

CHAPTER IX.

THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

By the 77th section of the Patents, Designs, and Trade Section 77.
Marks Act, 1883 (46 & 47 Vict. c. 57), it is provided that 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mark capable of being registered under the Act, it has been registered in pursuance of the Act, or of an enactment repealed by the Act; or in the case of any *other* trade mark in use before the 13th August, 1875, registration thereof under the Act or of an enactment repealed by the Act, has been refused. The comptroller may on request, and on payment of the prescribed fee (£1, see Trade Mark Rules, 1883, 1st Schedule), grant a certificate that such registration has been refused.

The owner of a mark in use before the 13th August, 1875, and who has obtained such a certificate will stand, it would seem, in precisely the same position as he would have done if the Registration Act had never been passed (*In re Barrons*, L. R. 5 Ch. D. 353—359, *per* Malins, V.-C.).

Upon registering any trade mark, the comptroller shall Rule 32.
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 registration), and such other particulars as he may think necessary (r. 32). This rule would not, however, appear to justify the comptroller in entering a note of a private arrange-

ment arrived at between the applicant and a third person with respect to the mark, and an *ex parte* application should, therefore, be made to the Court, accompanied by the written consent of the comptroller (*Re Keep*, W. N. 1884, p. 30).

*Refusal to
register.
Section 62.*

With respect to all applications for registration, the comptroller may, if he thinks fit, refuse to register any trade mark, but any such refusal is subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted (46 & 47 Vict. c. 57, s. 62, sub-sec. 4). 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 (*ibid.* sub-sec. 5). Where the comptroller refuses to register a trade mark, and the applicant intends to appeal to the Board of Trade from such refusal, he must within a month from the date of the decision appealed against, leave at the Patent Office, Trade Marks Branch, a notice of such his intention (Trade Mark Rules, 1883, r. 20), accompanied by a statement of the grounds of appeal and of the applicant's case in support thereof (*ibid.* r. 21). 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 hearing the appeal, or for the purpose of referring the appeal to the Court to hear and determine the same (*ibid.* r. 23).

*Rules 20,
21, 23.*

*Abandon-
ment of
applica-
tion.
Section 63.*

When 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 of the applicant, the application shall be deemed to be abandoned (sec. 63).

Definition

A trade mark, as defined by the Act, consists in the

several names, signatures, and devices, or combinations thereof as set forth in sect. 64, subject, in the case of trade marks used before the 13th August, 1875, to the power reserved to provide for entry on the register, of marks in common use as *additions* to trade marks, and to certain other powers with respect to marks not so used, and being common to the trade in the goods with respect to which the application to register is made. In these cases, the entry can only be made as an addition to a valid trade mark, and the applicant must disclaim any right to the exclusive use of the same (s. 74; see *Re Kuhn*, 53 L. J. Rep. N. S. (Ch.) 238). If the disclaimer is not entered on the register, the proper mode is to rectify the register by adding such disclaimer; the application may be made by any person aggrieved (*ibid.*)

By the 65th section of the Act, "a trade mark must be registered for particular goods or classes of goods," but this merely amounts to a legislative acknowledgment of a previously existing law (*Ainsworth v. Wainman*, L. R. 1 Eq. 518). By the 6th rule made in pursuance of the Act, goods are classified into fifty classes in the manner appearing in the third schedule, and if any doubt arises as to what class any particular description of goods belongs, the doubt is to be determined by the comptroller. Under rule 4 of the old Acts, a trade mark might have been registered with respect to goods in different classes, but where there were four trade marks including an anchor, already registered in respect of goods under class 42, "Substances used as food," the Court refused to give leave to the registrar to register a new trade mark including an anchor, in respect of goods of the same class but different in character from those goods for which the four trade marks had been registered (*Re Hargreaves*, 11 Ch. D. 669).

It was held under the old Acts that a trade mark is suffi-

ciently distinctive to be entitled to registration, if, looked at as a whole, it will in the ordinary course of business, be distinguishable from other devices in use; it makes no difference that some part or parts of it may be contained in, or may constitute such other devices (*Ex parte Orr Ewing & Co.*, 38 L. T. Rep. (N. S.) 313). Under the "Three Mark Rule," similar marks up to three are allowed to be registered if they are proved to have been used side by side before the Trade Mark Act, 1875 (see *Re Munch*, W. N. 1883, p. 170, sect. 74, sub-sect. 3). Under the present Act, however, no direct provision has been made for the registration of the same trade mark in more than one class, but by rule 30 (Trade Marks Rules, 1883), it is directed that the comptroller shall enter the applicant as the registered proprietor of the "trade mark" in respect of the particular goods or "classes of goods" described in his application, and from this it might be argued that the Act intended a mark to be registered if necessary in more than one class at a time, and if so, in part of a class also (See also s. 62, subs. 3, Form F, Second Schedule.)

