

specimen of the article comprised in the design satisfied the requirement as to registering a "copy" of the design.

**PART
III.**

DESIGNS.

49. (1.) The comptroller shall grant a certificate of registration to the proprietor of the design (a).

SS. 48-

51.

(2.) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

**Certificate
of regis-
tration.**

(a) Designs Rules, 11, 12.
Compare sect. 96, *post*.

Copyright of registered Designs.

50. (1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

**Copyright
on regis-
tration.**

(2.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the the design; and if he fails to do so, the comptroller may erase his name from the register, and thereupon (a) his copyright in the design shall cease.

(a) Compare note (x), *ante*, p. 104.
See sect. 60 for definition of "copyright."

51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark (a), or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall

**Marking
registered
designs.**

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53.Marking
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designs.

Samples.

Inspection
of regis-
tered
designs.Informa-
tion as to

cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

(a) Designs Rules, 32.

“Prescribed mark.” Under the old Acts it has been held that sale abroad without the proper sign or mark (*r*), or sale of even one or two articles (*s*), forfeits the copyright.

Patterns or samples containing the design on a small scale must be properly marked (*t*).

The concluding sentence of the section is new, and may perhaps be construed as entitling a proprietor to relief under circumstances analogous to those in *Pierce v. Worth* (*u*).

A book of designs need not be registered (*x*).

52. (1.) During the existence of copyright in a design, the design shall not be open to inspection (*a*) except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or by the Court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof.

(2.) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee (*β*).

(a) Designs Rules, 35.

(β) *Ibid.* 33.

53. On the request of any person producing a par-

(*r*) *Sarazin v. Hamel* (No. 2), 32 Beav. 151; 32 L. J. Ch. 380.

(*s*) *Pierce v. Worth*, 18 L. T. 710; *Hunt v. Stevens*, W. N. 1878, p. 97.

(*t*) *Fielding v. Hawley*, 48 L. T. 639.

(*u*) *Ubi supra*.

(*x*) *Branchardiere v. Elvery*, 4 Ex. 380.

particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

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—
SS. 53-55.
—
existence of copyright.

Designs Rules, 35.

54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Cesser of copyright in certain events.

Register of Designs.

55. (1.) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed (a).

Register of designs.

(2.) The Register of Designs shall be *primâ facie* evidence of any matters by this Act directed or authorised to be entered therein.

(a) Designs Rules, 21-28.

Compare sect. 87 as to the Register of Trade-Marks; sects. 88 and 89 as to inspection of any register, and sects. 90, 91, 93, and 94 as to rectification of any register.

Under the former statutes it was held that an assignment must be in writing (y), but whether this is so now, *quære*—there is no reference in the Act or the Rules to writing.

Assignments.

An assignment should be registered as soon as possible, as otherwise, in case of the bankruptcy of the assignor before registration,

(y) *Jewitt v. Eckhardt*. 8 Ch. D. 404.

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DESIGNS.**

**SS. 55-
57.**

**Fees on
registra-
tion, &c.**

**Exhibition
at indus-
trial or
inter-
national
exhibition
not to pre-
vent or
invalidate
registra-
tion.**

the copyright would probably be held to be in his order and disposition, and therefore to go to his trustee in bankruptcy (z).

Fees.

56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct.

Designs Rules, First Schedule.

Industrial and International Exhibitions.

57. The exhibition at an industrial or international exhibition, certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with; namely,—

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

Designs Rules 36, Second Schedule, Form L.

(z) See *Longman v. Tripp*, 2 Bos. & P. N. R. 67; *Re Dilworth*, 1 Deac. & C. 411.

Legal Proceedings.

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S. 58.

Penalty on piracy of registered design.

58. During the existence of copyright in any design—

(a.) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply (*z a*) such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural; and

(b.) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing (*z b*) that the same has been so applied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction.

LEGAL PROCEEDINGS.

The first sub-clause, it will be seen, applies only to manufacturers and does not require, to render a person liable, knowledge that the design used by him has been registered (*a*).

Manufacturers.

The second sub-clause applies to all persons offering for sale articles having on them a registered design, and it requires, in order to render them valid, that they should know the design or imitation thereof has been applied without the consent of the registered proprietor.

Retailers.

(*z a*) As to what operations will amount to an "application" of a design so as to render the person liable under this section, see *Mallet v. Howitt*, W. N. 1879, p. 107.

(*z b*) Compare the last sentence of sect. 59.

(*a*) See *MacRae v. Holdsworth*, 2 D. G. & Sm. 496; *Mallet v. Howitt*, *ubi supra*.

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S. 58.

Legal pro-
ceedings.Fraudu-
lent imita-
tion.

The question as to what will amount to a "fraudulent or obvious imitation" of another design was very fully discussed in the recent case of *Grafton & Co. v. Watson & Co.*, 28 Sol. Jo., p. 376-7. The exact question here was whether a registered design, consisting of a dominant part and subordinate parts, so arranged as to produce a general effect, was infringed by a design producing a similar effect, notwithstanding that such design imitated neither the dominant part nor the subordinate parts of the registered design. The plaintiffs and defendants were calico printers, at Manchester, and it is the custom of the trade to produce designs in the autumn for the fashions in the following spring, orders for execution being received in the meantime. In October, 1883, the plaintiffs registered four designs as a range or series, but found, in January, 1884, that goods bearing a design of alleged similarity to their design were being sold by the defendants. It was stated by the defendants that their design had been especially produced for them in Paris by a designer to whom the plaintiff's design had been admittedly shewn in order that he might, whilst producing a general effect, which it was said was the fashion in vogue, avoid imitating in any particular the plaintiffs' design. The defendants' design did not imitate the parts of the registered design, but was a combination of equivalents, so arranged as to produce a similar effect. It was contended that general effect could not be the subject of registration. Chitty, J., held that the defendants' design was a "fraudulent and obvious imitation" within the words of the above section—the general effect produced was the same as that of the plaintiffs' design, and was in palpable imitation of it, and he was satisfied that, but for the production of the plaintiffs' design, that of the defendants would not have appeared.

Know-
ledge.

Both sects. 58 and 59 require that a mere seller or retailer must know that he is infringing in order to be liable.

5 & 6 Vict.
c. 100.

These provisions are considerably different from those of the previous statute (5 & 6 Vict. c. 100, s. 7) on the same points, which were that "no person shall publish, sell, or expose for sale any article of manufacture, or any substance to which such design, or any fraudulent imitation thereof, shall have been so applied, after having received either verbally or in writing, or otherwise, from any source other than the proprietor of such design, knowledge that his consent has not been given to such application, or after having been served with or had left at his premises a written notice signed by such proprietor or his agent to the same effect."

Upon this section it was held by the full Court of Queen's Bench

in *Norton v. Nicholls* (b), that a notice which was addressed to the defendants, both as manufacturers who had applied the design to articles of manufacture, and as retail dealers who had sold articles of manufacture to which the design had been applied by others, and stated, that if the defendants either applied the design to an article of manufacture, or sold an article of manufacture with the design applied to it, the plaintiff would sue them was not sufficient, as not being tantamount to a notice that the plaintiff had not given his consent to the application of his design to the manufactured article.

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ceedings.**

In *Halsey v. Brotherhood* (c), Jessel, M.R., said: "In many cases it is [the plaintiff's] duty to [give notice] before bringing an action, and in some cases the legislature has compelled him to do so before bringing an action. Take for instance those cases of infringement of copyright and designs and so on where the seller is only liable if he knows that the right has been infringed; there you must let him know before bringing an action or your action would fail."

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages (a) arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing (b) that the proprietor had not given his consent to such application.

**Action for
damages.**

(a) Of course in addition or substitution for an injunction.

(b) Compare the last sentence of sect. 58, and the cases cited upon it.

(b) 1 E. & E. 761; 5 Jur. N. S. 1203.

(c) 15 Ch. D. 514, 517.

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III.

DESIGNS.

SS. 60,
61.

Definition
of "de-
sign,"
"copy-
right."

Definitions.

60. In and for the purposes of this Act—

"Design" means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

This definition makes "design" include all matters of the kind mentioned, and is not limited to such as are "ornamental" or "useful."

Definition
of pro-
prietor.

61. The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application

thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

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See cases cited *ante*, p. 104.

PART IV.

TRADE MARKS.

Registration of Trade Marks.

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—

62. (1.) The comptroller may, on application (*a*) by or on behalf of any person (*d*) claiming to be the proprietor of a trade-mark, register the trade-mark.

**Applica-
tion for
registra-
tion.**

(2.) The application must be made in the form (β) set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office in the prescribed manner (*a*).

(3.) The application must be accompanied by the prescribed number of representations (γ) of the trade-mark, and must state the particular goods or classes of goods in connection with which the applicant desires the trade-mark to be registered (*a*).

(4.) The comptroller may, if he thinks fit, refuse to register a trade-mark, but any such refusal shall be subject to appeal (δ) to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may

(*d*) See *Riviere's Trade-Mark*, 49 L. T. 504, for the case of a foreigner proposing to register.

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tion for
regis-
tration.

make an order determining whether, and subject to what conditions (*dd*), if any, registration is to be permitted (*e*).

(5.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court; and in that event the Court shall have jurisdiction to hear and determine the appeal and may make such order as aforesaid.

(a) Trade-Marks Rules, 7-16, as to mode of making and other requisites of an application for registration.

(b) Trade-Marks Rules, Second Schedule, Form F.

(c) Ibid. Form G.

(d) Ibid. Form H.

(e) Trade Marks Rules, 20-24, 44, as to appeals to the Board of Trade. See sect. 68 as to advertising applications.

„ 69 as to opposition.

„ 71 and 72 as to registering more than one person.

„ 72 and 74 as to mode of registration, &c.

„ 81 as to applications subject to the Cutlers' Company.

„ 91, 92, and 94 as to rectifying the register.

„ 97 as to mode of giving notices.

The application may be sent by post or left or given at the Patent Office or to the comptroller—see sect. 97 and Trade-Marks Rules, 16.

There is no limitation as to the power of the comptroller “if he thinks fit to refuse to register a trade-mark.” The refusal may take place *mero suo motu* and without the need for opposition from other parties. It is presumed, however, that the refusal will take place by the action of the comptroller himself only (a) when a mark proposed to be registered is the same as, or closely resembles another already on the register, or (b) under sect. 71. When opposition arises to a proposed registration the resemblance to existing marks no doubt will be the chief, but it will not necessarily be the sole, ground of opposition. To justify a refusal to register on this ground it has been held that the similarity between the proposed mark and already existing marks must be such as probably to deceive (*e*).

Opposition. In case of opposition by other parties to the registration of any particular application, the applicant may, by sect. 69, furnish a state-

(*dd*) Compare sect. 47, sub-sect. 7
as to designs.

(*e*) *Re Farina*, 26 W. R. 261; *Re Farina*, 27 W. R. 456.

ment of the grounds of his application. Then security is to be given, and, this done, the case "shall be deemed to stand for the determination of the Court." On an appeal to the Board of Trade, the proceedings as laid down by the Trade-Marks Rules are as follows—

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tion for
registra-
tion.**

(1.) Notice of appeal must within one month of the decision appealed against be left at the Patent Office (r. 20).

(2.) The notice is to be accompanied with a "statement of the grounds of appeal and the appellant's case in support thereof" (r. 21).

(3.) A copy of the notice is to be sent forthwith to the Board of Trade (r. 22).

(4.) The Board of Trade will thereupon give directions for the purpose either of the having before the Board of Trade or of referring the appeal to the Court (r. 23).

There are no specific provisions or directions as to the hearing of the appeal by the Court; when or how it is to be brought before the Court and what is to be the course of procedure.

Appeals to.

It will also be noticed that the section does not, nor does the Act elsewhere, contain any provisions as to the costs of proceedings before the comptroller or the Board of Trade.

Costs.

It is to be submitted that a person who is entitled to the exclusive use of a trade-mark is absolutely entitled to have it registered (*f*).

It was the practice—originally invariable but recently growing less common—of the Court of Chancery to direct in patent, as in other similar, actions the issues of fact to be separately tried before a judge usually with, though sometimes without a jury. By Cairns' Act and Rolt's Act (*g*) provisions were made for the trial of questions of fact by the Court of Chancery. These Acts have now been repealed, but the High Court of Justice has both by virtue of its general jurisdiction and also by the special provisions of the Judicature Acts and the Rules (*h*) power to direct issues where necessary (*i*).

**Issues of
fact.**

When necessary for the protection of interested parties conditions will be imposed, in allowing registration, as to the user and otherwise of a trade-mark or a design. Thus, where an application made

Conditions.

(*f*) See *Orr-Ewing v. Registrar of Trade-Marks*, 4 App. Cas. 479.

(*g*) 21 & 22 Vict. c. 27; 25 & 26 Vict. c. 42.

(*h*) J. A. 1873, s. 57; Order 33,

r. 1; Order 34, r. 2; Order 36, rr. 5, 7, 8. See also section 90.

(*i*) See *Saxby v. Gloucester Wagon Co.*, W. N. 1880, p. 28.

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tion for
registra-
tion.

to register for certain goods an old mark consisting of two globes with letterpress, which had been used on labels and wrappers, but not stamped on the goods, was opposed by the registered proprietor of certain old marks, registered for goods in the same classes, one consisting of a single globe, and another of the word "Globe," which marks were stamped on the goods, it was held that registration ought to be granted only on the applicant's undertaking (to be noted on the register) not to stamp his mark upon the metal of his goods, nor to use it otherwise than he had previously used it (*k*).

In another case the facts were these:—A firm of calico bleachers applied for registration of old marks for cotton goods, consisting of a shield, or frame in the shape of a shield, with (1) letters indicative of the firm itself, (2) the representation of a swan and also letters indicative of the firm. Varying letters were also used upon each mark, indicative of the date and packer of each parcel of calico. In the bleaching trade the trade-mark is stamped inside the fold of the parcel of calico, which is then stitched up, and the manufacturer's and merchant's mark is stamped outside the parcel. It was held that registration ought to be proceeded with, a note being placed upon the register of an undertaking entered into by the applicants not to use the marks otherwise than they had been previously used; namely, inside the fold of calico (*l*).

Alterations of
the registers.

Sects. 91 and 92 provide for the making of additions to or alterations in entries on the registers. Where a proposed alteration merely limits the extent of, or the right of a proprietor with respect to a trade-mark, the comptroller may on the *ex parte* application of the proprietor make the alteration (*m*).

Sheffield
registry.

By sect. 81 provision is made for the establishment of a Sheffield Register, in which register are to be entered the trade-marks in respect of cutlery, edge tools, and other goods belonging to persons carrying on business in Hallamshire or within six miles thereof, together with certain other trade-marks mentioned (sub-sect. 2).

Limit of
time for
proceeding
with applica-
tion.

63. Where registration of a trade-mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part

(*k*) *Re Whiteley*, 29 W. R. 235, n.; (*l*) *Re Sylkes*, 29 W. R. 235; 43
43 L. T. 626. L. T. 626.

(*m*) *Keep's Trade-Mark*, 26 Ch. D. 187; 32 W. R. 427.

of the applicant, the application shall be deemed to be abandoned.

This provision would appear to be imperative (*n*).

64. (1.) For the purposes of this Act, a trade-mark must consist of or contain at least one of the following essential particulars:

- (a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or
- (b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade-mark; or
- (c) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.

(2.) There may be added to any one or more of these particulars any letters, words or figures, or combination of letters, words or figures, or of any of them.

(3.) Provided that any special and distinctive word or words, letters, figure, or combination of letters, or figures or of letters and figures used as a trade-mark before the thirteenth day of August one thousand eight hundred and seventy-five may be registered as a trade-mark under this part of this Act.

See sects. 65-7, 73, 86.

There are two distinct classes of devices, signs, symbols, designations, or descriptions—*indicia* is, perhaps, the widest expression applicable—which are used in connection with articles the subjects of commerce, namely (a) trade-marks proper, and (b) those other *indicia* of the nature, quality, class, or description of goods which

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Conditions
of regis-
tration of
trade-
mark.**

**Trade-
marks.

Trade
names.**

(*n*) See Trade-Marks Rules 52, as to enlarging time.

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marks
proper.

are not trade-marks proper, and to which, for want of some other better general designation, the term "trade-name" may be applied.

TRADE-MARKS PROPER.

Whatever may have been the intention of the Legislature in passing the Trade Marks Acts as to registration, it has not been actually enacted, and therefore it is not absolutely necessary that, in order that any particular symbol, mark, name, or device, or the like, may be a true trade-mark entitled to the protection of law, it should be registered, or even be capable of registration.

Sect. 77 of this statute discriminates between trade-marks "capable of being registered under this Act" and "other trade-marks in use before the 13th August, 1875," that is to say, trade-marks incapable of registration (*o*); and it provides that, with respect to actions for infringement in the case of the former class of marks, registration shall be an essential preliminary; in the case of the latter, a refusal to register shall be essential.

Trade-marks which are capable of registration are conveniently arranged in two great classes, namely (a) "old marks" which are any trade-marks in use before the 13th August, 1875, but which for the purposes of the Act are limited to "any special and descriptive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade-mark before the 13th August, 1875;" and (b) "new marks," namely, those which were not in use at such date, and which must consequently come within the description set forth in sub-sects. 1 and 2 of sect. 64.

"Old
marks."

The essential requisites of "old marks" are that the word, letter, figure, or combination claimed (1) should be "special and distinctive" (*p*); and (2) should have been actually used as a trade-mark prior to the 13th August, 1875.

User.

Such user involves two essentials: (1) that the trade-mark should have been actually applied to a commercial commodity (*q*); and

(*o*) *Semble*, there is a third class of trade-marks, viz., trade-marks which were not in use before the 13th August, 1875, and yet are not capable of registration. In other words, trade-marks are divisible into (a) capable, (b) incapable of registration, and the latter are again divisible into (1) old, and (2) new marks.

(*p*) In *Anderson's Trade-Mark*, 26 Ch. D. 409; 32 W. R. 667, Chitty, J., held that a portrait of Baron Liebig was not a sufficiently "distinctive device" within sect. 10 of the Trade Marks Act, 1875, to be entitled to registration *per se*.

(*q*) *McAndrew v. Bassett*, 33 L. J. Ch. 561.

(2) that it should have been so used in connection with such commodities as to have become known in the trade as solely applied to and indicative of such commodities (r).

With regard to the public user or knowledge of the trade-mark, or the length of time that it must have been used, Lord Cranworth, L.C., thus expressed himself in *Seixo v. Provezende* (s): "The principle on which relief is given in these cases is that one man cannot offer his goods for sale, representing them to be the manufacture of a rival trader. Supposing the rival to have obtained celebrity in his manufacture, he is entitled to all the advantages of that celebrity, whether resulting from the greater demand for his goods or from the higher price which the public are willing to give for them, rather than for the goods of other manufacturers whose reputation is not so high. Where, therefore, a manufacturer has been in the habit of stamping the goods which he has manufactured with a particular mark or brand, so that thereby persons purchasing goods of that description know them to be of his manufacture, no other manufacturer has a right to adopt the same stamp."

There are, however, expressions in other judgments, more particularly in recent cases, which apparently imply that the mere fact that a person adopts a particular trade-mark is sufficient without more to entitle him to the benefit thereof as a trade-mark (t).

But this question, so far as it relates to true trade-marks, can now be of comparatively small importance, since it can affect only old trade-marks, and to these only in so far as it concerns the question whether or not any particular mark should be registered. As regards registered trade-marks, the fact of registration is by sect. 75 "equivalent to public use."

Requisites of Trade-Marks.—With regard to the general requisites of trade-marks, it is clearly settled that there cannot be claimed as valid trade-marks any words of the following classes, namely:

(a) Words which are merely descriptive of the quality of articles, such as "nourishing," applied to stout (u).

(b) Words which simply describe or identify a particular article

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marks
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General
requisites.

(r) *Millington v. Fox*, 3 My. & Cr. 338; *McAndrew v. Bassett*, *ubi supra*.

(s) L. R. 1 Ch. 192, 195.

(t) See per Hall, V.C., in *Cope v. Evans*, L. R. 18 Eq. 138, 143-4.

(u) *Raggett v. Findlater*, L. R. 17 Eq. 29. Compare *Siegert v. Findlater*, 7 Ch. D. 801, as to "Angostura Bitters"; *Young v. Macrae*, 9 Jur. N. S. 322, as to "Paraffine" Oil.

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as being that article and nothing more, and do not state or suggest that the particular article marked is an article manufactured or sold by a particular manufacturer or dealer, such as "Cheavin's Patent Filter," applied to water filters (*x*); "linoleum," applied to floor-cloth (*y*); "Singer," applied to sewing machines (*z*); "braided fixed stars," applied to matches (*a*); "Liebig's Extract of Meat," as applied to meat extract (*b*).

Under this head will come those cases where a patentee has during the existence of his patent, applied a particular name or description to the articles the subject of the patent, and by reason thereof, the articles have come to be known by such name or description. At the expiration of the patent the patentee will not be entitled to claim this name or description as a trade-mark (*c*). "I do not mean to say that a manufacturer of a patented article cannot have a trade-mark not descriptive of the patented article, so as to be entitled to the exclusive use of that mark after the patent has expired; for instance, if he impressed on the patented articles a griffin or some other device; but if his only trade-mark is a word or set of words, descriptive of the patented article of which he is the only maker, it appears to me to be impossible for him ever to make out as a matter of fact that this mark denotes him as the maker as distinguished from other makers" (*d*).

