *Woodcroft's Patent*, 10 Jur. 363, P. C. As to the term being extended upon *primâ facie* evidence of no profit, coupled with evidence of utility, see *Lowe's Patent*, 10 Jur. 363, P. C. For extension on the ground of public utility, *Derosne's Patent*, 4 E. F. Moo. 16, *Lowe's Patent*, 10 Jur. 363, P. C. Where the party applying for an extension is resident abroad, and had no manufacture in England, advertising in the towns or county where the persons to whom he has granted licenses are resident, is a sufficient compliance with the fourth section of the act 5 & 6 Wm. 4, c. 83, *In re Derosne's Patent, suprâ*, and 4 E. F. Moo. 16. The statute

5 & 6 Wm. 4, c. 83, derives much elucidation from the case of *Ledsam* v. *Russell*, 2 H. L. Ca. 687. The principal points there decided as to the renewal of letters patent are as follow:—The statute does not authorize the Judicial Committee of the Privy Council to impose terms as conditions on which patents are to be renewed. The authority of the Committee is limited to reporting on matters as between the public and the party applying. There is nothing in the statute to fetter the discretion of the Crown in the renewal, except the length of time for which the renewal is to be granted, and which must not exceed seven years (now fourteen years; 7 & 8 Vict. c. 69, s. 2). An application for a renewal is "prosecuted with effect," within the terms of the statute, if the party applying obtains the report of the Judicial Committee of the Privy Council before the expiration of the original patent. The Crown is not restricted as to the time within which it may act upon such report, and renewed letters patent are not void, because they are dated after the expiration of the original letters patent. If the Judicial Committee should impose a condition on a party applying for the renewal of a patent, such party need not, in an action for the infringement of a patent, aver that such condition was complied with before the patent was renewed. It may be further observed, with regard to this case, that the extension to fourteen years under the 7 & 8 Vict. c. 69, s. 2, is to be granted in like manner, and subject to the same rules as the extension under the 5 & 6 Wm. 4, c. 83. See also as to extension of patents by the Privy Council, *Pinkus' Patent*, 12 Jur. 233.

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

The extra costs of applying for a new patent will sometimes be ordered to be paid by the persons opposing, if it appear that his opposition be frivolous or vexatious (*re Downton*, Webster's Cases,

565), 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. (*Re Mackintosh*, Webster's Cases, 739).

Confirmation of Patents (*a*).—The Judicial Committee has seldom been called on to exercise their power 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. (*Westrupp and Gibbin's Patent*, Webster's Cases, 554).

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

CHAPTER VI.

Of the Construction of Letters Patent (*b*).

The construction of the specification of a patent belongs to the Court and not to the jury. (*Neilson* v. *Harford*, 16 M. & W. 805).

(*a*) See p. 190 of The Original Treatise, 2nd Ed.
(*b*) See p. 202 of The Practical Treatise, 2nd Ed.

CHAPTER VII.

Of the Property in an Invention (*a*).

The effect of an Assignment generally (*b*) has been stated, and the consequence to the inventor, if his patent should afterwards be discovered to be invalid (*c*). 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 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

(*a*) See p. 211 of The Practical Treatise, 2nd Ed.

(*b*) Id. 215.

(*c*) See Chanter *v.* Leese, 4 M. & W. 295, and 5 id. 698, which was principally decided on a point of pleading, *post*, 42; 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.

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. (*Baird and Others* v. *Neilson and Others*, 8 Clarke & F.'s Rep. 726).

Licenses to use the Patent (*a*).—The question respecting 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. (*Protheroe* v. *May*, 5 Meeson & W. 675).

The circumstances of that case (*Protheroe* v. *May*, 5 Meeson & W. 678), were thus stated in a case 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 first 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,

(*a*) See p. 225 of The Practical Treatise, 2nd Ed.

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 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 2nd 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. (*Protheroe* v. *May*, 5 M. & W. 687).

"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 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."

See also as to licenses, *Cutler* v. *Bower*, 12 Jur. 721; 17 L. J. Q. B. 217.

A patent may be assigned to trustees for the benefit of creditors of the patentee, exceeding twelve in number. (*McAlpin* v. *Mangnall*, 3 C. B. R. 496).

It appears that a license under seal to use a patented article, does not require a stamp. (*Chanter* v. *Johnson*, 14 Mee. & W. 408).

Moreover a license to use a patent need not be under seal. (*Chanter* v. *Dewhurst*, 12 Mee. & W. 825).

CHAPTER 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 (*Gibson and Another* v. *Brand*, 4 Manning & G. 179), 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* (*b*) was confirmed by the case of *Gillet* v. *Wilby* (9 Car. & P. 334), that the infringement 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

(*a*) See p. 230 of The Practical Treatise, 2nd Ed.
(*b*) Practical Treatise, 2nd Ed. p. 231.

the defendant's cabriolet was an imitation of the whole of them, but an imitation of one was sufficient to maintain the action.

The doctrine laid down by the Court of Exchequer, that, if a patent has been infringed unintentionally, the patentee is not entitled to redress, was disapproved of in the case of *Heath* v. *Unwin*, 15 Sim. 552, 11 Jur. 420, 16 L. J., Ch. 283.

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 inspection 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

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

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. (*Galloway and Others* v. *Bleaden*, 1 M. & G. 247). Where, in a declaration 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 & 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 (*b*).—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

(*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. 37, on another point.