Rule 30.

Assign-
ment of
trade
marks.
Section 70.

When registered, a trade mark "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 (s. 70), and where the applicant dies before registration, the trade mark may be registered in the name of the successor to the goodwill" (r. 31, and see rr. 34—39).

Rules
31, 34—
39.

With respect to the assignment and transmission of such trade marks as can be lawfully disposed of (see *Motley v. Downman*, 3 My. & Cr. 1), rr. 34—39 provide for the registration of subsequent proprietors as follows. 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 (r. 34). 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 (r. 35).

“ 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 connection with the goodwill of the business concerned in the particular goods or classes of goods for which the trade mark has been registered ” (r. 36).

“ 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 ” (r. 37).

“ 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 ” (r. 38).

“ A body corporate may be registered as proprietor by its corporate name ” (r. 39).

Where each of several persons claims to be registered as proprietor of the same trade mark, the comptroller may *Rival claimant's for registration.*

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 (s. 71) by special case to be filed and proceeded with in like manner as any other special case submitted to the Court, or in such manner as the Court may direct (r. 42). 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 (r. 43). In a case decided under the old Acts, registration of similar marks was allowed on the applicants undertaking not to use part of the design alone as a mark, and to use such mark in a specified manner only (*Re Sykes*, 43 L. T. Rep. 626; *Re Whiteley*, *ibid.* 627, *note*).

Registration.
Section 76.

By sect. 76, "the registration of a person as proprietor of a trade mark shall be *prima 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." In this section, the term "exclusive use" of course means exclusive so far as regards the class of goods in which the mark is registered, and the effect of the provision would seem to be, that for the first five years the title of the registered proprietor is good unless a better title is shown by some third person, but that after the expiration of that time, the title is secure except in so far as some inherent defect in the mark itself is concerned (*Re Palmer's Application*, 21 Ch. D. 47; *ibid.*, 24 Ch. D. 504; and see Hyde's Trade Mark, 38 L. T. Rep. (N. S.) 777. The expression "subject to the provisions of this Act," probably means subject to the sections and rules "as to their connexion with the goodwill of the business" (see Trade Marks Act, 1875, s. 3).

The question whether registration should be allowed ought to depend upon this, whether or not the party opposing registration would, independently of the Act, have been entitled to restrain the use by the applicant of the mark which he proposes to register (*In re Furina* 20 W. R. 261).

Where a German soap manufacturer adopted a trade mark for a particular sort of soap, the manufacture of which however at last entirely ceased, it was held that mere non-user of the mark from 1876 to 1882, though coupled with non-registration, did not amount to an abandonment of the mark so as to prevent registration, though it did not operate to bar any exclusive right to such mark on the part of another manufacturer who had in the interim innocently registered an identical mark (*Monson v. Boehm*, W. N. 1884, p. 68).

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 comprising a series shall be deemed and treated as registered separately. And by r. 14, when an application relates to a series of trade marks differing from one another in respect of the above particulars, it is provided that a representation of each trade mark of the series shall be made or affixed upon the form of application (and see r. 28). A trade mark may moreover be registered in any colour, and such registration shall, subject to the provisions of the Act, confer

Registration of a series of marks.
Sections 66, 67.

Rules 14, 28.

on the registered owner the exclusive right to use the same in that or any other colour (sect. 67).

*Opposition
to registra-
tion.*

*Section 69.
Rules 29,
44.*

By sect. 69 of the Act it is provided that any person may within two months of the first advertisement of the application (see sect. 68), 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. 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. 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. 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 for the determination of the Court (see Rules 29, 44).

Under the corresponding section (sect. 5) of the Act of 1875, an application was made to remove from the register a trade mark which had been registered as an old mark, after advertisement claiming 41 years' user. It appeared that for the greater part of this term the mark had been a common mark, and for about six years had been so to the knowledge of the defendants, and that the applicants, who had long used the same trade mark, were not aware of the advertisement, and had not opposed the registration.

It was held that the trade mark must be removed from the register (*Re Hyde & Co.'s Trade Mark*, 7 Ch. D. 724).