A case illustrative of this principle is *J. B. Palmer's Trade-Mark* (*e*). The facts were these:—Palmer, in 1876, registered "braided fixed stars" as a trade-mark for matches, alleging that he had used it as a trade-mark before the passing of the Act of 1875, and at the same time he registered a label enveloping the boxes in which his matches were sold, which contained the words "braided fixed stars" in two places, so as to be conspicuous on each side of the boxes, but also contained a number of other words. It was shewn that at the time when Palmer introduced the term "braided fixed stars," the term "fixed stars" was known in the trade as denoting a particular class of fuses, and that he had just

(*x*) *Cheavin v. Walker*, 5 Ch. D. C. A. 850. Compare *Masnam v. Thorley's Cattle Food Co.*, 14 Ch. D. C. A. 748; *Rose v. Evans*, 48 L. J. Ch. 618.

(*y*) *Linoleum Manufacturing Co. v. Nairn*, 7 Ch. D. 834.

(*z*) *Singer Manufacturing Co. v. Loog*, 8 App. Cas. 15.

(*a*) *J. B. Palmer's Trade-Mark*, 24 Ch. D. C. A. 504.

(*b*) *Anderson's Trade-Mark*, 26 Ch. D. 409; 32 W. R. 677.

(*c*) See cases in last notes.

(*d*) Per Lindley, L.J., 24 Ch. D. C. A. 521.

(*e*) 24 Ch. D. C. A. 504.

bought a patent for enveloping the stems of fuses with wire by means of a braiding machine. This patent expired in August, 1881. It appeared from the evidence that Palmer had not before the Act used "braided fixed stars" separately as a trade-mark, or otherwise than as a part of the above-mentioned label. In October, 1881, an application was made by a rival trader to expunge the registration. It was held by the Court of Appeal that the registration must be expunged (a) because, to entitle Palmer to register these words as a trade-mark, he must, before the Act, have used them as such alone, and not merely in conjunction with other words; and (b) because, even if they had been so used alone, they ought not to have been registered, for that they were only words properly descriptive of the patented article, and Palmer had no exclusive right to their use after the patent had expired.

(c) Words which were originally descriptive, whether as being the name of the maker or otherwise, of particular articles as being manufactured or made by a particular person or house (*f*), but which have passed into common use and indicate only the articles themselves and have ceased to refer to the original or any particular makers thereof. "There is no doubt, I think, that a word which was originally a trade-mark, to the exclusive use of which a particular trader, or his successors in trade, may have been entitled, may subsequently become *publici juris*, as in the case which has been cited of Harvey's Sauce. It was admitted that, although that originally had been the name of a sauce made by a particular individual, it had become *publici juris*, and that all the world were entitled to call the sauce they made Harvey's Sauce if they pleased. Then what is the test by which a decision is to be arrived at whether a word which was originally a trade-mark has become *publici juris*? I think the test must be, whether the use of it by other persons is still calculated to deceive the public, whether it may still have the effect of inducing the public to buy goods not made by the original owner of the trade-mark as if they were his goods. If the mark has come to be so public and in such universal use that nobody can be deceived by the use of it, and can be induced from the use of it to believe that he is buying the goods of the original trader, it appears to me, however hard to some extent it may appear on the trader, yet practically, as the right to a trade-mark is simply a right to prevent the trader from

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(*f*) And being therefore, of course, originally good trade-marks, *Ransome v. Graham*, 51 L. J. Ch. 894; 47 L. T. 218.

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being cheated by other persons' goods being sold as his goods through the fraudulent use of the trade-mark, the right to the trade-mark must be gone" (*g*).

(*d*) Words which, however descriptive of the articles themselves, do not in any manner identify the manufacturer or maker thereof. Such as "prize medal" (*h*).

(*e*) Words which themselves contain false statements of a kind to deceive the public, such as the word "patented" used, when there never was a patent or a patent has expired, in such a way as to imply the existence of an existing patent (*i*); and on analogous grounds registration has been refused of the word "royal" (*k*), and of the word "registered" (*l*).

Subject however to the qualifications above mentioned it is settled that trade-marks used as such prior to the 13th August, 1875, might have consisted, and if now registered may consist, of any words, names, marks, or other descriptions which serve to indicate the particular articles as being the production of particular houses of business. Names of persons, whether of the makers themselves or of other persons living or dead, or fictitious; names of localities and districts; fancy words or descriptions of every kind; devices, whether taken from existing or non-existing animals or objects, symbols, or marks of any kind; and initials, single letters, or numerals have all been adopted and recognised as perfectly good trade-marks.

Names of
persons.

With regard to names of persons there is this observation to be made:—Every person is entitled to use his own name as a trade-mark or otherwise in connection with articles manufactured or sold by him. Consequently another person having the same

(*g*) Per Mellish, L.J., in *Ford v. Foster*, L. R. 7 Ch. 611, 628. Compare *Lazenby v. White*, 41 L. J. Ch. 354.

(*h*) *Batty v. Hill*, 1 H. & M. 264. Registration was refused as to so much of a proposed mark as contained statements of price: *Steedman's Trade-Mark*, L. J. No. Cases, 1883, p. 83. See sect. 66.

(*i*) *Flavel v. Harrison*, 10 Hare, 467; *Leather Cloth Co. v. American Leather Cloth Co.*, 33 L. J. Ch. 199; 11 H. L. 523; *Cheavin v. Walker*,

5 Ch. D. C. A. 850, 863-5. But it is not every statement or suggestion of this kind which, even if not literally true, will disentitle the person using it to protection: *Marshall v. Ross*, L. R. 8 Eq. 651; 39 L. J. Ch. 225; *Read v. Richardson*, 45 L. T. 54.

(*k*) *Re Royal Baking Powder Co.* C. A. W. N. 1880, p. 49. See "Instructions to persons proposing to Register," *post*.

(*l*) *Meikle's Trade-Mark*, W. N. 1876, p. 248.

name and manufacturing or selling articles of the same description cannot restrain the other person from so using his own name (*m*).

Nevertheless the one person cannot so use and employ his own name upon or in connection with goods manufactured or sold by himself as to cause the public to believe that such goods are the production of the other person with the same name, and this applies equally whether the other person does or does not use his own name as a trade-mark or part of a trade-mark for his own goods (*n*).

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New Marks.

These are all such as are claimed to be trade-marks entitled to registration, but which were not used prior to the 13th of August, 1875. That they may be registered they must contain one at least of the particulars mentioned in sub-section 1 of sect. 64, which particulars will be dealt with seriatim.

(1.) A name of an individual or firm may be registered (*o*); but it must be "printed, impressed, or woven in some particular and distinctive manner." **Names of
persons.**

This provision is to some extent a restriction, but the adoption of it gets rid of the difficulty which, as already pointed out (*p*), sometimes arose when persons bearing the same names dealt in the same commodities. A person cannot print, impress, or weave his name in the same manner as another has been accustomed to do except for the purposes of fraud (*q*).

Numerous cases have come before the Courts for decision where names have been used as trade-marks, sometimes the names of the litigants themselves (*r*), sometimes the names of persons who

(*m*) *Burgess v. Burgess*, 3 D. G. M. & G. 896; *James v. James*, L. R. 13 Eq. 421.

(*n*) *Holloway v. Holloway*, 13 Beav. 209; *Fullwood v. Fullwood*, 9 Ch. D. 176.

(*o*) Whether this name may be that of some individual or firm other than the applicant, is perhaps doubtful, but it is submitted that such name, if it cannot be registered by virtue of the first clause of this sub-section, may be registered under the third clause of

this section as being a "fancy word."

(*p*) Cases in notes *m* and *n*.

(*q*) See *Holloway v. Holloway*, 13 Beav. 209; *Stephens v. Peel*, 16 L. T. 145.

(*r*) *Taylor v. Taylor*, 23 L. J. Ch. 255; *Dent v. Turpin*, 2 J. & H. 139; *Collins Co. v. Brown*, 3 K. & J. 423; *Liebig's Extract of Meat Co. v. Hambury*, 17 L. T. 298; *Ainsworth v. Walsley*, L. R. 1 Eq. 518; *Wheeler and Wilson Manufacturing Co. v. Shakspear*, 39 L. J. Ch. 36.

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originally were, but have ceased to be connected with the manufacture or sale of the articles in question (s), sometimes the names of persons, it may be altogether fictitious, who, if existent, never had the slightest connection with the manufacture or sale of the articles such as "Brougham," "Pismarek," &c., and such names may of course have added to them other additional words (t), or symbols (u).

(2.) "A written signature or copy of a written signature of the individual or firm applying for registration" (x).

(3.) "A distinctive device (y), mark (z), brand (a), heading (b), label (c), ticket (d), or fancy word or words not in common use."

It was decided under the old Acts that a single word or combination of letters could not be registered as a new mark (e); but as the present Act provides that a fancy "word" not in common use may be registered, it follows that a single word, provided that it is a "fancy word," may be registered.

It will be noticed that the word "wrapper" is not specifically

(s) *Dixon v. Fawcus*, 3 E. & E. 537; *Bury v. Bedford*, 33 L. J. Ch. 465.

(t) *Stephens v. Pecl*, 16 L. T. 145; *Cheavin v. Walker*, 5 Ch. D. C. A. 850.

(u) *Ransome v. Bentall*, 3 L. J. Ch. 161; *Rodgers v. Nowill*, 5 C. B. 109; 3 D. G. M. & G. 614; *Farina v. Silverlock*, 6 D. G. M. & G. 214; 4 K. & J. 650.

(x) See *Farina v. Silverlock*, 6 D. G. M. & G. 214; 4 K. & J. 650; *Maignen's Application*, 28 W. R. 759.

(y) *Edelsten v. Edelsten*, 1 D. G. J. & S. 185; *Cartier v. Carlile*, 31 Beav. 292; *Bass v. Dorolser*, 19 L. T. N. S. 626; *Barrows' Trade-Marks*, 5 Ch. D. C. A. 353; *Re Dugdale*, 49 L. J. Ch. 503; *Mitchell v. Henry*, 15 Ch. D. C. A. 181; *Read v. P. Hardson*, 45 L. T. 54.

(z) *Beard v. Tanner*, 15 L. T. 746; *Standish v. Whitwell*, 14 W. R. 512; *Re Rotherham*, 14 Ch. D. C. A. 585; *Re Worthing-*

ton, 14 Ch. D. C. A. 8; *Re Robinson*, 29 W. R. 31; *Re Sykes*, 29 W. R. 235; *Re Whiteley*, 29 W. R. 235.

(a) *Welch v. Knott*, 4 K. & J. 747; *McAndrew v. Bassett*, 33 L. J. Ch. 561; *Seixo v. Provezende*, L. R. 1 Ch. 192; *Richards v. Williamson*, 22 W. R. 765; *Rose v. Loftus*, 47 L. J. Ch. 576; *Upmann v. Elkan*, L. R. 7 Ch. 130; *Moet v. Pickering*, 8 Ch. D. C. A. 372.

(b) *Harter v. Souvazoglu*, W. N. 1875, pp. 11, 101; *Mitchell v. Henry*, 15 Ch. D. C. A. 181; *Leonard v. Wells*, 26 Ch. D. C. A. 288.

(c) *Bass v. Dawber*, 19 L. T. 626; *Cocks v. Chandler*, L. R. 11 Eq. 446; *Cotton v. Gillard*, 44 L. J. Ch. 90; *Wotherspoon v. Currie*, L. R. 5 H. L. 508; *Hirsch v. Jonas*, 3 Ch. D. 584; *Re Farina*, 27 W. R. 450; *Singer Manufacturing Co. v. Wilson*, 3 App. Cas. 376.

(d) *Orr-Ewing v. Johnston*, 13 Ch. D. C. A. 434.

(e) *Ex p. Stephens*, 3 Ch. D. 659.

included in the above, but no doubt the Courts will, if necessary, hold it to be sui generis with "label" or "ticket" (*f*).

The above list is wider than the corresponding section of the Trade-marks Regulation Act, 1875, in including "brand," and also the sentence any "fancy word or words not in common use." Trade-marks of the latter description are very numerous, and questions relating to them have often come before the Courts for decision.

Thus the names of personages famous in history or having a transcendent notoriety, or known only in romance, have often been adopted for trade-marks as being catch words likely to attract attention to the articles to which they are appended.

Other fancy words are those which have been coined as expressions to indicate more or less clearly the nature or characteristics of the articles to which they are applied, such as "Lacto Peptine" (*g*), "Chlorodyne" (*h*), "Paraffine Oil" (*i*), "Pyretic Saline" (*k*).

Another class of fancy words used for trade-marks closely allied to the latter are those of which: "Reading Sauce" (*l*), "Licensed Victualler's Relish" (*m*), "Kitchen Crystal Soap" (*n*), "Family Salve" (*o*), and similar words and expressions are examples.

In other cases fancy words and expressions in no way descriptive of or otherwise connected with the articles to which they are applied have been used. The whole law on this point and on fancy names used as trade-marks was fully discussed in *Ford v. Foster* (*p*), and in *Hirst v. Denham* (*q*), where a cloth manufacturer had used the words "Turin," "Sefton," "Leopold," "Liverpool," in connection with his cloth.

It is now quite settled that the place of origin of an article may be used as a trade mark. This holds equally whether the name be

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proper."Fancy
words."

(*f*) See *Cocks v. Chandler*, *ubi supra*; and *Siebert v. Findlater*, 7 Ch. D. 801.

(*g*) *Carriek v. Morson*, L. J. Notes of Cases, 1877, p. 71.

(*h*) *Browne v. Freeman*, 12 W. R. 305.

(*i*) *Young v. Macrae*, 9 Jur. N. S. 322.

(*k*) *Laplough v. Balmer*, W. N. 1867, p. 293. Compare "Valvoline," *Leonard v. Wells*, 26 Ch. D.

C. A. 288.

(*l*) *Cocks v. Chandler*, L. R. 11 Eq. 446.

(*m*) *Cotton v. Gillard*, 44 L. J. Ch. 90.

(*n*) *Eastman's Trade - Mark*, W. N. 1880, p. 128.

(*o*) *Reinhardt v. Spalding*, 49 L. J. Ch. 57.

(*p*) L. R. 7 Ch. 611, the "Eureka" Shirt Case, *ante*, pp. 123-4.

(*q*) L. R. 14 Eq. 542.

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proper.
Foreign
words.

that of the place where an article is manufactured, which article apart from such fact of manufacture has no necessary or other connection with such place as "Glenfield" Starch (*r*), or that of the place or district where the article grows naturally or is produced in its raw or natural state, as in the well-known cases of "Anatolia" liquorice (*s*), "Seixo" port (*t*), "Angostura" bitters (*u*), "Apolinaris" water (*x*).

Words in foreign languages or characters have often been recognised as valid trade-marks, as in *Gout v. Aleploglu* (*y*), where the Turkish word "Pessendede," "warranted," in connection with watches was used, and *Rotherham's Trade Marks* (*z*), where the word "Tod" in Arabic letters was used (*a*).

It was well settled, prior to the Act, that letters, whether initials of a person's name or not, might be trade-marks. They have usually been accompanied by other marks or symbols (*b*), but it does not seem that this is necessary (*c*).

The section (64) in consideration provides that there may be added to the particulars enumerated "any letters, words, or figures, or combination of letters, words, or of figures, or any of them." What may be the effect or import of this provision is not clear. There was a similar provision in the previous statute, which was discussed on various occasions but did not become the subject of judicial decision (*a*).

Old Marks.

Sub-sect. 3 of sect. 64 provides that "any special and distinctive word or word, letter, figure, or combination of letters or figures, or

(*r*) *Wotherspoon v. Currie*, L. R. 5 H. L. 508.

(*s*) *McAndrew v. Bassett*, 33 L. J. Ch. 561.

(*t*) *Seixo v. Provezende*, L. R. 1 Ch. 192.

(*u*) *Siegert v. Findlater*, 7 Ch. D. 801.

(*x*) *Apollinaris Co. v. Norrish*, 33 L. T. 242; *Radde v. Norman*, L. R. 14 Eq. 348. Compare *Braham v. Beachim*, 7 Ch. D. 848, the "Radstock Collieries" Case; *Wheeler v. Johnston*, L. R. 3 Ir. 284, as to the words "Cromac Springs."

(*y*) 6 Beav. 69, n.

(*z*) 14 Ch. D. C. A. 585.

(*a*) See Trade-Marks Rules, 15.

(*b*) *Crawshaw v. Thompson*, 4 M. & G. 357; *Ransome v. Brettel*, 3 L. J. Ch. 161; *Kinahan v. Bolton*, 15 Ir. Ch. 75; *Cartier v. Carlile*, 31 Beav. 292; *Barrows' Trade-Marks*, 5 Ch. D. C. A. 353.

(*c*) See cases in last note, and *Motley v. Downman*, 3 My. & Cr. 1; *Millington v. Fox*, 3 My. & Cr. 338.

(*d*) See *Barrows' Trade-Marks*, 5 Ch. D. C. A. 353; *J. B. Palmer's Trade-Mark*, 24 Ch. D. C. A. 504.

of letters and figures used as a trade-mark before the 13th of August, 1875, may be registered" (e).

This section is expressed in wider language than the corresponding section under the Act of 1875, under which it was decided that a single letter could not be registered as an old mark (f).

The description of old marks which may be registered is extensive enough to comprise almost every variety of symbol which is composed of words, letters, or numerals (g); but it must be taken as subject to the restrictions and limitations mentioned on pages 121-124, *ante*.

As to what will amount to a sufficient user, see *ante*, page 121 and the cases there cited. The user must be in connection with some particular commodities. If not so used the mark claimed will not be valid, and if and so far as valid the mark will nevertheless be a new mark as to all other commodities (h).

TRADE NAMES.

Trade names include all the various designations which one trader uses in connection with his business to indicate the particular business, and that it belongs to himself, or that particular commodities are manufactured, sold or supplied by himself. He has no right of property in these designations (i). His only right is that rival traders shall not defraud him by adopting and using the same or similar designations in such a manner as to mislead persons dealing with them and to cause them to believe that they are dealing with or buying the commodities of the other trader (k).

65. A trade-mark must be registered for particular goods or classes of goods.

Trade-Marks Rules 6, and Third Schedule.

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SS. 64,
65.
—**

**Connection
of trade-
mark with
goods.**

(e) See *ante*, p. 120.

(f) *Re Mitchell*, 7 Ch. D. 36.

(g) "Figures," as here used means numerals, per Jessel, M.R., in *Ex parte Stephens*, 3 Ch. D. 659.

(h) *Re Jelley*, 46 L. T. 381; 51 L. J. Ch. 639.

(i) Not even in a person's own name merely as such and apart from user of it in connection with a trade or business: *Clark v. Freeman*, 11 Beav. 112; *Maxwell v. Hoag*, L. R. 2 Ch. 307; *Du Boulay v. Du Boulay*,

L. R. 2 P. C. 430, 441.

(k) See *Isaacson v. Thompson*, 20 W. R. 196 ("Madame Elise"); *Lee v. Haley*, L. R. 5 Ch. 155 ("The Guinea Coal Co."); *Boulnois v. Peake*, 13 Ch. D. 513, n. ("Carriage Bazaar"); *Hookham v. Pottage*, L. R. 8 Ch. 91 ("Pottage from Hookham and Pottage"); *Merchant Banking Co. of London v. Merchants' Joint Stock Bank*, 9 C. D. 560; *Hendriks v. Montagu*, 17 Ch. D. C. A. 638.

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67.

Registra-
tion of a
series of
marks.

A new mark may be registered in respect of some of the goods in a class though a similar old mark has been already registered for other goods in the same class if the goods are distinct (*l*).

66. When a person claiming to be the proprietor of several trade-marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade-marks, they may be registered as a series in one registration. A series of trade-marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade-marks composing a series shall be deemed and treated as registered separately.

Trade-Marks Rules, 14 (*m*).

Trade-
marks may
be regis-
tered in
any colour.

67. A trade-mark may be registered in any colour, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.

The former Acts did not provide for the registration of colours as such, and did not protect colour as such as part of a trade-mark (*n*).

This section allows the registration of the colour of a trade-mark and provides that such registration shall (subject to the provisions of the Act) (*o*), confer the exclusive right to use the mark in the registered "or any other colour" (*p*).

(*l*) *Re F. Braby & Co.*, 2 Ch. D. 224, 51 L. J., Ch. 637; *Re Jelley*, *ubi supra*.

(*m*) See *Brook's Trade-Marks*, 26 W. R. 791; *Barrows' Trade-Marks*, 5 Ch. D. C. A. 353.

(*n*) *Nuthall v. Vining*, 28 W. R.

330; *Worthington & Co.'s Trade-Mark*, 14 Ch. D. C. A. 8.

(*o*) Which probably means, among other things, subject to any conditions which may be imposed with respect to the colour of a particular trade-mark.

(*p*) Compare *Robinson's Trade-Mark*, 29 W. R. 31.

68. Every application for registration of a trade-mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller.

Trade-Marks Rules, 25-28.

69. (1.) Any person may within two months of the first advertisement of the application, give notice in duplicate at the Patent Office of opposition to registration of the trade-mark, and the comptroller shall send one copy of such notice to the applicant (a).

(2.) Within two months after receipt of such notice or such further time as the comptroller may allow, the applicant may send to the comptroller a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

(3.) If the applicant sends such counter-statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.

(4.) If the person who gave notice of opposition duly gives such security as aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand (β) for the determination of the Court (γ).

(a) Trade-Marks Rules, Second Schedule, Form F.

(β) See notes (q) and (r), page 132.

(γ) Trade-Marks Rules, 29.

