subject. It was also resolved that, although such clause was contained in the King's letters patent, yet it is void; but where it is either by prescription or by custom confirmed by Parliament, then such an ordinance may be good, *Quia consuetudo legalis plus valet quam concessio Regalis.* Thus the King granted to the Abbot of Whitney the custody of a port which was, as it were, the key of the kingdom, and therefore the grant was adjudged void, such grant being expressly against the statute of Edw. 3, c. 1. Again, the King granted to B that none besides himself should make ordnance for batteries in the time of war. This grant was also adjudged void. The court then touched upon a distinction which has had the effect of making this case frequently quoted in patent cases. "If a man," it was said, "hath brought in a new invention and a new trade into the kingdom in peril of his life, and consumption of his estate or stock, or if a man hath made a new discovery of anything—in such cases the King, of his grace and favor in recompense of his costs and travail, may grant by charter unto him, that he only shall use such a trade or traffic for a certain time." When the trade has become common, the monopoly ceases. Chief Justice Cook put this case: The King granted to B that he solely should make and carry kerseys out of the kingdom, and the grant was adjudged void.

A grant of a monopoly may be to the first inventor by the 21 Jac. 1; and, if the invention be new in England, a patent may be granted, though the thing was practised beyond sea before; for the statute speaks of new manufactures within this realm. So that, if it be new here, it is within the statute, for the Act intended to encourage new devices useful to the kingdom: *Edgeberry* v. *Stephens*, 1 Web. P. C. 35. The reporter's note to this case is to the effect that the decision is in accordance with the old common law; and it has been the uniform practice to the present time (1844) to grant letters patent for such inventions, and the Legislature have repeatedly recognized the principle by granting rewards and exclusive privileges to such authors or introducers. As an instance, Lombe's Patent is cited.

In *Beard* v. *Egerton*, 3 C. B. 97, which was an action for an alleged infringement of a patent, the defendants pleaded, that by an agreement made in France between the original inventor and the King of France, the former, for the consideration therein mentioned, assigned the invention to the French Government, and that by virtue of the agreement, and by the laws of France, the invention became vested in the King of France, who thereby became entitled to vend and publish the invention as well in that country as in Great Britian, concluding "wherefore the said letters patent are void." The court held that this 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. It was also contended on behalf of the defendants that, inasmuch as the letters patent were granted for an invention communicated to the patentee by a foreigner, the subject of a State in amity with this country, they were void, on the grounds, first, that the patentee was not the true inventor within the meaning of the statute; or, if the patentee was a trustee, then that a patent taken out in England by an Englishman in his own name, in trust for foreigners residing abroad, is void at law. With reference to the first point it was admitted on behalf of the defendants that a person who has learned an invention abroad, and imported it into this country, where it was not known or used before, is the first and true inventor within the statute; but it was argued that, to come within the statute, the person who takes out a patent should be the meritorious importer—not a mere clerk or servant or other agent, to whom the communication was made for any special purpose by the foreign inventor, as for the purpose of enabling him to take out the patent for the benefit of such foreigner. No authority was cited for the distinction. "So far as relates to the interest of the public," said Chief Justice Tindal, "Berry (the patentee) has all the merit of the first inventor. If he has been guilty of any breach of faith in his mode of obtaining the communication, or in the mode of using it in England, he may or may not be made responsible to his employers abroad; but such misconduct seems to have no bearing upon the question—as between him and a stranger—whether the patent is void or valid." The learned reporters point out that it was not suggested that the patent was invalid on the ground of a deceit having been practiced on the Crown by the sup-