When an opposed application for registration stands for the determination of the Court under the above section, which it will do when the parties opposing registration have given security for costs (*In re Brundreth*, L. R. 9 Ch. D. 618), the practice will for the future be regulated by r. 29, which provides in effect that 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 the High Court 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. The applicant then takes out the summons and gives notice to the comptroller, or if he fails to do so within the said period of one month he will be deemed to have abandoned his application.

A motion for an injunction to restrain the proposed registration would be irregular, since the application to the Court referred to in r. 29 means an application by the person seeking to register (see *Re Simpson, Davies & Sons*, 15 Ch. D. 525).

Where a question of title arose, an action to try the right was directed to be brought (*ibid.*); and in another case it was held that an application to the Court by a person aggrieved by the refusal of the registrar to enter his name upon the register might be by way of motion, two clear days' notice thereof being given to the registrar (*Stephens, ex parte*, 24 W. R. 819). The new remedy is by way of appeal to the Board of Trade, under sect. 62, sub-sect. 4, 5, rr. 17—24.

When a mere word not used as a trade mark before the *Person aggrieved.*

*Refusal of
comptroller
to register.*

Section 62.

*Rules 17—
24.*

Act was registered, which it clearly ought not to have been, any person who had used the word in connection with or as descriptive of an article in his trade, was held to be a person aggrieved (*Rose v. Ewins*, 48 L. J. Ch. 618). A "person aggrieved" may possibly have a *locus standi*, even although he does not oppose the registration of the mark under sect. 69 (see *Re Hyde & Co.*, 7 Ch. D. 724. A mere licensee may be a person aggrieved (*Re Ralph*, 53 L. J. Rep. (N. S.) Ch. 188).

Where each of several persons claim to be registered as proprietor of the same trade mark, the comptroller may refuse to comply with the claims of such persons until their rights have been determined by the Court (sect. 71, *ante*, p. 245).

Section 71. The expression "same trade mark" would seem to be extended to "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" (see sect 72).

A discretion would therefore seem to be vested in the registrar as to whether he will register all or any of the marks, either unconditionally or with the introduction of variations, or whether he will submit or require the claimants to submit their rights to the Court (sect. 71).

In the latter event the procedure will be by special case (rr. 42 and 43; and see *Ex parte Grimshaw*, W. N. 1877, p. 24), and in the former by way of appeal to the Board of Trade (r. 20).

*Rectification
of
register.*

*Sections
90, 91.*

*Rules 44,
47.*

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 the 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, 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 (sect. 90). Under the preceding section the Court may 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 (*ibid.*, sub-sect. 2). Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller (*ibid.*, sub-sect. 3; and see r. 47). Mere clerical error may however be corrected by the comptroller without any application to the Court (sect. 91; see also r. 44).

A person who does not carry on business in England, and does not intend to do so, and has never used his trade mark in this country, may be a person aggrieved under this section, and it is a matter of evidence whether he is so or not; this being so, such person may apply to have the register rectified, even though he himself may not be entitled to have the mark registered in his own name (*Re Riviere*, W. N. 1884, pp. 27, 75; and see *Rose v. Brans*, 48 L. J. Ch. (N. S.) 618). Although no person can apply to rectify the register unless he is a person "aggrieved" within the meaning of the Act, this does not prevent a person aggrieved from suing for relief otherwise than under the Act (*Re Riviere*, *supra*).

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 particular within the meaning of the Act, and the Court may refuse or grant leave on such terms as it may think fit (sect. 92); and by the same section provision is made for notice to the comptroller, and alteration of the register in conformity with the order of the Court (see rr. 44—48). It must be borne in mind that the power pos-
Section 92.
Rules 44—48.

of trade marks is applicable only to cases in which there has been some mistake in the original registration, and not to cases where the register has become defective by reason of circumstances which have occurred subsequently to such registration (*In re Ward, Stuart & Sharp's Trade Marks*, 50 L. J. Ch. 347 ; 44 L. T. Rep. (N. S.) 97). In cases such as these the Court may order the entry to be expunged (*Re Lawrence*, 44 L. T. Rep. (N. S.) (note) 98), and re-registration to be effected (*Re Rust*, *ibid.* (note)), or in some cases the desired result may be effected by a simple assignment (*Re Farina*, *ibid.* (note)).

The rules relating to the practice affecting the alteration and rectification of the register are 46—48, shortly to the following effect :—

Rule 46. 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.

Rule 47. 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.

Rule 48. 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 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.

By the 72nd section, "The comptroller shall not, except ^{if} where the Court has decided that two or more persons are ^{found on} entitled to be registered as proprietors of the same trade ^{registration.} mark, register in respect of the same goods or description ^{Section 72.} of goods a trade mark identical with one already on the register with respect to such goods or description of goods, and 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 as to respect to such goods or description of goods as calculated to deceive. It shall not be lawful to use as part of or in combination with a trade mark any design 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" (sect. 73).