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69.**

**Advertise-
ment of
applica-
tion.**

**Opposition
to regis-
tration.**

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70.Assign-
ment and
transmis-
sion of
trade-
mark.

This section gives legislative effect to the practice as judicially laid down by the late Master of the Rolls in *Simpson, Davies, & Sons' Trade-Mark* (q).

A case does not "stand for the determination of the Court" until the security for costs has been given, and consequently the Court has jurisdiction to give only such costs as have been incurred since such date (r).

70. A trade-mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Trade-Mark Rules. 34-36.

This provision prevents the right to a trade-mark existing "in gross," that is apart from the goods themselves to which it applied, or the business in connection therewith (s).

This principle was well established prior to the present Act (t).

Upon the formation of a partnership with a person entitled to the benefit of a trade-mark the mark in the absence of express provisions in relation to it becomes an asset of the partnership (u). To the same effect was the decision in *Condy v. Mitchell* (x). The plaintiff, H. Boliman Condy, and the defendant Mitchell carried on business together under the style of "Bollman Condy & Co.," manufacturing and selling a disinfectant known as "Condy's Fluid."

(q) 15 Ch. D. 525, and cases there cited.

(r) *Brandreth's Trade-Mark*, 9 Ch. D. 618.

(s) In *Ralph's Trade-Mark, Ralph v. Taylor*, 25 Ch. D. 194, 32 W. R. 168, it was held that discontinuance of a business for one year and nine months determined the right to a trade-mark used in connection therewith. Compare *Mouson v. Boehm*, *post*, p. 133.

(t) *Shipwright v. Clements*, 19 W. R. 599; *Churton v. Douglas*, John. 174; *Hudson v. Osborne*, 39

L. J. Ch. 79; *Cotton v. Gillard*, 44 L. J. Ch. 90. Compare per Westbury, L.C., in *Leather Cloth Co. v. American Leather Cloth Co.*, 33 L. J. Ch. 199, and in *Hall v. Barrows*, 33 L. J. Ch. 204; per Page Wood, V.C., in *Ainsworth v. Walmsley*, L. R. 1 Eq. 518; and per Lord Blackburn in *Singer Manufacturing Co. v. Loog*, 8 App. Cas. 33.

(u) *Bury v. Bedford*, 4 D. G. J. & S. 352; 33 L. J. Ch. 465.

(x) 26 W. R. (C. A.) 269.

After dissolution of the partnership the plaintiff set up a business for the same purpose, under the name "H. Bollman Condyl," and the defendant afterwards set up a similar business under the name of "The Condyl's Fluid Company." The plaintiff sought to restrain the defendant from using the name of Condyl in connection with the article which he sold as "Condyl's Fluid." It was held that both the partners had an equal right to the use of the name "Condyl's Fluid;" and that the plaintiff, to succeed, must shew fraud on the part of the defendant, such as to mislead the public into the belief that the article which he sold was in reality manufactured by the plaintiff.

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72.**

71. Where each of several persons claims to be registered as proprietor of the same trade-mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the comptroller may himself submit or require the claimants to submit their rights to the Court.

**Conflicting
claims to
registra-
tion.**

Trade-Marks Rules, 41-3.

In *Benbow v. Low (y)*, an outgoing partner entitled to use a mark belonging to the firm was allowed to register this mark though the continuing firm were already registered in respect of it.

In the case of *Mouson v. Boehm (z)* the facts were — A. had adopted a trade-mark in 1874; subsequently his business fell off, and in May, 1882, the existence of the mark was forgotten by him; in the year 1880, B., in perfect ignorance of his mark, adopted the same mark for the same goods, sold in the same market; in August, 1880, B. registered his mark; in July, 1882, A. applied for registration of his mark; thereupon B. applied to restrain the user by A. of the mark, and A. applied to remove B.'s name from the register. It was held by Chitty, J., that A. was entitled to have his mark registered, and to have the register rectified by the removal of B.'s name.

72. (1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors

**Restric-
tions on
registra-
tion.**

(y) 29 W. R. 837; *Dent v. Turpin*, 2 J. & H. 139.

(z) 26 Ch. D. 398.

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of the same trade-mark, the comptroller shall not register in respect of the same goods or description of goods a trade-mark identical with one already on the register with respect to such goods or description of goods.

(2.) The comptroller shall not register with respect to the same goods or description of goods a trade-mark so nearly resembling a trade-mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

**Co-pro-
prieters.**

Two or more persons may be entitled to, and may therefore be entitled to be registered as proprietors of (a) the same trade, but in the case of old marks, sub-sect. 3 of sect. 74 imposes a limit of three.

In questions arising under this section the Court will have regard only to marks which are actually on the register (b).

There have been various cases where the Court has refused registration, or has ordered the removal of a registered mark, on the ground that the mark proposed to be, or already registered, was so similar to another previously registered mark as to be calculated to deceive (c).

**Evidence
as to
similarity.**

In determining whether or not two marks are so similar as to be calculated to deceive, expert evidence will, when necessary, be used and allowed to have weight (d), but, *semble*, the Court will not be guided simply by the evidence of witnesses, but will itself look at and compare the marks and draw its own conclusion from such comparison (e). "In each case the device or label, registration of which is applied for, must be looked at as a whole; and if it appears to be such as in the ordinary course of business would

(a) See cases in last three notes.

(b) *Re Dugdale's Application*, 49 L. J. Ch. 303.

(c) Compare *Re Farina*, 26 W. R. 261; *Re Maignan's Application*, 28 W. R. 759; *Robinson's Trade-Mark*, 29 W. R. 31; and *Re F. Braby & Co.*, 21 Ch. D. 223, in each of which registration was allowed

with *Re Farina* (No. 2), 27 W. R. 456, and *Worthington & Co.'s Trade-Mark*, 14 Ch. D. C. A. 8, where registration was refused.

(d) *Mitchell v. Henry*, 15 Ch. D. C. A. 181; 43 L. T. 186.

(e) Per Jessel, M.R., in the last case, and in *Re Jelley*, 46 L. T. 381; 51 L. J. Ch. 639.

be distinguished from other devices or labels, it should be registered" (*f*).

73. It shall not be lawful to register as part of or in combination with a trade-mark any words the exclusive use of which would by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a court of justice, or any scandalous design.

Compare sect. 86.

The last section applies to a trade-mark as a whole. This section applies only to words part of, or used in combination with, and provides that such words are not to be registered, if,

- (a) Calculated to deceive;
- (b) "Otherwise" on any other ground disentitled to protection in a court of justice.

Trade-marks may be "calculated to deceive" in either of two ways,—

- (a) By their resemblance to other trade-marks already in use and, if subject to this Act, registered (*g*).
- (b) By containing statements or representations which are wilfully untrue or are of a kind "calculated to deceive" the public generally (*h*).

The chief grounds upon which (in addition to similarity to existing trade-marks) registration will be refused are set forth, *ante*, pages 120-124.

The concluding sentence of the above section applies in terms only to designs; but, of course, a trade-mark in whole or part scandalous or offensive would be "disentitled to protection in a court of justice;" and moreover, sect. 86 expressly provides that no trade-mark is to be registered the use of which would be contrary to law or morality.

(*f*) Per Hall, V.C., in *Orr-Ewing's Trade-Marks*, 8 Ch. D. 794, 798. See per Earl Cairns, L.C., in 4 App. Cas. 484. Compare *Mouson v. Boehm*, *ante*, p. 133.

(*g*) See *ante*, pp. 120-121.

(*h*) See *ante*, p. 124, and compare *Estcourt v. Estcourt Hop Essence Co.*, L. R. 10 Ch. 276.

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Saving for power to provide for entry on register of common marks as additions to trade-marks.

74. (1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade-mark—

(a.) In the case of an application for registration of a trade-mark used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made ;

(b.) In the case of an application for registration of a trade-mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made ;

(2.) The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of

this section, be deemed common to the trade in such goods.

See sects. 91 and 92 as to the power of the comptroller to make clerical alterations in entries and to cancel entries on the register.

This section will probably give rise to considerable doubt and litigation. It must be read in connection with sects. 62, 64, and 72. Whatever may be the exact effect of some of its provisions, this seems clear:—

(a) That it applies, not to trade-marks as such, but only to “additions” to trade-marks.

(b) That the “additions” are of two classes or descriptions: (1) such as may be added to old trade-marks, and (2) such as may be added to new trade-marks, these latter being limited to a “distinctive word or combination of words.”

(c) That the additions must in each case be “common to the trade,” which expression is not defined in the case of new marks, but is defined with respect to old marks as “public user by more than three persons on the same or a similar description of goods.”

It is submitted that this section in no way affects the ownership of “common” trade-marks, but merely declares the conditions and limitations subject to and within which such marks may be registered.

Effect of Registration.

75. Registration of a trade-mark shall be deemed to be equivalent to public use of the trade-mark.

Registra-
tion equi-
valent to
public use.

As to what amounts to “public use,” see *ante*, pp. 120-121.

76. The registration of a person as proprietor of a trade-mark shall be *primâ facie* evidence of his right to the exclusive use of the trade-mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade-mark, subject to the provisions of this Act.

Right of
first pro-
prietor to
exclusive
use of
trade-
mark.

In *Re J. B. Palmer's Application (i)* it was held by the Court of

Effect of
registra-
tion.

(i) 21 Ch. D. C. A. 47.

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Appeal, on an application to rectify the register by striking out a mark which had been registered more than five years, that the registered proprietor had not thereby acquired an absolute right, and that, consequently, evidence was to be received (*k*) to show whether or not the mark was valid.

In this case the question was raised but not decided (*l*), whether or not, in the case of a mark registered for more than five years, a person sued for infringement can defend himself by shewing that the alleged trade-mark is invalid.

Restrictions on actions for infringement, and on defence to action in certain cases.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade-mark unless, in the case of a trade-mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade-mark in use before the thirteenth of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

Trade-Marks Rules, Second Schedule, Form L.

PRINCIPLES AS TO INFRINGEMENT.

Infringement.

The principles of law applicable to the various cases coming within the two classes of "trade-marks" and "trade-names" were originally, and are even now, primarily based upon the same general principle of fraud and deceit—that a person shall not, directly or indirectly represent, so as to cause the public to believe that particular commodities sold by himself are manufactured or produced by, or are the same as commodities manufactured or produced by some other person.

There is, however, a radical distinction between trade-marks and trade-names as to the nature of the rights belonging to proprietors

(*k*) Which was afterwards done, and the register rectified, 21 Ch. D. C. A. 504.

(*l*) See per Jessel, M.R., 21 Ch. D. 59, 60.

of the one and the other. The rights possessed by proprietors of trade-marks are rights of property—the rights possessed by those who have used trade-names are merely that they shall not be defrauded by persons improperly using the same or similar trade-names.

This distinction draws with it important consequences in considering the practical application of the principles of law relating to the two classes of rights in cases of infringement, and it must be admitted that the distinction has not always been clearly kept in view and expressed in the various judgments in connection with infringement.

“There are two distinct things known to us in dealing with these cases; that is to say, in the first place, there is the imitation of a trade-mark proper, which is different from other modes of false representation; and, secondly, there is the false representation, by which a man induces the public to believe that the goods which he is selling are the goods of another person—that is to say, he is passing off his goods as the goods of another person. But fraud is the essence in both cases.” These were the expressions of James, L.J., in one of the well-known “Singer” sewing machine cases (*m*).

To the same effect is the language of Lord Chelmsford in *Wotherpoon v. Currie* (*n*): “When the principle is ascertained upon which the question of piracy of trade-marks is to be determined, each case must be considered upon the facts, whether they do or do not bring it within that principle. Where the trade-mark is not actually copied, fraud is a necessary element in the consideration of every question of this description—that is, the party accused of piracy must be proved to have done the act complained of with the fraudulent design of passing off his own goods as those of the party entitled to the exclusive use of the trade-mark. For the purpose of establishing a case of infringement it is not necessary to shew that there has been the use of a mark in all respects corresponding with that which another person has acquired an exclusive right to use, if the resemblance is such as, not only to shew an intention to deceive, but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade-mark belongs.”

It is submitted however that in the judgments above cited the

(*m*) *Singer Manufacturing Co. v. Wilson*, 2 Ch. D. C. A. 434, 451.

(*n*) L. R. 5 H. L. 508, 519.

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learned Judges expressed themselves too strongly in laying down explicitly that fraud or deceit as such, that is actual or intentional fraud or deceit on the part of the defendant, is essential in order to entitle a plaintiff to succeed in an action for infringement of trade-mark. The law is thus stated by Cairns, L.C., in the same case of "*Singer*" *Machine Manufacturers v. Wilson* (o): "That there have been many cases in which a trade-mark has been used, not merely improperly but fraudulently, and that this fraudulent use has often been adverted to and made the ground of decision I do not doubt; but I wish to state in the most distinct manner that, in my opinion, fraud is not necessary to be averred or proved in order to obtain protection for a trade-mark. The argument that fraud must be proved assumes that the trade-mark of the plaintiffs has been adopted and used by the defendant, but contends that this use of it is to continue without restraint, even after the improper use has been pointed out, merely because, in the first instance, it took place ignorantly or inadvertently. This argument appears to me to be founded on a misapprehension. A man may take the trade-mark of another ignorantly, not knowing it was the trade-mark of the other; or he may take it in the belief, mistaken but sincerely entertained, that in the manner in which he is taking it he is within the law, and doing nothing which the law forbids; or he may take it knowing it is the trade-mark of his neighbour, and intending and desiring to injure his neighbour by so doing. But in all these cases it is the same act that is done, and in all these cases the injury to the plaintiff is just the same. The action of the Court must depend upon the right of the plaintiff, and the injury done to that right. What the motive of the defendant may be, the Court has very imperfect means of knowing. If he was ignorant of the plaintiff's rights in the first instance, he is, as soon as he becomes acquainted with them and perseveres in infringing upon them, as culpable as if he had originally known them. I have never known any serious doubt entertained on this subject since the case of *Millington v. Fox* (p), and I may refer to the observations of Lord Hatherley, when Vice-Chancellor, in the case of *Welch v. Knott* (q): 'That the defendant would not be entitled to use the plaintiff's bottles in such a manner as in fact to mislead the public, although there might be no intention on his part to mislead, is clear.' In *Millington v. Fox*, Lord Cottenham felt

(o) 3 App. Cas. 391-2.

(p) 3 My. & Cr. 338.

(q) 4 K. & J. 747.

satisfied that in using the plaintiff's trade-marks the defendants had no intention to mislead the public; yet inasmuch as the public were in fact misled, he held that the plaintiffs were entitled to a perpetual injunction. It was not sufficient for the defendants to say that they used the marks in ignorance of their being the plaintiffs' trade-marks. How far that doctrine is capable of being reconciled with cases at law in which the scienter has been held to be essential in order to enable the plaintiff to recover (that is, to recover damages) it is not material to consider. In this Court the rule is clear, as laid down in *Millington v. Fox*."

It is therefore submitted as the true deduction from all the decisions that in a trade-mark proper there is a species of property so that the person entitled to the trade-mark can say to all the world, that no one shall put such trade-mark upon goods of the same description as those in connection with which it is used by the owner thereof, and that there is no necessity to prove actual fraud or intention to deceive, and consequently that the person who, however innocently, infringes a trade-mark is as much responsible as the person who does so wilfully.

The question whether or not actual fraud or deceit is necessary to support an action for infringement of trade-mark is of course highly important for two, amongst many other good reasons (*r*), viz., (a) that actual fraud being unnecessary, proof of the fact of infringement will suffice, and (b) that in many cases it would be difficult, if not impossible, to establish actual fraud or deceit if the defendant himself stoutly averred want of knowledge of the plaintiff's rights, or that he acted in *bona fides*. "The plaintiffs judged it necessary to proceed without waiting till actual deceit was proved, and I think they judged rightly" (*s*).

As to what will amount to an infringement of a trade-mark entitling the proprietor to sue—if the mark is actually copied, the

(*r*) In addition to the question by whom the costs of an action are to be borne.

(*s*) Per Lord Blackburn, 7 App. Cas. 229. Some of the decisions on the subject of costs also go to establish the proposition that in actions for infringement of trade-mark, it is not necessary to prove actual fraud. Thus in *Upmann v. Forester*, 24 Ch. D. 231, it was held

by Chitty, J., that the defendant who had, in fact, infringed a trade-mark, but had been altogether faultless of any intention to infringe, and had at once submitted to the plaintiff's demand, must, nevertheless, pay the costs of the action. *Quære*, whether this decision is correct: see *Betts v. Wilmott*, 18 W. R. 946.

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ment.

What con-
stitutes
infringe-
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ment.

matter is clear, the proprietor is entitled to relief as of course. If, however, the mark itself is not copied, but portions of it are copied, or another mark resembling it is used, then the question is one of fact—whether what is complained of is likely to cause persons, dealing in the market to which the commodities are sent, to mistake the goods stamped with the objectionable trade-mark for the goods of the owner of the mark which has been copied.

The leading case upon this question is *Orr-Ewing & Co. v. Johnston & Co. (t)*, where it was decided by all the Courts up to the House of Lords—

(1.) That if one trader appropriates a material and substantial part of a trade-mark which belongs to another trader, he is bound to use such precautions as to avoid the reasonable probability of error and deception, and the onus is on him to shew that purchasers of the goods will not be deceived.

(2.) That if the goods of a trader have acquired in the market a name derived from a part of the trade-mark which he affixes to them, a rival trader is not entitled to use a ticket which is likely to lead to the application of the same name to his goods, even though that name is not the only name by which the goods of the first trader have been known, or though it has been always used in conjunction with some other words.

(3.) That where a trader has a right to a trade-mark on goods sold in a foreign market, an injunction will be granted to restrain the export of goods under another trade-mark which may deceive the ultimate purchasers, although it would not deceive Englishmen or the dealers in the foreign market.

And an injunction against the use of trade-mark by the defendant was made general, although the plaintiff had never used his trade-mark, except in the Indian market.

Similarity. No precise rule can be enunciated as to what amount of similarity will or will not constitute infringement. It is a question of degree, having regard to all the circumstances, and especially to the persons likely to deal in the goods, and to be deceived by the objectionable mark. It has however been laid down in numerous cases that a mark may be an infringement of an existing mark, although it differs so much from it that when the two are placed side by side no one would be deceived (*u*).

(t) 13 Ch. D. C. A. 434, 7 App. Cas. 219.

(u) See last case; and *Seizo v. Provezende*, L. R. 1 Ch. 192.

TRADE NAMES.

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ment.

What are the principles to be adopted in considering infringements of trade names? Is it necessary to prove actual intentional fraud or deceit? Or will it suffice merely to shew that the defendant has in fact used a "trade name"—whether name, device, symbol, or other representation—of such a kind and under such circumstances as that the user is likely to lead to mistakes and consequent deception? And if so, is it sufficient to shew that the user will probably cause persons to mistake goods associated with it for the goods of another person, or must it be shewn that the user has actually caused such mistakes? The decisions seem to establish that actual intentional fraud or deceit is necessary to entitle the plaintiff to succeed. "But when it is not a case pure and simple of trade-mark, it must, as I have always understood the law, depend upon actual fraud; that is, the defendant must be shewn to have said or done something which, as between himself and the person with whom he was dealing, amounted to a fraudulent representation that his goods were the goods of the person who is complaining of his act or word. Actual fraud must be proved." This is so laid down by James, L.J. (x), and holds without qualification in respect of trade names and all other similar rights not being true trade-marks.

If, however, it is necessary to prove actual fraud to support an action, it seems clear that this would be sufficiently proved by shewing that the defendant continued to use the objectionable mark after his attention had been called to the similarity between it and the one used by the plaintiff (y).

As with true trade-marks so with trade names and the like, it is not possible to formulate rules as to what will constitute an improper user. There must not be such a user as will deceive reasonable persons. But, subject to this, a person may, in order to get a market for his own commodities, utilise the credit already obtained by a rival in the same line of business. Thus a trader has a right to make and sell machines similar in form and construction to those made and sold by a rival trader, and in describing and advertising his own machines to refer to his rival's machines and his rival's name, provided he does this in such a way as to obviate any reasonable possibility of misunderstanding or deception (z).

(x) *Singer Manufacturing Co. v. Wilson*, 2 Ch. D. C. A. 452. Kay, J., in *Hill v. Hart-Davies*, 21 Ch. D. 798; 51 L. J. Ch. 845.

(y) See per Fry, J., in *Barnett v. Tak*, 45 L. T. 743, and per (z) *Singer Manufacturing Co. v. Loog*, 9 App. Cas. 15.

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ment.

QUASI TRADE-MARKS.

This section in consideration divides trade-marks into two classes: (a) those which are "capable of being registered under this Act;" (b) "any other trade-marks in use before the 13th of August, 1875," *i.e.* old marks not capable of being registered.

Trade-marks—that is to say marks, symbols, &c., in the nature of trade-marks, "quasi" trade-marks—which are not within these two classes (a) are not within such protection as is afforded by the Act. Consequently if the above section be read strictly and if these quasi trade-marks are held to be true trade-marks within the meaning of this section, it seems necessarily to follow that no action whatever can be brought in respect of infringements of them. But as the Courts will interfere by injunction to restrain persons from using in connection with commercial commodities, names, devices, labels, and the like of such appearance or descriptions as to cause others dealing with them to think that such commodities are in reality the production of manufactures and others who in fact have not produced them (b), it is submitted that *à fortiori* in the case of marks which have all the characteristics of true trade-marks but cannot be registered, the fraudulent user of them will upon the same grounds be restrained. If not the persons who have hitherto used such marks will, for the protection of themselves and their customers, have to drop the user of them and communicate such disuse, not only to their own customers but also to the general public.