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

is not uncommon for the venue to be placed in the country. The venue, however, as stated by Mr. Godson at p. 238, if once laid, appears to be unchangeable. If it be laid in Middlesex, it cannot be changed, for the letters patent, which are part of the cause of action, being tested at Westminster, the affidavit that the cause of action arose in any other county than Middlesex, and not elsewhere, cannot be made. Nor it seems can the venue be changed even when it is laid out of Middlesex. *Brunton* v. *White* (7 D. & R. 103). As to proceedings on *scire facias*, see the 12 & 13 Vict. c. 109, ss. 29, 30, 31, 32, Appendix to Supplement.

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

In an action for infringing the plaintiff's patent a plea 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*. (*Spilsbury and Another* v. *Clough and Another*, 2 Q. B. Rep. 466).

A plea in an action on the case (*Gibson and Another* v. *Brand*, 4 M. & G. 179) for infringing a patent set out the specification *in hæc verba*, and alleged that the plaintiffs did not enrol 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.

Upon an issue of not guilty to an action for infringement of a patent, the question whether there was a fraudulent evasion of the patent does not arise. (*Stead* v. *Anderson*, 16 Law J., C. P. 250; 11 Jur. 77, 4 C. B. R. 806). According to the same case, in determining whether a defendant has infringed a patent, no

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

question arises as to his intention, but only as to his acts. And, moreover, in the same case, a plea that the plaintiff was not the first and true inventor, was held to be proved by shewing a publication before the plaintiff's invention. A plea also that "before the letters patent the invention had been and was wholly and in part publicly and generally known, used, practised, and published in England," only raised a question of user before the grant of letters patent. See also *Stead* v. *Carey*, 1 C. B. 496, and *Beddels* v. *Massey*, 7 Mann. & G. 630, where, in case for infringement of a patent where the effect of the letters patent is set out, it would appear that *non concessit* is a good plea. The Court will not compel the plaintiff in an action for the infringement of a patent to furnish the defendant with the particulars of such infringement, if the granting of such an application would be likely to embarrass the plaintiff. (*Electric Telegraph Company* v. *Nott*, 11 Jur. 590; 16 Law J., C. P. 319).

The plea of *non concessit* may be pleaded in an action for the infringement of a patent. (*Beddels* v. *Massey*, 3 Jur. 808; 2 Dow. & L. 322).

It is no ground for disallowing pleas of *non concessit*, and a traverse of the assignment to the plaintiff of the patent, that in a proceeding before the Vice-Chancellor of England, who had directed the action to be brought, the defendant had disputed the infringement only, and that it was understood between the parties "that no other question should be raised." (*Bunnett* v. *Smith*, 13 M. & W. 552).

In an action for the infringement of a patent, to which a disclaimer as to part has been entered, under 5 & 6 Wm. 4, c. 83, the defendant will not be allowed to plead that the whole invention was not new, and also that undisclaimed part was not new. (*Clark* v. *Kenrick*, 219; 12 M. & W. 219; 1 D. & L. 392. See also *Bentley* v. *Keighley*, 1 D. & L. 944).

The Statement of Objections under 5 & 6 *Wm.* 4, *c.* 83 (*a*).—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

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

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

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 improvements, or some of them, have been used before; the defendant should point out which have been used. (*Fisher* v. *Dewick*, 4 Bing. New Cases, 706; 6 Scott, 587; 6 Dowl. Prac. Cases, 739).

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

In case for the infringement of a patent for improvements in machinery, the notice of objections delivered pursuant to the 5 & 6 Wm. 4, c. 83, s. 5, stated that the invention was known to and used by A. and B. and others before the grant. The Court refused to require the defendant to strike out the words "and others." (*Bentley* v. *Keighley*, 7 Mann. & G. 652).

In an action for the infringement of a patent, the defendant delivered a notice of objections, one of which stated that the patentee did not, by the specification in the declaration mentioned, sufficiently describe the nature of the supposed invention; and the other stated that he had not caused any specification sufficiently describing the nature of the supposed invention to be duly enrolled in Chancery. It was held, that the last objection

was not sufficiently precise; and the Court ordered an amendment, which was made, by inserting the word "other" before "specification." (*Leaf* v. *Topham*, 14 M. & W. 146).

See also *post*, p. 54, the case of *Davis* v. *Mill* (20 L. Jour. C. P. 16), as to the disclaimer being to be deemed a part of the specification from the time of granting the letters patent, and not from the time of its enrolment only; and as to the case of *Penny* v. *Shinner* (*ante*, Practical Treatise, p. 167), being, in the decision of *Davis* v. *Mill*, indirectly questioned.

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 to actual use, except by the defendant, when he infringed the patent (*a*). 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 the defendant's 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 (*Walton* v. *Potter*, 3 M. & G. 411), "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,

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

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.

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 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*).

In a recent case it appears that the plea of *non concessit*, in an action for the infringement of a patent, does not impose on the plaintiff the burden of showing that the Crown had power to grant the patent until evidence to impeach the patent has been given. It also appears by the same case, that if the averment in the declaration that the plaintiff was the inventor of an improvement for which the patent was granted is not traversed, the defendant is not at liberty at the trial to controvert the fact. (*Nickels* v. *Ross*, 13 Law J., C. P. 467).

See as to the admission and effect in evidence of the disclaimer under the 5 & 6 Wm. 4, c. 83, s. 1, *Davis* v. *Mill*, *post*, p. 54.

Costs (*b*).—Under the statute of 3 & 4 Vict. c. 24, s. 2, if the damages recovered be under 40*s*., 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. (*Gillett* v. *Green*, 7 M. & W. 347.)

By the third section of 5 & 6 Wm. 4, c. 83, *treble costs* were, under certain circumstances, given to the plaintiff. By the

(*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.