*Register of Trade-Marks.*Register of
trade-
marks.

78. There shall be kept at the Patent Office a book called the Register of Trade-Marks, wherein shall be entered the names and addresses of proprietors of registered trade-marks, notifications of assignments and of transmissions of trade-marks, and such other matters as may be from time to time prescribed.

Trade-Marks Rules, 30-48.

See sects. 81 and 87.

(a) See *ante*, p. 120.

(b) See *ante*, pp. 139-142.

79. (1.) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade-mark, the comptroller shall send notice to the registered proprietor that the trade-mark will be removed from the register unless the proprietor pays to the comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect.

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Removal of
trade-
mark after
fourteen
years
unless fee
paid.

(2.) If such fee be not paid before the expiration of such fourteen years the comptroller may after the end of three months from the expiration of such fourteen years remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

(3.) If before the expiration of the said three months the registered proprietor pays the said fee, together with the additional prescribed fee, the comptroller may without removing such trade-mark from the register accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4.) Where after the said three months a trade-mark has been removed from the register for non-payment of the prescribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade-mark to the register on payment of the prescribed additional fee.

(5.) Where a trade-mark has been removed from the register for non-payment of the fee or otherwise, such trade-mark shall nevertheless for the purpose of any application for registration during the five years next after

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81.Fees for
registra-
tion, &c.

the date of such removal, be deemed to be a trade-mark which is already registered.

Trade-Marks Rules, 7, 45, 48.

Fees.

80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

Trade-Marks Rules, First Schedule.

*Sheffield Marks.*Registra-
tion by
Cutlers'
Company
of Sheffield
marks.

81. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company) and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:

- (1.) The Cutlers' Company shall establish and keep at Sheffield a new register of trade-marks (in this Act called the Sheffield register):
- (2.) The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel and the goods mentioned in the next sub-section, all the trade-marks entered before the commencement of this Act in respect of cutlery, edge-tools, or raw steel and such goods in the register established under

the Trade-Marks Registration Act, 1875, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade-marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade-Marks Registration Act, 1875.

- (3.) An application for registration of a trade-mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company (a) :
- (4.) Every application so made to the Cutlers' Company shall be notified to the comptroller in the prescribed manner, and unless the comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner :
- (5.) If the comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court.
- (6.) Upon the registration of a trade-mark in the Sheffield register the Cutlers' Company shall give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade-marks ;

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and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day :

- (7.) The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade-marks, the effect of such registration, and the assignment and transmission of rights in a registered trade-mark shall apply in the case of applications and registration in the Sheffield register (β); and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life, estate, and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register :
- (8.) Where the comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade-mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company :
- (9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade-marks, and thereupon all marks entered therein shall, unless

entered in the Sheffield register, be deemed to have been abandoned.

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(10.) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade-marks :

(11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade-mark or trade-marks (γ).

(12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the comptroller, who shall have power to confirm, reverse, or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the Court (δ) :

(13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register.

(a) Trade-Marks Rules, 53-55.

(β) Ibid. 56.

(γ) See *Bury v. Bedford*, 4 D. G. J. & S. 352.

(δ) Trade-Marks Rules, Third Schedule, Form W.

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SS. 82,
83.Patent
Office.

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GENERAL.

Patent Office and Proceedings thereat.

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

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

(3.) The Patent Office shall be under the immediate control of an officer called the Comptroller General of Patents, Designs, and Trade-marks, who shall act under the superintendence and direction of the Board of Trade.

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

Officers
and clerks.

83. (1.) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade-marks, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

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

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—
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87.
—

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

Seal of
Patent
Office.

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

Trust not
to be en-
tered in
registers.

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

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

See section 73.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade-mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade-mark, in the register of patents, designs, or trade-marks, as the case may be (a). The person for the time being entered in the register of patents, designs, or trade-marks, as proprietor of a patent, copyright in a design or trade-mark as the case may be, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the

Entry of
assign-
ments and
transmis-
sions in
registers.

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GENERAL.SS. 87,
88.Entries on
registers.

same and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such patent, design, or trade-mark may be enforced in like manner as in respect of any other personal property.

(a) Patent Rules, 65-70; Designs Rules, 22-28; Trade-Marks Rules, 34-39.

See sects. 36 and 70.

As to the rights of co-owners and licensees of, and the power to assign shares and interests in patents, designs and trade-marks: see *ante*, pp. 5-7.

Whether registration is necessary in order to entitle an assignee of a patent, design or trade-mark capable of registration to sue for infringement is doubtful. In *Chollet v. Hoffman* (c), it was held that an assignee of a patent could not sue a third party for infringement until he had registered his assignment. But in *Hassall v. Wright* (d), it was held that an assignee could prior to registering his assignment, sue his assignor and licensees from the assignor who had become so after and with notice of the assignments to restrain infringements by them (e).

Where a patentee assigned his patent and the assignees did not at once register, and subsequently the patentee purported again to assign it and the latter assignment was forthwith registered, the Court on the application of the first assignees ordered the register to be rectified by expunging from it the second assignment with costs to be paid by the second assignee (f).

Inspection
of and ex-
tracts from
registers.

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

(c) 7 E. & B. 636.

(d) Law Rep. 10 Eq. 510.

(e) As to the position of executors of patentees or of owners of designs, see *Ellwood v. Christy*, 17

C. B. N. S. 754; 10 Jur. N. S. 1079; *Jewitt v. Eckhardt*, 17 Ch. D. 404.

As to trustees in bankruptcy, see *Bloxam v. Elsee*, 6 B. & C. 169.

(f) *Green's Patent*, 24 Beav. 145.

person requiring the same on payment of the prescribed fee.

Patents Rules, 75; Designs Rules, 33; Trade-Marks Rules, 49.
See sects. 52 and 53.

89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the Patent Office, of or from patents, specifications, disclaimers and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

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

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

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

(a) Trade-Marks Rules, 44-48.
See also Patents Rules, 71.

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V.
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90.

Sealed
copies to
be received
in evi-
dence.

Rectifica-
tion of
registers
by Court.

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GENERAL.

S. 90.

Rectifica-
tion of
registers.

The power of the Court to rectify the register is unqualified, and its operation is limited only by the need of the circumstances giving it jurisdiction. These are that there must be either (a) the omission without sufficient cause of the "name of any person," or (b) some "entry" made without sufficient cause in the registry, and that the Court is put in motion by "some person aggrieved" thereby.

It will be noticed that a person may be aggrieved by "any entry," *i.e.* not limited to the entry of the name of some person, whereas the grievance in the case of an omission must be by the omission of the name of a person.

Who may
apply.

To determine what persons will be "aggrieved" within the meaning of this section so as to entitle them to apply to the Court, reference must be made to the various cases of applications to rectify, or opposition to enter upon the register. Speaking generally, a person will be held entitled to put the section in motion, if being in fact affected by omissions from or entries on the register he belongs to either of these classes, *viz.* (a) persons who as co-owners, transferees and the like have an actual interest in the matter registered or omitted (*g*), and (b) persons carrying on a trade in commodities affected by the matter registered (*h*).

In *Ralph's Trade-Mark, Ralph v. Taylor* (*i*), a licensee of a patent, the owner of which had registered a trade-mark in connection with the articles manufactured under the patent, was held to be a person "aggrieved," so as to be entitled to apply to rectify the register. In *Riviere's Trade-Mark* (*k*), the Court of Appeal held that it could not be laid down as a proposition of law, that a foreigner not carrying on business in England and not intending to do so, could by no possibility be aggrieved by the registration of a trade-mark in England.

The Patent Law Amendment Act, 1852, contained a sect. 38, having similar provisions and numerous applications took place under it, some of the more important of which have been reported (*l*).

The Trade Marks Regulation Act, 1875, also contained a sect. 5,

(*g*) See cases cited on p. 155, *post*.

(*h*) See *Rose v. Evans*, 48 L. J. Ch. 618.

(*i*) 25 Ch. D. 194; 32 W. R. 168.

(*k*) 26 Ch. D. C. A. 48.

(*l*) See *Green's Patent*, 24 Beav. 145; *Morey's Patent*, 25 Beav. 581; *Horsley & Knighton's Patent*, L. R. 8 Eq. 475; *Berdan's Patent*, L. R. 20 Eq. 346.

with very similar provisions and several decisions arising on applications under it have been reported, which no doubt will be useful in future as shewing the construction to be placed on this section. Thus it was decided—

That the powers given to the Court by this section to rectify the register of trade-marks, are only exerciseable in cases where there has been some mistake or error in the registration, and not in cases where a change is desirable in consequence of a devolution of interest (*m*).

That where a trade-mark belonging to a firm has been registered in the name of one of the partners, described as trading under the firm name, the register of trade-marks will be ordered to be rectified by cancelling the name of the registered proprietor, and inserting the names of all the co-partners trading under the firm name (*n*).

That where a trade-mark belonging to a firm has, by a mistake common to the firm, been applied for and registered in the name of one of the partners in the firm to the exclusion of the other partners, and without any mention of the firm's right to the mark, the proper course to take for obtaining the registration of the firm as proprietor of the trade-mark, is for the registered proprietor of the trade-mark or his legal personal representative to assign the trade-mark to the firm which is already entitled to the goodwill of the business with which the trade-mark has been used (*o*).

That where a person registers in his own name the trade-mark of another person, without the knowledge or consent of the true proprietor, the register of trade-marks cannot be rectified by transferring the registration into the name of the true proprietor (*p*).

That the register may be rectified not only by removing the whole of an entry objected to (*q*), but by striking out part of the entry or adding a note or qualification to it (*r*).

(*m*) *Re Ward*, 29 W. R. 395; 50 L. J. Ch. 347; 44 L. T. 97. In such case, *e.g.* devolution of interest by death, application should be made to the comptroller under sect. 87, but it is submitted that if he refused to act, the Court would in a proper case have jurisdiction under this, the 90th section.

(*n*) *Rust's Trade-Mark*, 29 W. R.

393, n.; 44 L. T. 98.

(*o*) *Farina's Trade-Mark*, 29 W. R. 391; 44 L. T. 99.

(*p*) *Marler's Trade-Mark*, 29 W. R. 392, n.; 44 L. T. 98.

(*q*) See cases in last notes.

(*r*) *Mitchell's Trade-Mark*, W. N. 1878, p. 101. Compare *Re Whiteley*, 29 W. R. 235; *Re Sykes*, *ibid.*

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—
S. 90.
—

Rectifica-
tion of
registers.

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V.

GENERAL.

SS. 90-
92.

Power for
comptrol-
ler to cor-
rect cleri-
cal errors.

A person may come to rectify the register not only after the advertisements have duly taken place (s), but even after the entry has been on the register for five years (t), provided that the delay is reasonably explained (u).

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

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

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

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

(α) Patents Rules, Form P; Designs Rules, Form M; Trade-Marks Rules, 45, and Forms M, Q.

(β) Trade-Marks Rules, O, P.

By rule 18 of the Patent Rules, 30 of the Designs Rules, and 51 of the Trade-Marks Rules, "any document for the amending of which no special provision is made by the Act may be amended," if and on such terms as the comptroller shall think fit.

Alteration
of regis-
tered
mark.

92. (1.) The registered proprietor of any registered trade-mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential

(s) *Hyde & Co.'s Trade-Mark*, 7 Ch. D. 724.

(t) *J. B. Palmer's Trade-Mark*, 24 Ch. D. C. A. 504.

(u) Last two cases, and *Ransome v. Graham*, 51 L. J. Ch. 894; and *Mouson v. Boehm*, 26 Ch. D. 398.

particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

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(2.) Notice of any intended application to the Court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application (a).

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94.

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

(a) Trade-Marks Rules, 48, Second Schedule, Form N.

As to imposing "conditions" on registration, see sect. 47, sub-sect. 7, as to Designs, and sect. 62, sub-sect. 4, as to Trade-mark.

See sect. 74 as to entering on the register of "additions to any trade-mark."

Where an applicant for registration or a registered proprietor desires to limit the generality of a trade-mark (or design?) or otherwise to qualify his rights in respect thereof, the comptroller may on his request *ex parte*, insert on the register a note to this effect (x).

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

Falsifica-
tion of
entries in
registers.

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power

Exercise of
discre-
tionary
power by
comptrol-
ler.

(x) *Keop's Trade-Mark*, 26 Cl. D. 187.

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—
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97.
—

adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade-mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Patent Rules, 11-13; Designs Rules, 13-15; Trade-Marks Rules, 17-19.

Power of
comptrol-
ler to take
directions
of law
officers.

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

Certificate
of comp-
troller to
be evi-
dence.

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

Patents Rules, Form Q; Designs Rules, 34, Form J; Trade-Marks Rules, 57, Form U.

Applica-
tions and
notices by
post.

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

(2.) In proving such service or sending, it shall be

(*xa*) See *Harris's Case*, L. R. 15 Eq. 18; and *Household Fire, 7 Ch. 587; Wall's Case*, L. R. &c., *Insurance Co. v. Grant*, 4 Ex. D.

sufficient to prove that the letter was properly addressed and put into the post (*xb*).

(a) Patents Rules, 19; Designs Rules, 12; Trade-Marks Rules, 16.

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

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

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GENERAL.
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99.

Provision
as to days
for leaving
documents
at office.

Declara-
tion by
infant,
lunatic,
&c.

216, deciding that the posting of a letter accepting a contract, such letter being duly addressed to the other party, is a sufficient acceptance of the offer, and binds the other side, although concurrently

therewith or even previously thereto the offer had been withdrawn, and notwithstanding that such letter should be lost in the post.

(*xb*) See *Trotter v. Maclean*, 13 Ch. D. 574.

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V.

GENERAL.

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101.

Transmis-
sion of cer-
tified
printed
copies of
specifica-
tions, &c.

capable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

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

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

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

- (a.) For regulating the practice of registration under this Act:
- (b.) For classifying goods for the purposes of designs and trade-marks:
- (c.) For making or requiring duplicates of specifications, amendment, drawings, and other documents:
- (d.) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, amendment and other documents:
- (e.) For securing and regulating the making, printing,

publishing and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents :

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

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

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

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

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

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled,

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103.

the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

See the several sets of rules, *post*.

Annual
reports of
comp-
troller.

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

International and Colonial Arrangements.

Inter-
national
arrange-
ments for
protection
of inven-
tions, de-
signs, and
trade-
marks.

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

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

Provided that nothing in this section contained shall

entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade-mark in this country, as the case may be.

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104.
—

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

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade-mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade-marks, any trade-mark the registration of which has been duly applied for in the country of origin may be registered under this Act :

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

104. (1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions,

Provision
for colonies
and India:

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GENERAL.
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106.

designs, and trade-marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

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

Offences.

Penalty on
falsely re-
presenting
articles
to be
patented.

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

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

Compare the cases cited *ante*, p. 124. See also the Merchandise Marks Act, 1862, 25 & 26 Vict. c. 88.

Penalty on
unautho-
rised as-
sumption
of Royal
arms.

106. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connexion with any

trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

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V.
GENERAL.
—
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109.
—

Scotland; Ireland; &c.

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

Saving for
Courts in
Scotland.

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

See sect. 28.

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

Summary
proceed-
ings in
Scotland.

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

Proceed-
ings for
revocation
of patent
in Scot-
land.

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

See sect. 26.

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V.

GENERAL.

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112.Reserva-
tion of
remedies
in Ireland.General
saving for
jurisdic-
tion of
Courts,

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

Compare sects. 16, 26, 36, and 111 (*y*).

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

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

Isle of
Man.

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

(1.) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade-mark competent to those courts;

(*y*) See *Brown v. Annandale*, *Finch*, L. R. 5 C. P. 523, and cases 1 Web. P. C. 433; and *Bocill v.* there cited.

(2.) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court ;

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V.
GENERAL.
—
SS. 112,
113.
—

(3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Repeal ; Transitional Provisions ; Savings (yy).

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

Repeal
and saving
for past
operation
of repealed
enact-
ments, &c.

(a.) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade-mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act ; or

(b.) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect

(yy) As to the effect of this section on existing patents, see *Re Brandon's Patent*, O. J. Rep. vol. i. p. 154.

PART
V.

GENERAL.

SS. 114,
115.Former
registers
to be
deemed
continued.

thereof, and any such proceeding may be carried on as if this Act had not been passed; or

(c.) Take away or abridge any protection or benefit in relation to any such action or proceeding.

114. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act.

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

As to registers established by previous statutes: see the Patent Law Amendment Act, 1852, sect. 34 as to Register of Patents, and sect. 35 as to Register of Proprietors; 5 & 6 Vict. c. 160, sects. 14, 15 and 16 as to the Registry of ornamented Designs, and 6 & 7 Vict. c. 65, sects. 7, 8 and 9 as to the Registry of useful Designs; and the Trades Marks Regulation Act, 1875, sect. 1, as to the Register of Trade Marks.

Saving for
existing
rules.

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

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

**PART
V.
GENERAL.
SS. 116,
117.**

**Saving for
preroga-
tive.**

General Definitions.

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

**General
defini-
tions.**

“Person” includes a body corporate:

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

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

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

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

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

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

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

PART
V.
GENERAL.

S. 117.

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

SCHEDULES.

THE FIRST SCHEDULE.

FORMS OF APPLICATION, &c.

FORM A.

FORM OF APPLICATION FOR PATENT.

FORM B.

FORM OF PROVISIONAL SPECIFICATION.

FORM C.

FORM OF COMPLETE SPECIFICATION.

For these Forms A, B, and C are now substituted the Forms A, A1, B, and C in the Second Schedule to the Patents Rules, *post*.

FORM D.

FORM OF 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 *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, hath by his solemn declaration represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief :

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (hereinafter together with his executors, administrators, and assigns, or any of them,

referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention :

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention :

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request :

Know ye, therefore, that We, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial license, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantages from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents: And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, licence or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: Provided that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor

FORM E.

FORM OF APPLICATION FOR REGISTRATION OF DESIGN.

_____ day of _____ 18 .

(a) Here insert legibly the name and address of the individual or firm.

You are hereby requested to register the accompanying _____ Design, in Class _____ in the name of (a) _____ of _____ who claims to be the proprietor thereof, and to return the same to _____

Statement of nature of Design _____

Registration Fees enclosed £ „ s.

To the Comptroller,
Patent Office, 25, Southampton Buildings, Chancery Lane, W.C.
(Signed) _____

FORM F.

Section 62.

FORM OF APPLICATION FOR REGISTRATION OF TRADE MARK.

(One representation to be fixed within this square, and two others on separate sheets of foolscap of same size.)

(Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.)

You are hereby requested to register the accompanying trade mark [*In Class — Iron in bars, sheets, and plates; in Class — Steam engines and boilers; and in Class — Warming Apparatus*], in the name of (a) _____, who claims to be the proprietor thereof.

(a) Here insert legibly the name, address, and business of the individual or firm.

Registration Fees enclosed £ „ s.

To the Comptroller,
Patent Office, 25, Southampton Buildings, Chancery Lane, W.C.
(Signed) _____

Note.—If the trade-mark has been in use before the 13th of August, 1875, state length of use.

THE SECOND SCHEDULE.

Fees on instruments for obtaining Patents, and Renewal.

Section 24.

(a.) *Up to sealing.*

	£	s.	d.	£	s.	d.
On application for provisional protection ..	1	0	0			
On filing complete specification ..	3	0	0			
	<hr/>			4	0	0
<i>or</i>						
On filing complete specification with first application ..				4	0	0

(b.) *Further before end of four years from date of patent.*

On certificate of renewal	50	0	0
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(c.) *Further before end of seven years, or in the case of patents granted after the commencement of this Act, before the end of eight years from date of patent.*

On certificate of renewal	100	0	0
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Or in lieu of the fees of £50 and £100 the following annual fees:—

Before the expiration of the fourth year from the date of						
the patent	10	0	0			
" " fifth	10	0	0			
" " sixth	10	0	0			
" " seventh	10	0	0			
" " eighth	15	0	0			
" " ninth	15	0	0			
" " tenth	20	0	0			
" " eleventh	20	0	0			
" " twelfth	20	0	0			
" " thirteenth	20	0	0			

With regard to the fees of £50 and £100 the following notice has been issued—The Board of Trade, with the consent of the Treasury, have made the following reduction relating to certain fees prescribed by the Second Schedule of the Patents, Designs, and Trade Marks Act, 1883. In the case of patents granted before the commencement of the said Act, the patentee who has paid the prescribed fee of £50, before the end of four years from the date of his patent, may, in lieu of the prescribed fee of £100 payable before the end of seven years from such date, pay the following annual fees:—Before the end of the seventh year from the date of the patent, £10; eighth year, £10; ninth year, £10; tenth year, £15; eleventh year, £15; twelfth year, £20; thirteenth year, 20. This reduction shall come into operation on the 1st day of August, 1884.

THE THIRD SCHEDULE.

Enactments repealed.

Section 113.	21 James I. c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
	5 & 6 Will. 4, c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
	5 & 6 Will. 4, c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
	2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to amend the law touching letters patent for inventions."
	5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
	6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.
	7 & 8 Vict. 69. (a) [1844.] In part.	An Act for Amending an Act passed in the fourth year of the reign of His late Majesty, intituled "An Act for the better administration of justice in His Majesty's Privy Council, and to extend its jurisdiction and powers." In part; namely,— Sections two to five, both included.
	13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.

(a.) *Note.*—Sects. 6 and 7 of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.
21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years of Her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.
33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part; namely,— Section sixty-five, and in the Schedule the words and figures. “Certificate of the registration of a design £5 . 0 . 0. And see section 65.”
38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.

38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part; namely,— Section five.
45 & 46 Vict. c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part; namely,— Section sixteen.

PATENTS RULES.

Issued 21st of December, 1883. See Act, sect. 101 for the general power to make rules.

By virtue of the provisions of the Patents, Designs and Trade Marks Act, 1883, the Board of Trade do hereby make the following Rules:—

SHORT TITLE.

1. These Rules may be cited as the Patents Rules, 1883. Short title.

COMMENCEMENT.

2. These Rules shall come into operation from and immediately after the 31st day of December, 1883. Commencement.

INTERPRETATION.

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

FEEs.

4. The fees to be paid under the above-mentioned Act, in addition to the fees mentioned in the Second Schedule thereto, so far as it relates to patents, shall be those specified in the list of fees in the First Schedule to these Rules. Fees.

FORMS.

5. The Forms A, B, and C in the First Schedule to the said Act shall be altered or amended by the substitution therefor respectively of the Forms A. A1, B, and C in the Second Schedule hereto. Forms.
Alterations.

6. (1.) An application for a patent shall be made either in the Form A or the Form A1 set forth in the Second Schedule hereto, as the case may be. Application.

- Specification. (2.) The Form B. in such Schedule of provisional specification and the Form C. of complete specification shall respectively be used.
- Other forms. (3.) The remaining forms set forth in such Schedule may, as far as they are applicable, be used in any proceedings under these Rules.

GENERAL.

- Hours of business. 7. The Patent Office shall be open to the public every week-day during the hours of ten and four, except on the days and times following:—
 Christmas Day.
 Good Friday.
 The day observed as Her Majesty's birthday.
 The days observed as days of public fast or thanksgiving, or as holidays at the Bank of England.
- Agency. 8. An application for a patent must be signed by the applicant, but all other communications between the applicant and the Comptroller and all attendances by the applicant upon the Comptroller may be made by or through an agent duly authorised to the satisfaction of the Comptroller, and if he so require resident in the United Kingdom.
- Statement of address. 9. The application shall be accompanied by a statement of an address to which all notices, requisitions, and communications of every kind may be made by the Comptroller or by the Board of Trade, and such statement shall thereafter be binding upon the applicant unless and until a substituted statement of address shall be furnished by him to the Comptroller. He may in any particular case require that the address mentioned in this rule be in the United Kingdom.
- Size, &c. of documents. 10. All documents and copies of documents sent to or left at the Patent Office or otherwise furnished to the Comptroller or to the Board of Trade shall be written or printed in large and legible characters in the English language upon strong wide ruled paper (on one side only), of a size of 13 inches by 8 inches, leaving a margin of two inches on the left-hand part thereof, and the signature of the applicants or agents thereto must be written in a large and legible hand. Duplicate documents shall at any time be left, if required by the Comptroller.
- Exercise of discretionary power by 11. Before exercising any discretionary power given to the Comptroller by the said Act adversely to the applicant for a

patent or for amendment of a specification, the Comptroller shall give ten days' notice, or such longer notice as he may think fit, to the applicant of the time when he may be heard personally or by his agent before the Comptroller.

Comptroller.
Notice of
hearing.

Act, sect. 94.

12. Within five days from the date when such notice would be delivered in the ordinary course of post, or such longer time as the Comptroller may appoint in such notice, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter.

Notice by
applicant.

Second Schedule, Form E.

13. Whether the applicant desires to be heard or not, the Comptroller may at any time require him to submit a statement in writing within a time to be notified by the Comptroller, or to attend before him and make oral explanations with respect to such matters as the Comptroller may require.

Comptroller
may require
statement,
&c.

14. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified by him to the applicant, and any other person affected thereby.

Decision to
be notified
to parties.

15. The term "applicant" in Rules 11, 12, and 13 shall include an applicant whose specification bears a title the same as or similar to that of the specification of a prior applicant, and has been reported on by the examiner.

Definition of
"applicant."

Act, sect. 13.

16. Such prior and second applicant respectively may attend the hearing of the question whether the invention comprised in both applications is the same, but neither party shall be at liberty to inspect the specification of the other.

Prior and
second appli-
cant may
attend hear-
ing.

17. Any person desirous of exhibiting an invention at an industrial or international exhibition, or of publishing any description of the invention during the period of the holding of the exhibition, or of using the invention for the purpose of the exhibition in the place where the exhibition is held, shall, after having obtained from the Board of Trade a certificate that the exhibition is an industrial or international one, give to the Comptroller seven days' notice of his intention to exhibit, publish, or use the invention, as the case may be.

Industrial
or interna-
tional exhi-
bitions.

For the purpose of identifying the invention in the event of an application for a patent being subsequently made the applicant shall furnish to the Comptroller a brief description of his invention accompanied, if necessary, by drawings, and such other information as the Comptroller may in each case require.

Act, sect. 39.

Power of amendment, &c.

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

Act, sects. 91 and 101. This rule provides generally for amendments. Compare the corresponding rules, Designs, 30, and Trade-marks, 51. See the Special Rules 48-56, *post*, p. 187.

Documents by post.

19. Any application, notice, or other document authorized or required to be left, made, or given at the Patent Office or to the Comptroller or to any other person under these Rules may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

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

Act, sect. 97.

Affidavits.

20. Affidavits may, except where otherwise prescribed by these Rules, be used as evidence in any proceedings thereunder when sworn to in any of the following ways, *viz.*:—

- (1.) In the United Kingdom before any person authorised to administer oaths in the Supreme Court of Judicature or before a justice of the peace for the county or place where it is sworn or made.
- (2.) In any place in the British dominions out of the United Kingdom before any court, judge, or justice of the peace, or any person authorised to administer oaths there in any court.
- (3.) In any place out of the British dominions before a British minister, or person exercising the functions of a British minister, or a British consul, vice-consul, or other person

exercising the functions of a British consul, or a notary public, or before a judge or magistrate.

Act, sect. 98.

21. Where any statutory declaration prescribed by these Rules, or used in any proceedings thereunder, is made out of the United Kingdom, the words, "and by virtue of the Statutory Declarations Act, 1835," must be omitted, and the declaration shall (unless the context otherwise requires) be made in the manner prescribed in Rule 20, sub-section (3).

Statutory
declarations.

APPLICATION WITH PROVISIONAL OR COMPLETE SPECIFICATION.

22. Applications for a patent sent by prepaid letter through the post shall, as far as may be practicable, be opened and numbered in the order in which the letters containing the same have been respectively delivered in the ordinary course of post.

Order of
recording
applications.

Applications left at the Patent Office otherwise than through the post shall be in like manner numbered in the order of their receipt at the Patent Office.

23. Where a person making application for a patent includes therein by mistake, inadvertence, or otherwise, more than one invention, he may after the refusal of the Comptroller to accept such application, amend the same so as to apply to one invention only, and may make application for separate patents for each such invention accordingly.

Application
for separate
patents by
way of
amendment.

Every such application shall bear the date of the first application, and shall, together therewith, be proceeded with in the manner prescribed by the said Act and by these Rules as if every such application had been originally made on that date for one invention only.

24. An application for a patent by the legal representative of a person who has died possessed of an invention shall be accompanied by an official copy of or extract from will or the letters of administration granted of his estate and effects in proof of the applicant's title as such legal representative.

Application
by represen-
tative of
deceased
inventor.

25. On the acceptance of an application with a provisional or complete specification the Comptroller shall give notice thereof to the applicant, and shall advertise such acceptance in the official journal of the Patent Office.

Notice and
advertise-
ment of
acceptance.

Inspection
on accept-
ance of
complete
specification.

26. Upon the publication of such advertisement of acceptance in the case of an application with a complete specification, the application and specification or specifications with the drawings (if any) may be inspected at the Patent Office upon the payment of the prescribed fee.

APPLICATION ON COMMUNICATION FROM ABROAD.

Communica-
tion from
abroad.

27. An application for a patent for an invention communicated from abroad shall be made in the form A 1 set forth in the Second Schedule hereto.

SIZES AND METHODS OF PREPARING DRAWINGS ACCOMPANYING PROVISIONAL OR COMPLETE SPECIFICATIONS.

Size of
drawings.

28. The drawings accompanying provisional or complete specifications shall be made upon half-sheets or sheets of imperial drawing paper, to be within a border line of 19 inches by 12 inches, or 27 inches by 19 inches, with a margin of $\frac{1}{2}$ an inch all round.

Copies of
drawings.

29. A copy of the drawings will be required upon *rolled* imperial drawing paper or upon thin Bristol board of the same dimensions as the original drawing or drawings. All the lines must be absolutely black, Indian ink of the best quality to be used, and the same strength or colour of the ink maintained throughout the drawing. Any shading must be in lines clearly and distinctly drawn and as open as is consistent with the required effect. Section lines should not be too closely drawn. No colour must be used for any purpose upon the copy of the drawings. All letters and figures of reference must be bold and distinct. The border line should be one fine line only. The drawings must not be folded, but must be delivered at the Patent Office either in a perfectly flat state or rolled upon a roller so as to be free from creases or breaks (a).

30. Where a complete specification is left at the Patent Office after a provisional specification has been accepted, the complete specification and drawing or drawings accompanying the same, as

(a) As the drawings accompanying the provisional and complete specification respectively are copied at the Patent Office for publication

by the process of photo lithography, this rule must be strictly observed in order that correct copies may be made.

well as the copy thereof, must be prepared in accordance with Rules 10, 28, and 29.

ILLUSTRATED JOURNAL.

31. Every applicant for the grant of a patent shall, in addition to the drawings to be furnished with his complete specification, furnish the Comptroller with a drawing illustrative of the feature or features of novelty constituting his invention. Such drawing must be prepared in the manner prescribed for the copy of the original drawing or drawings accompanying the specification, but must not cover a space exceeding 16 square inches. The drawing must be accompanied by a concise explanatory statement on foolscap paper and legibly written or printed.

Additional drawing to be furnished.

OPPOSITION TO GRANTS OF PATENTS.

32. A notice of opposition to the grant of a patent shall state the ground or grounds on which the person giving such notice (hereinafter called the opponent) intends to oppose the grant, and shall be signed by him. Such notice shall state his address for service in the United Kingdom.

Notice of opposition.

Act, sect. 11. Patents Rules, Second Schedule, Form D.

33. On receipt of such notice a copy thereof shall be furnished by the Comptroller to the applicant.

Copy for applicant.

Second Schedule, Form E.

34. Where the ground or one of the grounds of opposition is that the invention has been patented in this country on an application of prior date, the title, number, and date of the patent granted in such prior application shall be specified in the notice.

Particulars of prior patent.

35. Within fourteen days after the expiration of two months from the date of the advertisement of the acceptance of a complete specification, the opponent shall leave at the Patent Office statutory declarations in support of his opposition, and deliver to the applicant a list thereof.

Opponent's evidence.

36. Within fourteen days from the delivery of such list the applicant shall leave at the Patent Office statutory declarations in answer, and deliver to the opponent a list thereof, and within seven days from such delivery the opponent shall leave at the Patent Office his statutory declarations in reply, and deliver to the applicant a list thereof. Such last-mentioned declarations shall be confined to matters strictly in reply.

Applicant's evidence.

Evidence in reply.

Copies of the declarations mentioned in this and the last preceding Rule may be obtained either from the Patent Office or from the opposite party.

Closing of evidence.

37. No further evidence shall be left on either side except by leave of the Comptroller upon the written consent of the parties duly notified to him, or by special leave of the Comptroller on application made to him for that purpose.

38. Either party making such application shall give notice thereof to the opposite party, who shall be entitled to oppose the application.

Notice of hearing.

39. On the completion of the evidence the Comptroller shall appoint a time for the hearing of the case, and shall give to the parties seven days' notice at the least of such appointment.

Disallowance of opposition in certain cases.

40. On the hearing of the case no opposition shall be allowed in respect of any ground not stated in the notice of opposition, and where the ground or one of the grounds is that the invention has been patented in this country on an application of prior date, the opposition shall not be allowed upon such ground unless the title, number, and date of the patent granted on such prior application shall have been duly specified in the notice of opposition.

Decision to be notified to parties.

41. The decision of the Comptroller in the case shall be notified by him to the parties.

CERTIFICATES OF PAYMENT OR RENEWAL.

Payment of fees of 50*l.* and 100*l.* for continuance of patent.

42. If a patentee intends at the expiration of the fourth or eighth year from the date of his patent to make the prescribed payment for keeping the same in force, he shall seven days at least before such expiration give notice to the Comptroller of such intention, and shall, before the expiration of such fourth or eighth year, as the case may be, leave at the Patent Office a form of certificate of payment, duly stamped, subject as hereinafter provided, with the prescribed fee of 50*l.* and 100*l.*, as the case may be.

Second Schedule, Form J.

As to patents granted before commencement of Act.

43. In the case of patents granted before the commencement of the said Act, the above Rule shall be read as if the words "seventh year" were therein written instead of the words "eighth year."

Payment of annual fees in lieu of 50*l.* and 100*l.*

44. If the patentee intends to pay annual fees in lieu of the above-mentioned fees of 50*l.* and 100*l.*, he shall seven days at least before the expiration of the fourth and each succeeding year

during the term of the patent, until and inclusive of the 13th year thereof, give notice to the Comptroller of such intention, and shall, before the expiration of such respective periods as aforesaid, leave at the Patent Office a form of certificate of payment, duly stamped with the fee prescribed to be paid at such periods respectively.

45. On due compliance with these Rules, and as soon as may be after such respective periods as aforesaid, or any enlargement thereof respectively duly granted, the Comptroller shall give to the patentee a certificate that the prescribed payment has been duly made.

Certificate of payment.

ENLARGEMENT OF TIME.

46. An application for an enlargement of the time for making a prescribed payment shall state in detail the circumstances in which the patentee by accident, mistake, or inadvertence has failed to make such payment, and the Comptroller may require the patentee to substantiate by such proof as he may think necessary the allegations contained in the application for enlargement.

Enlargement of time for payments.

Act, sect. 17 (3). Patents Rules, Second Schedule, Form K.

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

In other cases.

Act, sects. 7 and 18.

AMENDMENT OF SPECIFICATION.

48. A request for leave to amend a specification shall be signed by the applicant or patentee and accompanied by a copy of the original specification and drawings, showing in red ink the proposed amendment, and shall be advertised by publication of the request and the nature of the proposed amendment in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller may in each case direct.

Request for leave to amend.

Advertisement.

Second Schedule, Form F.

49. A notice of opposition to the amendment shall state the ground or grounds on which the person giving such notice (hereinafter called the opponent) intends to oppose the amendment, and shall be signed by him. Such notice shall state his address for service in the United Kingdom.

Notice of opposition.

Second Schedule, Form G.

Copy for the applicant.

50. On receipt of such notice a copy thereof shall be furnished by the Comptroller to the applicant or patentee, as the case may be (hereinafter called the applicant).

See Form E.

Opponent's evidence.

51. Within fourteen days after the expiration of one month from the first advertisement of the application for leave to amend, the opponent shall leave at the Patent Office statutory declarations in support of his opposition and deliver to the applicant a list thereof.

Further proceedings.

52. Upon such declarations being left, and such list being delivered, the provisions of Rules 36, 37, 38, and 39 shall apply to the case, and the further proceedings therein shall be regulated in accordance with such provisions as if they were here repeated.

Decision to be notified to parties.

53. The decision of the Comptroller in the case shall be notified by him to the parties.

Requirements thereon.

54. Where leave to amend is given the applicant shall, if the Comptroller so require, and within a time to be limited by him, leave at the Patent Office a new specification and drawings as amended, to be prepared in accordance with Rules 10, 28, and 29.

Leave by order of Court.

55. Where a request for leave to amend is made by or in pursuance of an order of the Court or a judge, an official or verified copy of the order shall be left with the request at the Patent Office.

Advertisement of amendment.

56. Every amendment of a specification shall be forthwith advertised by the Comptroller in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller shall direct.

COMPULSORY LICENSES (b).

Petition for compulsory grant of licenses.

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

Second Schedule, Form H 1.

(b) Act, sects. 22 and 45 (2). There is no provision in the Act or the Rules as to costs of applications for compulsory licenses.

58. The petition and an examined copy thereof shall be left at the Patent Office, accompanied by the affidavits, or statutory declarations, and other documentary evidence (if any) tendered by the petitioner in proof of the alleged default of the patentee.

To be left with evidence at Patent Office.

Second Schedule, Form H.

59. Upon perusing the petition and evidence, unless the Board of Trade shall be of opinion that the order should be at once refused, they may require the petitioner to attend before the Comptroller, or other person or persons appointed by them, to receive his or their directions as to further proceedings upon the petition.

Directions as to further proceedings unless petition refused.

60. If and when a *prima facie* case for relief has been made out to the satisfaction of the Board of Trade, the petitioner shall upon their requisition, and on or before a day to be named by them, deliver to the patentee copies of the petition and of the affidavits or statutory declarations and other documentary evidence (if any) tendered in support thereof.

Procedure.

Petitioner's evidence.

61. Within fourteen days after the day of such delivery the patentee shall leave at the Patent Office his affidavits or statutory declarations in opposition to the petition, and deliver copies thereof to the petitioner.

Patentee's evidence.

62. The petitioner within fourteen days from such delivery shall leave at the Patent Office his affidavits, or statutory declarations in reply, and deliver copies thereof to the petitioner; such last-mentioned affidavits or declarations shall be confined to matters strictly in reply.

Evidence in reply.

63. Subject to any further directions which the Board of Trade may give the parties shall then be heard at such time, before such person or persons, in such manner, and in accordance with such procedure as the Board of Trade may, in the circumstances of the case, direct, but so that full opportunity shall be given to the patentee to show cause against the petition.

Further proceedings.

REGISTER OF PATENTS.

64. Upon the sealing of a patent the Comptroller shall cause to be entered in the Register of Patents the name, address, and description of the patentee as the grantee thereof, and the title of the invention.

Entry of grant.

Request for entry of subsequent proprietorship.

65. Where a person becomes entitled to a patent or to any share or interest therein, by assignment either throughout the United Kingdom and the Isle of Man, or for any place or places therein, or by transmission or other operation of law, a request for the entry of his name in the register as such complete or partial proprietor of the patent, or of such share or interest therein, as the case may be, shall be addressed to the Comptroller, and left at the Patent Office.

Second Schedule, Form L.

It would seem that by the operation of this rule, and of sects. 23 and 87 of the Act, registration of licenses is now compulsory. See rule 74 as to licenses.

Signature of request.

66. Such request shall in the case of individuals be made and signed by the person requiring to be registered as proprietor, or by his agent duly authorised to the satisfaction of the Comptroller, and in the case of a body corporate, by their agent, authorised in like manner.

Particulars to be stated in request.

67. Every such request shall state the name, address, and description of the person claiming to be entitled to the patent, or to any share or interest therein, as the case may be (hereinafter called the claimant), and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom the patent, or such share or interest therein as aforesaid, has been assigned or transmitted.

Production of documents of title and other proof.

68. Every assignment and every other document containing, giving effect to, or being evidence of, the transmission of a patent or affecting the proprietorship thereof as claimed by such request, except such documents as are matters of record, shall be produced to the Comptroller, together with the request above prescribed, and such other proof of title as he may require for his satisfaction.

As to a document which is a matter of record, an official or certified copy thereof shall in like manner be produced to the Comptroller.

Copies for Patent Office.

69. There shall also be left with the request an examined copy of the assignment or other document above required to be produced.

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

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

71. Where an order has been made by Her Majesty in Council for the extension of a patent for a further term or for the grant of a new patent, or where an order has been made by the Court for the revocation of a patent or the rectification of the register under sect. 90 of the said Act, or otherwise affecting the validity or proprietorship of the patent, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be. Entry of Orders of the Privy Council or of the Court.

Second Schedule, Form S.

72. Upon the issue of a certificate of payment under Rule 45, the Comptroller shall cause to be entered in the Register of Patents a record of the amount and date of payment of the fee on such certificate. Entry of payment of fees on issue of certificate.

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

74. An examined copy of every license granted under a patent shall be left at the Patent Office by the licensee, with a request that a notification thereof may be entered in the register. The licensee shall cause the accuracy of such copy to be certified as the Comptroller may direct, and the original license shall at the same time be produced and left at the Patent Office if required for further verification. Entry of licenses.

It would seem that by the operation of this rule, and of sects. 23 and 87 of the Act, registration of licenses is now compulsory. See rule 65 as to assignments.

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

- (a) Christmas Day, Good Friday, the day observed as Her Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England; or
- (b.) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office;

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

Certified
copies of
documents.

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

POWER TO DISPENSE WITH EVIDENCE, &c.

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

Designs Rules, 29 ; Trade-Marks Rules, 50.

REPEAL.

Repeal.

78. All general rules made by the Lord Chancellor, or by any other authority, under the Patent Law Amendment Acts, and in force on the 31st day of December, 1883, shall be, and they are hereby repealed as from that date, without prejudice, nevertheless, to any application then pending.

FIRST SCHEDULE.

Approved 4th of December, 1883.

LIST OF FEES PAYABLE ON AND IN CONNECTION WITH LETTERS
PATENT (a).

Up to Sealing.

	£	s.	d.	£	s.	d.
1. On application for provisional protection	1	0	0			
2. On filing complete specification	3	0	0			
	—————			4	0	0
or						
3. On filing complete specification with first applica- tion				4	0	0
4. On appeal from Comptroller to Law Officer. By appellant				3	0	0
—————						
5. On notice of opposition to grant of patent. By opponent				0	10	0
6. On hearing by Comptroller. By applicant and by opponent respectively				1	0	0
—————						
7. On application to amend specification:— Up to sealing. By applicant				1	10	0
8. After sealing. By patentee				3	0	0
9. On notice of opposition to amendment. By op- ponent				0	10	0
10. On hearing by Comptroller. By applicant and by opponent respectively				1	0	0
11. On application to amend specification during action or proceeding. By patentee				3	0	0
—————						
12. On application to the Board of Trade for a compul- sory license. By person applying				5	0	0
13. On opposition to grant of compulsory license. By patentee				5	0	0
14. On certificate of renewal:— Before end of four years from date of patent ..				50	0	0

(a) See the notice, ante, p. 175.

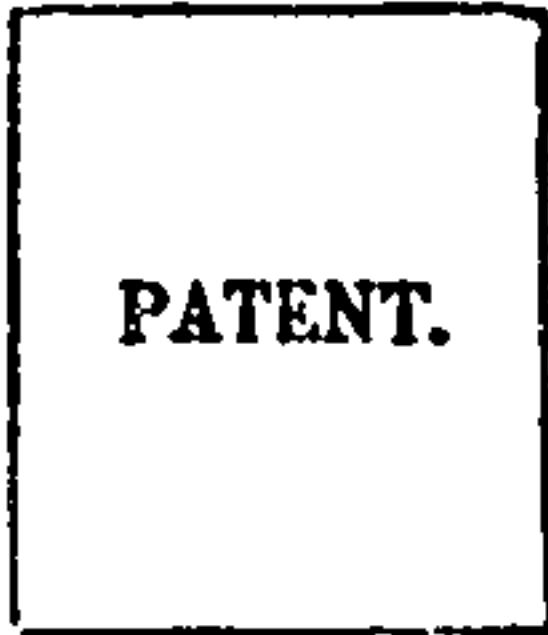
		£	s.	d.
15.	Before end of seven years, or in the case of patents granted under the "Patents, Designs, and Trade Marks Act, 1883," before the end of eight years from date of patent	100	0	0
	Or in lieu of the fees of 50% and 100%, the following annual fees:—			
16.	Before the expiration of the 4th year from the date of the patent	10	0	0
17.	" " 5th " " "	10	0	0
18.	" " 6th " " "	10	0	0
19.	" " 7th " " "	10	0	0
20.	" " 8th " " "	15	0	0
21.	" " 9th " " "	15	0	0
22.	" " 10th " " "	20	0	0
23.	" " 11th " " "	20	0	0
24.	" " 12th " " "	20	0	0
25.	" " 13th " " "	20	0	0
	On enlargement of time for payment of renewal fees:—			
26.	Not exceeding 1 month	3	0	0
27.	" 2 months	7	0	0
28.	" 3 months	10	0	0
29.	For every entry of an assignment, transmission, agreement, license or extension of patent ..	0	10	0
30.	For duplicate of letters patent each	2	0	0
31.	On notice to Comptroller of intended exhibition of a patent under sect. 39	0	10	0
32.	Search or inspection fee each	0	1	0
33.	For office copies every 100 words (but never less than one shilling)	0	0	4
34.	" of drawings, cost according to agreement.			
35.	For certifying office copies, MSS. or printed, each	0	1	0
36.	On request to Comptroller to correct a clerical error	0	5	0
37.	For certificate of Comptroller under sect. 96 ..	0	5	0
38.	For altering address in register	0	5	0

THE SECOND SCHEDULE.

FORMS.

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PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.



FORM A.

APPLICATION FOR PATENT.

(a) Here¹
insert name,
full address,
and calling
of applicant
or appli-
cants.

(a) _____

_____, do solemnly
and sincerely declare that _____ in possession of an invention

(b) Here
insert title of
invention.

for (b) _____

that _____ the true and first inventor _____ thereof; and that
the same is not in use by any other person or persons to the best
of _____ knowledge and belief; and _____ humbly pray that a
patent may be granted _____

for the said invention.

And _____ make the above solemn declaration conscientiously
believing the same to be true, and by virtue of the provisions of
the Statutory Declarations Act, 1835.

(c) Signa-
ture of ap-
plicant or
applicants.

(c) _____

PATENTS RULES, 1883—SECOND SCHEDULE 197

Declared at (d) _____ in the _____
_____ this _____ day of
_____ 18 _____.

(d) If de-
clared by
more than
one appli-
cant and at
different
times or
places, insert
after "De-
clared" the
words "by
the above-
named."

Before me,

(e) _____

(e) Signa-
ture and title
of the person
before whom
the declara-
tion is made.

[Declared at (d) _____ in the _____
_____ this _____ day of
_____ 18 _____.

Before me,

(e) _____

_____ (f)]

(f) If not
required as
in note (d),
strike out
part within
brackets.

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted, and the declaration must be made before a British Consular Officer, or where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

PATENT.

FORM A1.

APPLICATION FOR PATENT FOR INVENTIONS COMMUNICATED FROM ABROAD.

(a) Here insert name, full address, and calling of applicant.

I (a) _____ in the county of _____ do solemnly and

(b) Here insert title of invention.

sincerely declare that I am in possession of an invention for (b) _____

(c) Here insert name, address, and calling of communi- cant.

which invention has been communicated to me from abroad by (c) _____

that I claim to be the true and first inventor thereof; and that the same is not in use within this realm by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

And I make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(d) Signa- ture of appli- cant.

Declared at (a') _____ in the county of _____ this _____ day of _____ 18 ____.

(e) Signa- ture and title of the officer before whom the declara- tion is made.

Before me,

(e) _____

NOTE.—Where the above declaration is made out of the United Kingdom the words, “and by virtue of the Statutory Declarations Act, 1835,” must be omitted, and the declaration must be made before a British Consular Officer, or where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

To be issued with Form A or A1.

FORM B.

PROVISIONAL SPECIFICATION.
(To be furnished in Duplicate.)

(a) _____

(a) Here insert title, as in declaration.

(b) _____

(b) Here insert name, full address, and calling of applicant or applicants, as in declaration.

do hereby declare the nature of the said invention for _____

to be as follows (c): _____

(c) Here insert short description of invention.

NOTE.—No stamp is required on this document, which must form the commencement of the Provisional Specification; the continuation to be upon wide-ruled foolscap paper (but on one side only) with a margin of two inches on the left hand of paper. The Provisional Specification and the "Duplicate" thereof must be signed by the applicant or his agent on the last sheet, the date being first inserted as follows:—

" Dated this day of 18 ."



FORM C.

COMPLETE SPECIFICATION.

(To be furnished in Duplicate—one unstamped.)

(a) Here insert title, as in declaration.

(a) _____

(b) Here insert name, full address, and calling of applicant or applicants, as in declaration.

(b) _____

_____ do hereby declare
 the nature of _____ invention for _____

and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (c):—

(c) Here insert full description of invention which must end with a distinct statement of claim or claims, in the following form:

“ Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is

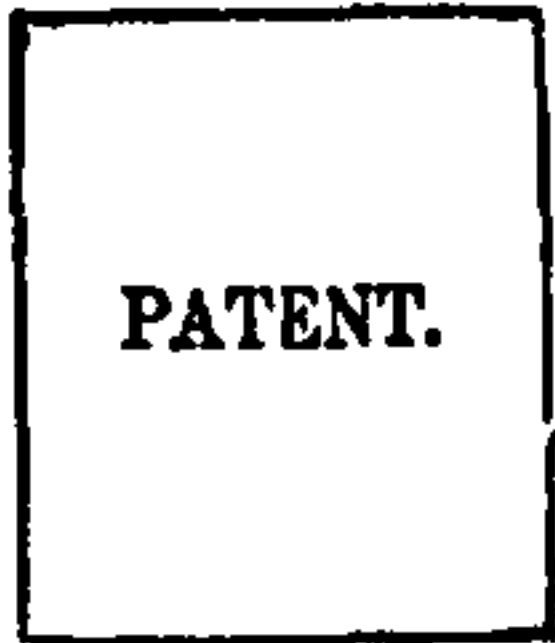
(1.)
 (2.)
 (3.)
 Here state distinctly the features of novelty claimed.

NOTE.—This document must form the commencement of the complete specification; the continuation to be upon wide-ruled foolscap paper (but on one side only) with a margin of two inches on left hand of paper. The complete Specification and the “ Duplicate ” thereof must be signed by the applicant or his agent on the last sheet, the date being first inserted as follows:—

“ Dated this _____ day of _____ 18 .”

FORM D.

FORM OF OPPOSITION TO GRANT OF PATENT.



[To be accompanied by an unstamped copy.]

*I _____

* Here state name and full address.

hereby give notice of my intention to oppose the grant of Letters Patent upon application No. _____ of _____, applied for by _____

upon the ground† _____

† Here state upon which of the grounds of opposition permitted by sect. 11 of the Act the grant is opposed.

(Signed)† _____

‡ Here insert signature of opponent or agent.

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

FORM E.

PATENT.

FORM OF APPLICATION FOR HEARING BY THE
COMPTROLLER.

IN CASES OF REFUSAL TO ACCEPT OPPOSITION, OR APPLICATIONS
FOR AMENDMENTS, &c.

SIR,

(a) Here
insert full
address.

_____ of (a) _____

hereby apply to be heard in reference to

and request that I may receive due notice of the day fixed for the
hearing.

Sir,
Your obedient Servant,

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

FORM F.

FORM OF APPLICATION FOR AMENDMENT OF SPECIFICATION OR DRAWINGS.



*

* Here state name and full address of applicant or patentee.

seek leave to amend the specification of Letters Patent No. _____ of 188 , as shown in red ink in the copy of the original specification hereunto annexed _____

My reasons for making this amendment are as followst _____

† Here state reasons for seeking amendment; and where the applicant is not the patentee, state what interest he possesses in the Letters Patent.

(Signed) _____

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

PATENT.

FORM G.

FORM OF OPPOSITION TO AMENDMENT OF SPECIFICATION OR DRAWINGS.

[To be accompanied by an unstamped copy.]

* Here state name and full address of opponent.

* _____

hereby give notice of objection to the proposed amendment of the specification or drawings of Letters Patent No. _____

† Here state reason of opposition.

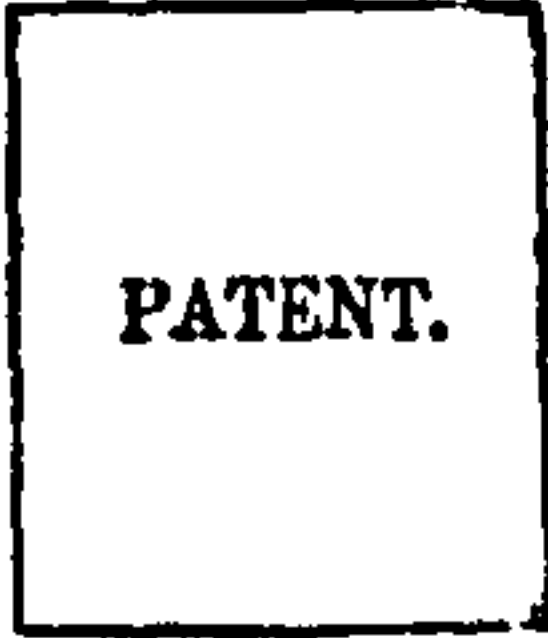
of 188 , for the following reason: † _____

(Signed) _____

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

FORM H.

FORM OF APPLICATION FOR COMPULSORY
GRANT OF LICENSE.



[To be accompanied by an unstamped copy.]

*

* Here state
name and
full address
of applicant.

hereby request you to bring to the notice of the Board of Trade
the accompanying petition for the grant of a license to me by †

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

(Signed) _____

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

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

FORM H1.

 FORM OF PETITION FOR COMPULSORY GRANT OF
 LICENSES.

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

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

THE PETITION of (a) of _____, being a person interested in the matter of this petition as herein-after described:—

SHEWETH as follows:—

(b) Here insert title of invention.

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

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

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

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

3. (d)

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

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

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

(e) state ground ground which is the la of sub- (b), o the c be. (f) state port effe the p order terms the of re secur paym othe upon the tione to be to th in qu

FORM I.

**FORM OF OPPOSITION TO COMPULSORY
GRANT OF LICENSE.**

PATENT.

* _____

* Here state
name and
full address.

hereby give notice of objection to the application of _____

for the compulsory grant of a License under Patent No. _____
of 188 .

(Signed) _____

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

FORM J.

 APPLICATION FOR CERTIFICATE OF PAYMENT OR
 RENEWAL.

_____ hereby transmit the fee prescribed for the continua-
 tion in force of _____ Patent No. _____, of 18 _____,
 for a further period of _____.

* Here in-
 sert name
 and full ad-
 dress of pa-
 tentee or his
 agent.

Name* _____

Address _____

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

 CERTIFICATE OF PAYMENT OR RENEWAL.

PATENT.

Letters Patent No. _____ of 188 _____.
 _____ 18 _____.

This is to certify that _____ did this _____
 day of _____ 18 _____, make the prescribed payment
 of £ _____ in respect of a period of _____ from _____,
 and that by virtue of such payment the rights of _____
 remain in force.*

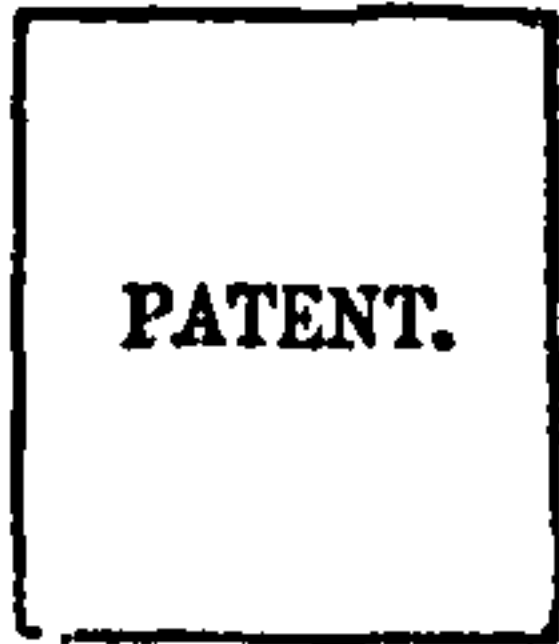
* See sect. 17
 of the Pa-
 tents, De-
 signs, and
 Trade Marks
 Act, 1883.

Seal.

Patent Office, London.

FORM K.

FORM OF APPLICATION FOR ENLARGEMENT OF
TIME FOR PAYMENT OF RENEWAL FEE.



SIR,

I HEREBY apply for an enlargement of time for
month in which to make the _____ payment of
£ _____ upon my Patent, No. _____,
of 188 .

I am,

Sir,

Your obedient Servant,

(a) _____

(a) Here in-
sert full ad-
dress to
which re-
ceipt is to be
sent.

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

FORM L.

PATENT.

FORM OF REQUEST TO ENTER NAME UPON THE REGISTER OF PATENTS, AND OF DECLARATIONS IN SUPPORT THEREOF.

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

I (a), _____

(b) My or
our.
(c) Or
names.

hereby request that you will enter (b) _____ name (c) in the Register of Patents:—

(d) I or
We.
(e) Here
insert the
nature of the
claim.

(d) _____ claim to be entitled (e) _____

(f) Here
give name
and address,
&c., of pa-
tenteo or pa-
tentees.

of the Patent No. _____ of 188 , granted to (f) _____

(g) Here
insert title of
the inven-
tion.

for (g) _____

(h) Here
specify the
particulars of
such docu-
ment, giving
its date, and
the parties to
the same, and
showing how
the claim
here made
is substan-
tiated.

by virtue of (h) _____

(i) Here
insert the
nature of the
document.

And in proof whereof I transmit the accompanying (i) _____ with an examined copy

(j) Where
any docu-
ment which
is a matter
of record is
required to
be left, a
certified or
official copy
in lieu of
an examined
copy must be
left.

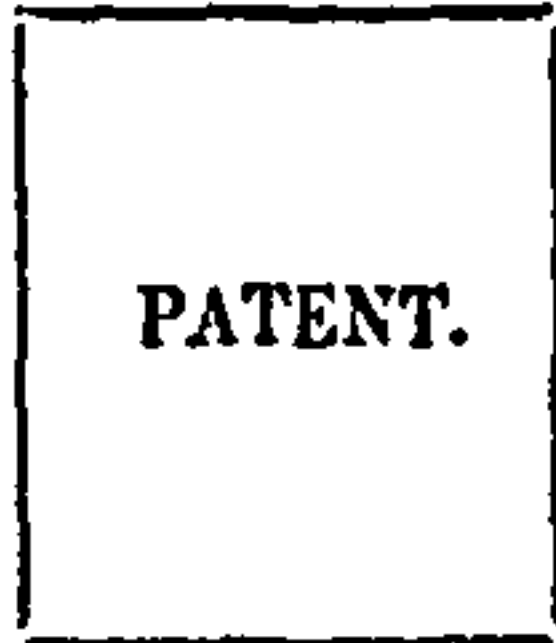
thereof. (j)

I am,
Sir,
Your obedient Servant,

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

FORM M.

FORM OF REQUEST TO ENTER NOTIFICATION OF
LICENSE IN THE REGISTER OF PATENTS.



SIR,

I HEREBY transmit an examined copy of a license granted
to me by _____

under Patent No. _____ of 188 , as well as the original license
for verification, and I have to request that a notification thereof
may be entered in the Register.

I am,

Sir,

Your obedient Servant,

(a) _____

(a) Here
insert full
address.

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



FORM N.

 APPLICATION FOR DUPLICATE OF PATENT.

Date

SIR,

I REGRET to have to inform you that the Letters Patent,

[* Here insert date, No., name, and full address of patentee.]

dated*

No.

granted to

[† Here insert title of invention.]

for an invention of †

[‡ Here insert the word "destroyed" or "lost," as the case may be.]

have been ‡

I beg therefore to apply for the issue of a duplicate of such

§ Here state interest possessed by applicant in the Letters Patent

Letters Patent. §

[Signature of Applicant.]

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

FORM O.

NOTICE OF INTENDED EXHIBITION OF AN UNPATENTED INVENTION.



* _____

* Here state name and full address of applicant.

hereby give notice of my intention to exhibit a _____
of _____ at the _____

Exhibition, which † _____ of _____ 18 _____,

† State "opened" or "is to open."

under the provisions of the Patents, Designs, and Trade Marks Act of 1883.

‡ _____ herewith enclose _____

‡ Insert brief description of invention, with drawings, if necessary.

(Signed) _____

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



FORM P.

 FORM OF REQUEST FOR CORRECTION OF
 CLERICAL ERROR.

SIR,

(a) or errors.

I HEREBY request that the following clerical error (a) may

(b) Here state
whether in
application,
specification,
or register.

be corrected in (b)

Signature _____

Full Address _____

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

FORM Q.

CERTIFICATE OF COMPTROLLER-GENERAL.

PATENT.

Patent Office,
London,

188

I, _____, Comptroller-General of Patents
Designs, and Trades Marks, hereby certify



FORM R.

FORM OF NOTICE FOR ALTERATION OF AN
ADDRESS IN REGISTER.

SIR,

(a) Here
state name
or names and
full address
of applicant
or appli-
cants.

(a) _____

hereby request that _____ address now upon the Register may be
altered as follows:—

(b) Here
insert full
address.

(b) _____

Sir,

Your obedient Servant,

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

FORM S.

FORM OF APPLICATION FOR ENTRY OF ORDER
OF PRIVY COUNCIL IN REGISTER.

PATENT.

(a)

(a) Here
state name
and full ad-
dress of ap-
plicant.

hereby transmit an office copy of an Order in Council with
reference to (b)

(b) Here
state the pur-
port of the
order.

Sir,

Your obedient Servant,

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

FORM T.

PATENT.

 FORM OF APPEAL TO LAW OFFICER.

(a) Here insert name and full address of appellant.

I, (a) _____ of (a) _____

hereby give notice of my intention to appeal to the Law Officer

(b) Here insert "the decision" or "that part of the decision," as the case may be.

from (b) _____

of the Comptroller of the _____ day of _____

(c) Here insert "refused [or allowed] application for Patent," or "refused [or allowed] application for leave to amend Patent," or otherwise, as the case may be.

188 _____, whereby he (c) _____

No. (d) _____ of the year 188 (d) _____.

Signature _____

Date _____

(d) Insert number and year.

N.B.—This notice has to be sent to the Comptroller General at the Patent Office, London, W.C., and a copy of same to the Law Officer's Clerk at Room 549, Royal Courts of Justice, London.

21st December, 1883.

(Signed) J. CHAMBERLAIN,
President of the Board of Trade.

RULES REGULATING THE PRACTICE AND PROCEDURE ON APPEALS TO THE LAW OFFICERS.

I. When any person intends to appeal to the law officer from a decision of the Comptroller in any case in which such appeal is given by the Act, he shall within fourteen days from the date of the decision appealed against file in the Patent Office, a notice of such his intention.

II. Such notice shall state the nature of the decision appealed against, and whether the appeal is from the whole, or part only, and if so, what part of such decision.

III. A copy of such notice of intention to appeal shall be sent by the party so intending to appeal to the law officer's clerk at room 549, Royal Courts of Justice, London; and when there has been an opposition before the Comptroller, to the opponent or opponents; and when the Comptroller has refused to seal a patent on the ground that a previous application for a patent for the same invention is pending, to the prior applicant.

IV. Upon notice of appeal being filed, the Comptroller shall forthwith transmit to the law officer's clerk all the papers relating to the matter of the application in respect of which such appeal is made.

V. No appeal shall be entertained of which notice is not given within fourteen days from the date of the decision appealed against, or such further time as the Comptroller may allow, except by special leave upon application to the law officer.

VI. Seven days' notice, at least, of the time and place appointed for the hearing of any appeal, shall be given by the law officer's clerk, unless special leave be given by the law officer that any shorter notice be given.

VII. Such notice shall in all cases be given to the Comptroller and the appellant; and, when there has been an opposition before the Comptroller, to the opponent or opponents; and, when the Comptroller has refused to seal a patent on the ground that an

application for a patent for the same invention is pending, to the prior applicant.

VIII. The evidence used on appeal to the law officer shall be the same as that used at the hearing before the Comptroller; and no further evidence shall be given, save as to matters which have occurred or come to the knowledge of either party, after the date of the decision appealed against, except with the leave of the law officer upon application for that purpose.

IX. The law officer shall, at the request of either party, order the attendance at the hearing on appeal, for the purpose of being cross-examined, of any person, who has made a declaration, in the matter to which the appeal relates, unless in the opinion of the law officer, there is good ground for not making such order.

X. Any person requiring the attendance of a witness for cross-examination shall tender to the witness whose attendance is required a reasonable sum for conduct money.

XI. Where the law officer orders that costs shall be paid by any party to another, he may fix the amount of such costs, and if he shall not think fit to fix the amount thereof, he shall direct by whom and in what manner the amount of such costs shall be ascertained.

XII. If any costs so ordered to be paid be not paid within fourteen days after the amount thereof has been so fixed or ascertained, or such shorter period as shall be directed by the law officer, the party to whom such costs are to be paid may apply to the law officer for an order for payment under the provisions of sect. 38 of the Act.

XIII. All documentary evidence required, or allowed by the law officer to be filed, shall be subject to the same regulations, in all respects, as apply to the procedure before the Comptroller, and shall be filed in the Patent Office, unless the law officer shall order to the contrary.

XIV. Any notice or other document required to be given to the law officer's clerk, under these rules, may be sent by a prepaid letter through the post.

HENRY JAMES, A.G.
FARRER HERSCOWELL, S.G.

RULES TO BE OBSERVED IN PROCEEDINGS before the JUDICIAL COMMITTEE OF THE PRIVY COUNCIL under the Act of the 5th and 6th Wm. IV., intituled "An Act to amend the Law touching LETTERS PATENT FOR INVENTIONS" (cap. 83) (a).

RULE I.

A party intending to apply by petition, under sect. 2 of the said Act, shall give public notice by advertising 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 carries on any manufacture of anything made according to his specification, or near to or in which he resides, in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to petition His Majesty under the said section, and shall in such advertisements state the object of such petition, and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the *London Gazette*), and that on or before such day, notice must be given of any opposition intended to be made to the petition; and any person intending to oppose the said application, shall lodge notice to that effect at the Council Office, on or before such day so named in the said advertisements, and having lodged such notice shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

This rule relates to confirmation of letters patent, as to which no provisions are contained in the present Act.

(a) No new rules have been issued, and the following rules made under the statutes repealed by the present Act are still in force. The requirements of the rules should be

strictly observed: *Bolmer's Patent*, 1 Web. P. C. 740; 2 Moo. P. C. C. 471; *Johnson's and Atkinson's Patents*, L. R. 5 P. C. 87.

RULE II.

A party intending to apply by petition, under sect. 4 of the said Act, shall in the advertisements directed to be published by the said section, give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the *London Gazette*), and that on or before such day caveats must be entered; and any person intending to enter a caveat shall enter the same at the Council Office, on or before such day so named in the said advertisements; and having entered such caveat, shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

Advertisements.

Section 4 of the Act of Wm. 4, related to petitions for prolongation of letters patent, and it provided with respect to advertisements of the petition, that if a patentee "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 anything 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," &c., the petition shall be heard.

By sect. 25 of the present Act, the rules to be made thereunder are to provide any other things for advertisements, and until such rules are made, proceedings on petitions for extension "shall be regulated according to the existing procedure and practice of the Judicial Committee." As no rules have yet been made, it is presumed that the advertisements on petitions for extension must be issued in accordance with the above section of the Act of Wm. 4.

Place of business.

It would seem that the advertisements must be issued in the place or district where the business is actually carried on in cases where the patentee does not himself carry on the business and resides elsewhere (*b*).

It would, however, in any case be safer to advertise in both localities, *i.e.*, in that where the business is carried on, and also in that where the patentee resides.

Persons interested.

If an equitable assignee of a patent wishes to appear upon and in support of a petition for extension, his name should be inserted in the advertisements (*c*), and it is advisable in any case where a person having

(*b*) *Derosne's Patent*, 2 Web. P. C. 2; 4 Moo. P. C. C. 416. Compare *Perkins' Patent*, 2 Web. P. C. 6, 8.

(*c*) *Noble's Patent*, 7 Moo. P. C. C. 191.

an interest in a patent desires to support an application for extension, that his name should be set forth in the advertisements.

Where the petitioner died before the hearing, his widow, as executrix, was allowed to appear without further advertisements on a supplemental petition (*d*).

Where on an application to fix the hearing, it appeared that the patent had nearly eighteen months to run, the application was ordered to stand over, as the accruing profits meanwhile might affect the question of extension (*e*).

Time for hearing.

The provisions as to "prosecuting with effect" a petition for extension contained in the repealed statutes (*f*) are not reproduced in the present statute. It is, therefore, submitted that it will be sufficient if a petition is presented while the letters patent are in force, even though further proceedings cannot take place till they have expired.

An application for extension may be heard while proceedings are pending as to the validity of a patent (*g*).

Any person of the English public has a right to enter a caveat to be heard (*h*), and so has an alien who is resident abroad who is interested in an English patent competing with the patent sought to be prolonged (*i*); and a person who has entered a caveat is entitled to notice of any application in respect of the petition (*k*).

Caveat.

RULE III.

Petitions under sects. 2 and 4 of the said Act must be presented within one week from the insertion of the last of the advertisements required to be published in the *London Gazette*.

In case of accidental delay arising from mistake, the Privy Council may extend this time (*l*).

RULE IV.

All petitions must be accompanied with affidavits of advertisements having been inserted according to the provisions of sect. 4 of

(*d*) *Herbert's Patent*, L. R. 1 P. C. 399, 401.

(*e*) *Macintosh's Patent*, 1 Web. P. C. 739.

(*f*) 5 & 6 Wm. 4, c. 83, s. 4; 2 & 3 Vict. c. 67. See *Bodmer's Patent*, 1 Web. P. C. 740; 2 Moo. P. C. C. 471; *Kay's Patent*, 3 Moo. P. C. C. 24; *Ledsam v. Russell*, 1 H. L. C. 687.

(*g*) *Kay's Patent*, *ubi supra*.

(*h*) *Lowe's Patent*, 8 Moo. P. C. C.

1. Query, if a caveat can be entered by a person as agent for another so as to entitle the latter to be heard.

Ibid.

(*i*) *Re Schlumberger*, 9 Moo. P. C. C. 1.

(*k*) *Hutchinson's Patent*, 14 Moo. P. C. C. 364.

(*l*) *Hutchinson's Patent*, *ubi supra*.

the said Act, and the 1st and 2nd of these Rules, and the matters in such affidavits may be disputed by the parties opposing upon the hearing of the petitions.

RULE V.

All persons entering caveats under sect. 4 of the said Act, and all parties to any former suit or action touching letters patent, in respect of which petitions shall have been presented under sect. 2 of the said Act, and all persons lodging notices of opposition under the 1st of these Rules, shall respectively be entitled to be served with copies of petitions presented under the said sections, and no application to fix a time for hearing shall be made without affidavit of such service.

This rule extends to all applications (*m*).

RULE VI.

All parties served with petitions shall lodge at the Council Office, within a fortnight after such service, notice of the grounds of their objections to the granting of the prayers of such petitions.

The grounds of objection may be stated generally without going into particulars (*n*).

RULE VII.

Parties may have copies of all papers lodged in respect of any application under the said Act, at their own expense.

RULE VIII.

The registrar of the Privy Council, or other officer to whom it may be referred to tax the costs incurred in the matter of any petition presented under the said Act, shall allow or disallow in his discretion all payments made to persons of science or skill examined as witnesses to matters of opinion chiefly.

RULE IX.

A party applying for an extension of a patent, under sect. 4 of the said Act, must lodge at the Council Office six printed copies of

(*m*) *Hutchinson's Patent, ubi supra.*

(*n*) *Ball's Patent, 4 App. Cas. 171.*

the specification (o), and also four copies of the balance sheet of expenditure and receipts relating to the patent in question, which accounts are to be proved on oath before the Lords of the Committee at the hearing. In the event of the applicant's specification not having been printed, and if the expense of making six copies of any drawing therein contained or referred to would be considerable, the lodging of two copies only of such specification and drawing will be deemed sufficient.

All copies mentioned in this Rule must be lodged not less than one week before the day fixed for hearing the application.

The Judicial Committee will hear the Attorney-General or other counsel, on behalf of the Crown, against granting any application made under either the 2nd or 4th section of the said Act, in case it shall be thought fit to oppose the same on such behalf.

One week. This rule is strictly adhered to in order to allow the Attorney-General to inspect the accounts and make inquiries (p).

(o) *Bell's Patent*, 2 Web. P. C. 159. *Patents*, L. R. 5 P. C. 88; *Chatwood's Patent*, *Ibid.*

(p) *Johnson's and Atkinson's*

PATENT OFFICE.

DESIGNS RULES.

Issued December 21, 1883. See Act, sect. 101, for the General Power to make Rules.

By virtue of the provisions of the Patents, Designs, and Trade Marks Act, 1883, the Board of Trade do hereby make the following Rules:—

COMMENCEMENT.

1. These Rules may be cited as the Designs Rules, 1883, and shall come into operation from and immediately after the 31st day of December, 1883.

INTERPRETATION.

Interpreta-
tion.

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

FEEES.

Fees.

3. The fees to be paid under the said Act, so far as it relates to applications for and registration of designs, shall be the fees specified in the First Schedule hereto.

FORMS.

Forms.

4. An application for the registration of a design shall be made in the Form E. in the Second Schedule hereto. The remaining forms in such Schedule may be used in all cases to which they are applicable.

CLASSIFICATION OF GOODS.

Classification
of goods.

5. For the purposes of the registration of designs and of these Rules, goods are classified in the manner appearing in the Third Schedule hereto.

APPLICATION FOR REGISTRATION.

6. All communications between an applicant for the registration of a design and the Comptroller or the Board of Trade, as the case may be, may be made by or through an agent duly authorised to the satisfaction of the Comptroller. Agents.

7. An application for the registration of a design shall, with the prescribed fee, be left at the Patent Office, Designs Branch, or be sent prepaid by post, addressed to the Comptroller at the Patent Office (Designs Branch), 25, Southampton Buildings, Chancery Lane, London. Address of
Comptroller.

Second Schedule, Form E.

8. An application for the registration of a design, and all drawings, sketches, photographs, or tracings of a design, and all other documents sent to or left at the Patent Office, Designs Branch, or otherwise furnished to the Comptroller or to the Board of Trade, shall be written, printed, copied, or drawn upon strong wide-ruled foolscap paper (on one side only), of the size of 13 inches by 8 inches, leaving a margin of not less than 1 inch and a half in the left-hand part thereof, and the signature of the applicants or agents thereto must be written in a large and legible hand. Size of
papers.

The Comptroller may in any particular case vary the requirements of this Rule as he may think fit.

9. An application for the registration of a design shall be accompanied by a sketch or drawing, or by three exactly similar drawings, photographs, or tracings of the design, or by three specimens of the design, and shall, in describing the nature of the design, state whether it is applicable for the pattern or for the shape or configuration of the design, and the means by which it is applicable. Sketches and
drawings.
Nature of
design.

When sketches, drawings, or tracings are furnished they must be fixed.

When the articles to which designs are applied are not of a kind which can be pasted into books, drawings, photographs, or tracings of such designs shall be furnished.

. Act, sect. 60, *ante*, p. 114, for definition of design.

10. On receipt of an application for registration the Comptroller shall send to the applicant an acknowledgment thereof. Acknow-
ledgment to
applicant.

11. If the Comptroller determines to register a design, he shall as soon as may be send to the applicant a certificate of such regis- Notice of
registration.

tration in the prescribed form, sealed with the seal of the Patent Office:

Applications
may be sent
by post.

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

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

Act, sect. 97, *ante*, p. 158.

Hearing by
Comptroller.

13. Before exercising any discretionary power given to the Comptroller by the said Act adversely to an applicant for registration of a design the Comptroller shall give him ten days' notice of the time when he may be heard personally or by his agent before the Comptroller.

Act, sect. 94, *ante*, p. 157.

Hearing by
Comptroller.

14. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter.

Notification
of Comptroller's
decision.

15. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant.

APPEAL TO THE BOARD OF TRADE.

Notice of
appeal to
Board of
Trade.

16. Where the Comptroller refuses to register a design, and the applicant intends to appeal to the Board of Trade from such refusal, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Designs Branch, a notice of such his intention.

Statement on
appeal.

17. Such notice shall be accompanied by a statement of the grounds of appeal, and of the applicant's case in support thereof.

Notice to
Secretary of
Board of
Trade.

18. The applicant shall forthwith on leaving such notice send a copy thereof to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London.

19. The Board of Trade may thereupon give such directions (if any) as they may think fit for the purpose of the hearing of the appeal for the Board of Trade.

Directions
by Board of
Trade.

This rule purports to provide for hearings "for" (*i.e.*, not merely "by" the Board of Trade. But the Act contains no provision for hearings other than by the Board of Trade: see sect. 47, sub-s. (7)

20. Seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing of the appeal shall be given to the Comptroller and the applicant.

Notice of
time of
hearing.

Compare the corresponding Trade-Marks Rules, 20-24.

REGISTER OF DESIGNS.

21. Upon the sealing of a certificate of registration the Comptroller shall cause to be entered in the register of designs the name, address, and description of the registered proprietor, and the date upon which the application for registration was received by the Comptroller, which day shall be deemed to be the date of the registration.

Registering
design.

22. Where a person becomes entitled to the copyright in a registered design, or to any share or interest therein, by assignment, transmission, or other operation of law, or where a person acquires any right to apply the design, either exclusively or otherwise, a request for the entry of his name in the register as such proprietor of the design, or as having acquired such right, as the case may be (hereinafter called the claimant), shall be addressed to the Comptroller, and left at the Patent Office, Designs Branch.

Subsequent
proprietors.

23. Every such request shall, in the case of an individual, be made and signed by the person requiring to be registered as proprietor; and in the case of a firm or partnership, by some one or more members of such firm or partnership, or, in either case, by his or their agent respectively duly authorised to the satisfaction of the Comptroller; and in the case of a body corporate, by their agent authorised in like manner.

Signature of
request.

24. Every such request shall state the name, address, and description of the claimant, and the particulars of the assignment, transmission, or other operation of law by virtue of which the request is made, so as to show the manner in which and the person or persons to whom the design has been assigned or transmitted, or the person or persons who has or have acquired such right as aforesaid, as the case may be.

Particulars
in request.

Statutory
declaration
with request.

25. Every such request shall be accompanied by a statutory declaration to be thereunder written verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the design or the right to apply the same, as the case may be, as claimed by such request.

Proof of title
if required.

26. The claimant shall furnish to the Comptroller such other proof of title as he may require for his satisfaction.

Corporate
name.

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

Notice of
order of
Court.

28. Where an order has been made by the Court, under sect. 90 of the said Act, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified, or the purport of such order shall otherwise be duly entered in the register, as the case may be.

POWER TO DISPENSE WITH EVIDENCE.

Comp-
troller's dis-
cretion as to
evidence.

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

* Patents Rules, 77; Trade-Marks Rules, 50.

AMENDMENTS.

Amend-
ments.

30. Any document, drawings, sketches, or tracings for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which, in the opinion of the Comptroller, may be obviated without detriment to the interests of any person may be corrected, if the Comptroller think fit, and upon such terms as he may direct.

Act, sects. 91 and 101. Patents Rules, 18; Trade-Marks Rules, 51.

ENLARGEMENT OF TIME.

31. The time prescribed by these Rules for doing any act or taking any proceeding thereunder may be enlarged by the Comptroller, if he think fit, and upon such terms as he may direct.

Enlargement
of time.

MARKING GOODS.

32. Before the delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall, if such article is included in any of the classes one to twelve in the third schedule hereto, cause each such article to be marked with the abbreviation "R^D" and the number appearing on the certificate of registration, and shall, if such article is included in the classes thirteen or fourteen in the third schedule hereto, cause each such article to be marked with the abbreviation "REG^D."

Registration
mark.

See Act, sect. 51, *ante*, p. 107.

INSPECTION.

33. On such days and during such hours as the Comptroller shall from time to time determine and notify by a placard posted at the Patent Office any person paying the prescribed fee may, on production of the number of any design of which the copyright has ceased, inspect such design, and any person paying the prescribed fee may take a copy or copies of such design.

Office hours.

CERTIFICATE BY COMPTROLLER.

34. Where a certificate is required for the purpose of any legal proceeding or other special purpose as to any entry, matter, or thing which the Comptroller is authorised by the said Act or these Rules to make or do, the Comptroller may, on a request in writing and on payment of the prescribed fee, give such certificate, which shall also specify on the face of it the purpose for which it has been requested as aforesaid.

Certificate in
legal pro-
ceeding.

SEARCHES ON PRODUCTION OF SKETCH OF DESIGN.

35. The Comptroller may, on receipt of the prescribed fee, make searches among the designs registered at the Patent Office after the commencement of the Act, and inform any person requesting him so to do whether a particular design produced by such person, and to be applied to goods in any particular class, is or is not identical with or an obvious imitation of any design applied to such goods and registered since the commencement of the Act.

Search.

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS.

Notice of
exhibition.

36. Any person desirous of exhibiting a design, or any article to which a design has been applied, at an industrial or international exhibition, or of publishing a description of a design during the period of the holding of the exhibition, shall, after having obtained from the Board of Trade a certificate that the exhibition is an industrial or international one, give to the Comptroller seven days' notice in writing of his intention to exhibit the design or article, or to publish a description of the design, as the case may be.

For the purpose of identifying the design in the event of an application to register the same being subsequently made, the applicant shall furnish to the Comptroller a brief description of the nature of the design, accompanied by a sketch or drawing thereof, and such other information as the Comptroller may in each case require.

Act, sect. 57, *ante*, p. 110. Second Schedule, Form L.

REPEAL.

Repeal of
previous
Rules.

37. All general rules and regulations made by any authority under the Acts relating to the Copyright of Designs, and in force on the 31st December, 1883, shall be, and they are hereby repealed as from that date without prejudice nevertheless to any application then pending.

SCHEDULES.

FIRST SCHEDULE.

FEES.

	£	s.	d.
1. On application to register one design to be applied to single articles in each class except classes 13 and 14	0	10	0
2. On application to register one design to be applied to single articles in classes 13 and 14	0	1	0
3. On application to register one design to be applied to a set of articles for each class of registration ..	1	0	0
4. On notice of appeal to Board of Trade against refusal of Comptroller to register	1	0	0
5. Copy of certificate of registration, each copy ..	0	1	0
6. On request for Certificate of Comptroller for legal proceedings or other special purpose	0	5	0
7. On request to enter name of subsequent proprietor	} same as registration fee.		
8. On notice to Comptroller of intended exhibition of an unregistered design	0	5	0
9. Inspection of design of which the copyright has expired, for each quarter of an hour	0	1	0
10. Copy of one such design	} cost according to agreement.		
11. On request to correct clerical error	0	5	0
12. On request for search under sect. 53	0	5	0
13. On request to enter new address	0	5	0
14. For office copy, every 100 words	0	0	4
	(but never less than 1s.)		
15. For certifying office copies, MSS. or printed	0	1	0

NOTE.—The term “set” to include any number of articles ordinarily on sale together irrespective of the varieties of size and arrangement in which the particular design may be shown on each separate article.

Approved, 4th December, 1883.

SECOND SCHEDULE.

FORMS.**Form of Application to Register.**

- „ **Appeal to Board of Trade.**
- „ **Certificate of Registration.**
- „ **Application for Copy of Certificate of Registration.**
- „ **Request for Certificate for use in Legal Proceedings.**
- „ **Certificate for use in Legal Proceedings.**
- „ **Request to enter Name of Subsequent Proprietor.**
- „ **Notice of intending Exhibition of Unregistered Design.**
- „ **Request for Correction of Clerical Error or for entry of New Address.**

PATENTS, DESIGNS, AND TRADE MARKS
ACT, 1883.



FORM E.

APPLICATION FOR REGISTRATION OF DESIGN
IN CLASSES _____

You are hereby requested to register the accompanying design
in Class _____, in the name of (a) _____

of _____

who claims to be the proprietor thereof, and to return the same to

(a) Here insert legibly the name, address, and description of the individual or firm.

Statement of nature of design (b) _____

(b) Such as whether it is applicable for the pattern or for the shape.

(c) (c) To be signed by the applicant.

(Signed) _____

Dated the _____ day of _____ 188_____.

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



FORM F.

**APPEAL TO BOARD OF TRADE ON REFUSAL OF
COMPTROLLER TO REGISTER A DESIGN.**

[To be accompanied by an unstamped copy.]

Sir,

I heroby appeal against your decision upon my application
to register _____

(a) The statement of the case to be written upon foolscap paper (on one side only), with a margin of two inches on the left-hand side thereof.

and beg to submit my case (a) for the decision of the Board of Trade.

I am, Sir,

Your obedient servant,

The Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

FORM G.

CERTIFICATE OF REGISTRATION OF DESIGN.

(No. No. _____.)

Seal of
Patent
Office.

Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

This is to certify that the Design of which this is a copy was registered this _____ day of _____ 188 , in pursuance of the Patents, Designs, and Trade Marks Act, 1883, in respect of the application of such Design to articles in Class _____, for which a copyright of five years is granted.

Designs.

FORM H.

**APPLICATION FOR COPY OF CERTIFICATE OF
REGISTRATION OF DESIGN.**

Sir,

I hereby request you to furnish me with a Copy Certificate
of Registration of Design No. _____ in Class _____.

(Signed) _____

Dated the _____ day of _____ 188____.

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

FORM I

REQUEST FOR CERTIFICATE FOR USE IN LEGAL PROCEEDINGS.



Sir,

I hereby request you to send me for the purposes of use in the suit of (a) _____

(a) Here state the title of the legal proceeding or the other purpose for which the Certificate is required.

a certificate that the design of which a copy is herein enclosed was (b) _____

(b) Here state the entry, matter, or thing which the writer wishes certified.

(Signed) _____

_____ day of _____ 188_____.

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

FORM J.

CERTIFICATE FOR USE IN LEGAL PROCEEDINGS.

In the matter of _____

No. _____

_____ Comptroller-General of Patents,
 Designs, and Trade Marks, hereby certify that _____

Witness my hand and seal this _____ day of _____

188 _____ .

Comptroller.

Seal

Patent Office, Designs Branch,
 25, Southampton Buildings,
 London.

FORM K.

REQUEST TO ENTER NAME OF SUBSEQUENT PROPRIETOR OF DESIGN, WITH DECLARATION IN SUPPORT THEREOF.



I, [a] _____

[a] or We.
Here insert name, full address, and description.

hereby request that you will enter [b] _____ name [c] _____ in the Register of Designs as proprietor _____ of the Design No. _____ in Class _____.

[b] My or our.
[c] as Names.

[d] _____ entitled as to the said Design _____
[e] _____

[d] I am, or We are.

[e] Here state whether design transmitted by death, marriage, bankruptcy, or other operation of law, and if entitled by assignment state the particulars thereof as, e.g., "by deed dated the _____ day of _____ 188- made between so-and-so of the one part."

[f] And I do solemnly and sincerely declare that the above several statements are true, and the particulars above set out comprise every material fact and document affecting the proprietorship of the said Design as above claimed.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

[g] _____

[f] This paragraph is not required when the declaration is made out of the United Kingdom.

[g] To be signed here by the person making the declaration.

[h] Signature and title of the authority before whom the declaration is made.

Declared at _____

this _____ day of _____ 188 .

Before me,

[h] _____

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



FORM L.

**NOTICE OF INTENDED EXHIBITION OF AN
 UNREGISTERED DESIGN.**

(a) Here
 state name
 and address
 of applicant.

(a) _____

hereby give notice of my intention to exhibit a _____

of _____ at the _____

(b) State
 "opened" or
 "to open."

Exhibition, which (b) _____

of _____ 188____, under the provisions of the

(c) Insert
 brief descrip-
 tion of the
 design, with
 drawing.

Patents, Designs, and Trade Marks Act of 1883 (c) _____

herewith enclose a _____

(Signed) _____

Dated the _____ day of _____ 188 .

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

FORM M.

REQUEST FOR CORRECTION OF CLERICAL ERROR OR
FOR ENTRY OF NEW ADDRESS.

Designs.

Sir,

I hereby request that _____

(Signed) _____

Dated the _____ day of _____ 188 .

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

THIRD SCHEDULE.

CLASSIFICATION OF ARTICLES OF MANUFACTURE AND SUBSTANCES.

Classes.

1. Articles composed wholly or partly of metal, not included in Class 2.
2. Jewellery.
3. Articles composed wholly or partly of wood, bone, ivory, papier maché, or other solid substances not included in other classes.
4. " " " " glass, earthenware or porcelain, bricks, tiles, or cement.
5. " " " " paper (except hangings).
6. " " " " leather, including book-binding, of all materials.
7. Paper hangings.
8. Carpets and rugs in all materials, floorcloths, and oilcloths.
9. Laco, hosiery.
10. Millinery and wearing apparel, including boots and shoes.
11. Ornamental needlework on muslin or other textile fabrics.
12. Goods not included in other classes.
13. Printed or woven designs on textile piece goods.
14. " " " " handkerchiefs and shawls.

Approved, 4th December, 1883.

TRADE MARKS RULES.

Issued 21 December 1883. See Act, sect. 101, for the general power to make rules.

By virtue of the provisions of the Patents, Designs, and Trade Marks Act, 1883, the Board of Trade do hereby make the following Rules:—

PRELIMINARY.

1. These Rules may be cited as the Trade Marks Rules, 1883, and shall come into operation from and immediately after the 31st day of December, 1883.

INTERPRETATION.

2. In the construction of these Rules any words herein used defined by the said Act shall have the meanings thereby assigned to them respectively. Interpretation.

FEEs.

3. The fees to be paid in pursuance of the said Act, so far as it relates to trade-marks, shall be the fees specified in the First Schedule hereto. Fees.

FORMS.

4. The Form F. in the First Schedule to the said Act shall be altered or amended by the substitution therefor of the Form F. in the Second Schedule to these Rules. Forms.

5. (1) An application for registration of a trade-mark shall be made in the Form F. in the Second Schedule to these Rules; (2) The remaining forms in such Schedule may be used in all cases to which they are applicable.

CLASSIFICATION OF GOODS.

6. For the purposes of trade-marks registration and of these Rules goods are classified in the manner appearing in the Third Schedule hereto. Classification of goods.

If any doubt arises as to what class any particular description of goods belongs, the doubt shall be determined by the Comptroller.

Act, sect. 65.

APPLICATION FOR REGISTRATION.

Application
by firm.

7. An application for registration of a trade-mark, if made by any firm or partnership, may be signed by some one or more members of such firm or partnership, as the case may be.

If the application be made by a body corporate it may be signed by the Secretary or other principal officer of such body corporate.

Agency.

8. An application for registration and all other communications between the applicant and the Comptroller may be made by or through an agent duly authorised to the satisfaction of the Comptroller.

Acknow-
ledgment of
application.

9. On receipt of the application the Comptroller shall furnish the applicant with an acknowledgment thereof.

Contents of
form of
application.

10. Where application is made to register a trade-mark which was used by the applicant or his predecessors in business before the 13th of August, 1875, the application shall contain a statement of the time during which and of the person by whom it has been so used in receipt of the goods mentioned in the application.

Act, sect. 64.

Size, &c., of
documents.

11. Subject to any other directions that may be given by the Comptroller, all applications, notices, counter-statements, representations of marks, papers having representations affixed or other documents required by the said Act or by these Rules to be left with or sent to the Comptroller or to the Cutlers' Company, shall be upon foolscap paper of a size of 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

Qualification
of metal
goods.

12. In the case of an application for the registration of a trade-mark used on any metal goods, other than cutlery, edge tools, and raw steel, the applicant shall state in the specification of goods in the form of application of what metal or metals the goods in respect to which he applies are made.

Representa-
tion of trade-
mark.

13. Subject to any other directions that may be given by the Comptroller, three representations of each trade-mark, except in the case of marks applied for in classes 23 to 35 inclusive, must be supplied upon paper of the size aforesaid, and must be of a durable

nature. One of such representations must be made upon or affixed to the form of application, the others upon separate half-sheets. In the case of trade-marks exceeding the limits of the foolscap paper of the size aforesaid, such may be pasted and folded upon the sheets of foolscap.

In the case of marks applied for in classes 23 to 35 inclusive, the applicant shall supply for representations of each mark for each class.

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade-mark may be sent either of full size or on a reduced scale, and in such form as the Comptroller may think most convenient.

The Comptroller may, if dissatisfied with the representation of a trade-mark, require a fresh representation either before he proceeds with the application or before he registers the trade-mark.

The Comptroller may also, in exceptional cases, deposit in the Patent Office a specimen or copy of any trade-mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such a manner as he may think fit.

Second Schedule, Form G.

14. When an application relates to a series of trade-marks differing from one another in respect of the particulars mentioned in section 66 of the said Act, a representation of each trade-mark of the series shall be made or affixed upon the form of application and also upon each of the separate half-sheets of paper aforesaid.

Representations of a series of trade marks.

Compare rule 23, and see Act, sects. 64 and 66.

15. Wherever a mark consists of or includes words printed in other than Roman character, there shall be given at the foot or on the back of each representation a translation of such words, signed by the applicant or his agent.

Translation of foreign characters.

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

Mode of sending notices, &c.

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

Act, sect. 97.

EXERCISE OF DISCRETIONARY POWERS.

Hearing by
Comptroller.

17. Before exercising any discretionary power given to the Comptroller by the said Act adversely to the applicant for registration of a trade-mark, the Comptroller shall give him ten days' notice of the time when he may be heard personally or by his agent before the Comptroller.

Act, sect. 54.

Notice of
wish to be
heard before
Comptroller.

18. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter.

Notification
of decision.

19. The decision of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant.

APPEAL TO THE BOARD OF TRADE.

Appeal to
Board of
Trade.

20. Where the Comptroller refuses to register a trade-mark and the applicant intends to appeal to the Board of Trade from such refusal, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Trade Marks Branch, a notice of such his intention.

Statement of
grounds of
appeal.

21. Such notice shall be accompanied by a statement of the grounds of appeal, and of the applicant's case in support thereof.

Copy of
notice to
Board of
Trade.

22. The applicant shall forthwith on leaving such notice send a copy thereof to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London.

Directions
by Board.

23. The Board of Trade may thereupon give such directions (if any) as they may think fit with respect to evidence, or otherwise, for the purpose of the hearing of the appeal by the Board of Trade, or for the purpose of their referring the appeal to the Court to hear and determine the same.

Notice of
time of
hearing.

24. Where the Board of Trade intend to hear the appeal, seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing, shall be given to the Comptroller and the applicant.

See Act, sect. 62. Compare the corresponding Belgus Rules, 16-20.

ADVERTISEMENT OF APPLICATION.

Advertise-
ment of
application.

25. Every application shall be advertised by the Comptroller in the official paper, during such times, and in such manner as the Comptroller may direct.

If no representation of the trade-mark be inserted in the official paper in connection with the advertisement of an application, the Comptroller shall refer in such advertisement to the place or places where a specimen or representation of the trade-mark is deposited for exhibition.

26. The official paper for the purposes of these Rules shall be some paper published under the direction of the Board of Trade, or such other paper as such Board may from time to time direct.

Definition of official paper.

27. For the purposes of such advertisement the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of the trade-mark, of such dimensions as may from time to time be directed by the Comptroller, or with such other information or means of advertising the trade-mark as may be required by the Comptroller; and the Comptroller, if dissatisfied with the block or electrotype furnished by the applicant or his agent, may require a fresh block or electrotype before the proceeding with the advertisement.

Means of advertising trade-mark to be supplied to official paper.

28. When an application relates to a series of trade-marks differing from one another in respect of the particulars mentioned in section 66 of the said Act, the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of any or of each of the trade-marks constituting the series; and the Comptroller may, if he thinks fit, insert with the advertisement of the application a statement of the manner in respect of which the several trade-marks differ from one another.

Advertisement of series.

Compare rule 14.

OPPOSITION TO REGISTRATION.

29. (1.) Where a case stands for the determination of the Court, under the provisions of sect. 69 of the said Act, the Comptroller shall require the applicant within one month, or such further time as the Comptroller may allow, to issue a summons in the chambers of a judge of Her Majesty's High Court of Justice for an order that notwithstanding the opposition of which notice has been given the registration of the trade-mark be proceeded with by the Comptroller, or to take such other proceedings as may be proper and necessary for the determination of the case by the Court.

Manner of bringing case before Court.

(2.) The applicant shall thereupon issue such summons, or take such other proceedings as aforesaid, within the period of one month above-named, or such further time as the Comptroller may allow, and shall also within the like period give notice thereof to the Comptroller.

(3.) If the applicant shall fail to issue such summons, or to take such other proceedings, of which failure the non-receipt by the Comptroller of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

Made of giving notice that the matter has been brought before the Court.

(4.) Such notice to the Comptroller shall be given by delivering at or sending to the Patent Office a copy of the summons or other initiatory proceeding bearing an endorsement of service signed by the applicant or his solicitor, or an endorsement of acceptance of service signed by the opponent or his solicitor.

Compare, sect. 69, and rule 12, *post*.

REGISTER OF TRADE MARKS.

Time of registration of trade-marks.

30. As soon as may be after the expiration of two months from the date of the first advertisement of the application, the Comptroller shall, subject to any such summons, or other proceeding as aforesaid and the determination of the Court thereon, if he is satisfied that the applicant is entitled to registration, and on payment of the prescribed fee, enter the name, address, and description of the applicant in the Register of Trade Marks as the registered proprietor of the trade-mark in respect of the particular goods or classes of goods described in his application.

Where applicant dies before registration, the trade-mark may be registered for successors to good will of business.

31. In case of the death of any applicant for a trade-mark after the date of his application, and before the trade-mark applied for has been entered on the register, the Comptroller, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, enter on the register, in place of the name of such deceased applicant, the name, address, and description of the person owning the goodwill of the business, if such ownership be proved to the satisfaction of the Comptroller.

Entries to be made in register.

32. Upon registering any trade-mark the Comptroller shall enter in the register the date on which the application for registration was received by the Comptroller (which day shall be deemed to be the date of the registration) and such other particulars as he may think necessary.

Notice of registration.

33. The Comptroller shall send notice to the applicant of the registration of his trade-mark, together with a reference to the advertisement of such trade-mark in the official paper.

Request by subsequent proprietor.

34. Where a person becomes entitled to a registered trade-mark by assignment, transmission, or other operation of law, a request for the entry of his name in the register as proprietor of the trade-

mark shall be addressed to the Comptroller, and left at the Patent Office.

Act, sect. 78. Trade Marks Rules, Second Schedule, Form K.

35. Such request shall in the case of an individual be made and signed by the person requiring to be registered as proprietor, and in the case of a firm or partnership by some one or more members of such firm or partnership, or in either case by his or their agent respectively duly authorised to the satisfaction of the Comptroller, and in the case of a body corporate by their agent, authorised in like manner.

Signature of request.

36. Every such request shall state the name, address, and description of the person claiming to be entitled to the trade-mark (hereinafter called the claimant), and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom the trade-mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which the trade-mark has been registered.

Contents of request.

37. Every such request shall be accompanied by a statutory declaration to be thereunder written, verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the trade-mark as claimed by such request.

Declaration to accompany request.

38. The claimant shall furnish to the Comptroller such other proof of title and of the existence and ownership of such goodwill as aforesaid as he may require for his satisfaction.

Further proof of title if required.

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

Body corporate.

40. The term "applicant" in Rules 17, 18, and 19 shall include each of several persons claiming to be registered as proprietor of the same trade-mark.

Definition of applicant.

41. Whether all of such persons so claiming require to be heard before the Comptroller or not, he may, before exercising the discretion vested in him by sect. 71 of the said Act, require such persons, or any or either of them, to submit a statement in writing

Comptroller may require statement from rival claimants.

within a time to be notified by him, or to attend before him and make oral explanations with respect to such matters as the Comptroller may require.

Submission
to Court of
conflicting
claims.

42. Where each of several persons claims to be registered as proprietor of the same trade-mark, and the Comptroller refuses to register any of them until their rights have been determined according to law, the manner in which the rights of such claimants may be submitted to the Court by the Comptroller, or if the Comptroller so require, by the claimants, shall, unless the Court otherwise order, be by a special case; and such special case shall be filed and proceeded with in like manner as any other special case submitted to the Court, or in such other manner as the Court may direct.

Compare rule 29, *ante*.

Settlement
of special
case.

43. Where the special case is to be submitted to the parties it may be agreed to by them, or if they differ, may be settled by the Comptroller on payment of the prescribed fees.

Second Schedule, Form T.

44. Where an order has been made by the Court in either of the following cases, viz. :—

(a) allowing an appeal under sect. 62 of the said Act;
(b) disallowing an opposition to registration under sect. 69; or,
(c) under the provisions of sects. 72, 90, or 92 of the said Act,
the person in whose favour such order has been made, or such one of them, if more than one, as the Comptroller may direct, shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified or altered, or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Removal of
mark from
register.

45. Where a trade-mark has been removed from the register for nonpayment of the prescribed fee or otherwise, under the provisions of sect. 79 of the said Act, the Comptroller shall cause to be entered in the register a record of such removal and the cause thereof.

Alteration
of address in
register.

46. If the registered proprietor of a trade-mark send to the Comptroller, together with the prescribed fee, notice of an alteration in his address, the Comptroller shall alter the register accordingly.

47. Whenever an order is made by the Court for making, expunging, or varying an entry from or in the register, the Comptroller shall, if he thinks that such rectification or variation should be made public, and at the expense of the person applying for the same, publish, by advertisement or otherwise, and in such manner as he thinks just, the circumstances attending the rectification or variation in the register.

Publication of rectification or variation of register.

48. Whenever the registered proprietor of any trade-mark intends to apply for the leave of the Court to add to or to alter such trade-mark, under sect. 92 of the said Act, the notice to be given to the Comptroller shall be given fourteen days at least before such application. If leave be granted on such application the applicant shall forthwith supply to the Comptroller such a number of representations of the trade-mark as altered as he may deem sufficient.

Notice to Comptroller of Order of Court for alteration of trade-mark under sect. 92 of Act.

INSPECTION OF REGISTER.

49. The Register of Trade Marks shall be open to the inspection of the public, on payment of the prescribed fee, on every week-day between the hours of ten and four, except on the days and at the times following:—

Hours of inspection.

- (a.) Christmas Day, Good Friday, the day observed as Her Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England; or
- (b.) Days which may from to time be notified by a placard posted in a conspicuous place at the Patent Office;
- (c.) Times when the register is required for any purpose of official use.

POWER TO DISPENSE WITH EVIDENCE.

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

Dispensing with evidence.

dispense with any such act or thing, document, declaration or evidence.

Patent Rules, 77; Designs Rules, 92.

AMENDMENTS.

Amendment
of docu-
ments.

51. Any document or drawing or other representation of a trade-mark for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which in the opinion of the Comptroller may be obviated without detriment to the interests of any person may be corrected, if the Comptroller think fit, and on such terms as he may direct.

Act, sects. 91 and 101. Patents Rules, 18; Designs Rules, 30.

ENLARGEMENT OF TIME.

Comptroller
may enlarge
time.

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

CUTLERS' COMPANY.

Sheffield ap-
plications in
duplicate.

53. All applications to the Cutlers' Company for registration of a trade-mark, under section 81 of the said Act, shall be in duplicate, accompanied by the prescribed fees and representations.

Notice to
Comptroller.

54. The Cutlers' Company shall, within seven days of the receipt by them of an application to register a trade-mark, send the Comptroller one copy of such application, by way of notice thereof, together with two representations of the mark for each class for which the applicant seeks registration.

Time within
which Com-
ptroller may
object to
application
made at
Sheffield.

55. (1.) The time within which the Comptroller shall give notice to the Cutlers' Company of any objection he may have to the acceptance of an application for registration made to the said Company shall be one month from the date of the receipt by the Comptroller of the notice from the said Company of the making of the application.

Advertise-
ment of
application
made at
Sheffield.

(2.) If no such objection is made by the Comptroller, the Cutlers' Company shall require the applicant to send the Comptroller a wood block or electrotype as the Comptroller may direct, and the Comptroller shall if satisfied with such wood block or electrotype, advertise the application in the same manner as an application made to him at the Patent Office.

(3.) The manner in which the Comptroller shall notify to the Cutlers' Company an application and proceedings thereon made as mentioned in subsection 8 of section 81 of the said Act shall be by sending to the Cutlers' Company a copy of the official paper containing the application of which notice is required to be given, with a note distinguishing such application.

Manner of notifying to Cutlers' Company application received by Comptroller.

56. The provisions of these Rules as to forms, representations, the proceedings on opposition to registration, registration, and all subsequent proceedings shall, as far as the circumstances, allow, apply to all applications to register made to the Cutlers' Company, and to all proceedings consequent thereon.

Similarity of proceedings at London and at Sheffield.

CERTIFICATES.

57. The Comptroller, when required for the purpose of any legal proceeding or other special purpose to give a certificate as to any entry, matter, or thing which he is authorised by the said Act, or any of these Rules to make or do, may, on receipt of a request in writing, and on payment of the prescribed fee, give such certificate, and shall specify on the face of it the legal proceeding or other purpose for which such certificate is granted.

Certificate by Comptroller.

DECLARATIONS.

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

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

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

59. Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorised to take such declaration in testimony of such

Notice of seal of officer taking declaration to prove itself.

declaration having been made and subscribed before him, may be admitted by the Comptroller without proof of the genuineness of any such seal or signature, or of the official character of such person or his authority to take such declaration.

REPEAL

Previous
rules re-
pealed.

60. All general rules as to the registration of trade-marks heretofore made by the Lord Chancellor under the Trade Marks Registration Act, 1875, and in force on the 31st day of December, 1883, shall be, and they are hereby repealed, as from that date, without prejudice, nevertheless, to any proceeding which may have been taken under such Rules.