The question as to what may be considered to "nearly resemble" a trade mark already on the register, is of course a matter of evidence in each case. In *Worthington's Trade Mark*, 14 Ch. D. 8, 42 L. T. 563, the Court of Appeal, affirming the decision of Jessel, M.R., disallowed a brewer's trade mark enclosed in a triangle, the Court taking into consideration the possibility of the mark, which was registered plain, being coloured *red* in practice, as Bass's well-known trade mark is (and see *Re Farina*, 26 W. R. 261; *Ex parte Orr Ewing & Co.*, 47 L. J. Ch. 180). The words "calculated to deceive" are said to refer to an element of deception in the mark itself, without any reference to other marks (*In re Horsburgh*, 53 L. J. N. S. (Ch.) 237; see *Re Jelley & Others*, 21 Ch. D. 225, *quoted*; Sebastian's Digest, No. 616).

A trade mark for a stove polish consisted of the words "The Rising Sun," with a vignette of the sun: it was held not to be infringed by the words "Rising Moon," with vignette of the moon (*Morse v. Worrell*, 10 Phila. (Pa.) 168).

Where four trade marks, including an anchor, were already registered in respect of goods in Class 42 of the first Schedule to the Rules made under the Act of 1875, the Court refused to give leave to register a new mark including an anchor, in respect of goods in the same class but different in character from those goods for which the four trade marks had been registered (*Re Hargreaves*, 11 Ch. D. 669), the rule of the Court being to permit registration of identical old trade marks up to three, though if more than three applications for the registration of the same old mark are received it will be treated as common to the trade (*Bentley v. Low*, 44 L. T. Rep. (N. S.) 875; 29 W. R. 837; 46 & 47 Vict. c. 57, s. 74, sub-s. 3). Where an old mark has already been registered for certain goods in a certain class there would seem to be nothing to prevent the registration of a new mark for other goods in the same class, provided that the goods and the trades of the proprietors are sufficiently distinct for no confusion to take place (*Re Broby's Applications*, 21 Ch. D. 223; *Re Jelley & Others*, *ibid.* (quoted) 225; Sebastian's Digest, No. 616).

Any person aggrieved by the refusal of the comptroller to register under sects. 72, 73, of the Act, may appeal to the Board of Trade, who may refer the appeal to the Court in the way pointed out by sect. 62, and rr. 20—24. It is thought that the Court will direct a trade mark to be registered if satisfied as to its dissimilarity to marks actually registered, and this without inquiring whether it is distinguishable from other marks, the subjects of pending applications to register (*Re Dugdale*, 49 L. J. Ch. (N. S.) 303). And as any word that may accompany the device is clearly part thereof, at least for purposes of registration, it is submitted that such words may be regarded in estimating the distinctiveness of the mark (*ibid.*, and see *Re Horsburgh*, 53 L. J. N. S. (Ch.) 237).

certified by the comptroller, and sealed with the seal of the Patent Office, are to be admitted in evidence in all courts, and in all proceedings, without further proof or production of the originals (sect. 89; and see rr. 50, 57, and also sect. 96). *copies to be received in evidence.*
Sections 89, 96.
Rules 50, 57.

The 81st section makes certain provisions with respect to the Company of Cutlers, in Hallamshire, in the county of York (see rr. 53 to 56, and the several statutes relating to the Company of Cutlers, viz.: 21 Jac. 1, c. 31; 31 Geo. III. c. 58; 41 Geo. III. c. 97; 54 Geo. III. c. 119; 23 Vict. c. 43). *Cutler's Company.*
Section 81.
Rules 53—56.

The 64th section is perhaps the most important one of the series relating to trade marks, for by it an attempt is made to define a valid trade mark under the Act. It is provided that for the purposes of the Act a trade mark must consist of or contain at least one of the following essential particulars:— *Composition of a trade mark.*
Section 64.

- (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; and 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 any of them;

Provided that any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures, *used as a trade mark before the 13th day of August, 1875*, may be registered as a trade mark under this part of the Act. The word “figures” will

doubtless here mean "numerals" (*Ex parte Stephens*, L. R. 3 Ch. D. 660).

By virtue of this section, unless a mark falls within the protection of some one or more of the three first-mentioned conditions, or was used as a trade mark before the 13th day of August, 1875, it cannot be registered under the Act.

Nothing in the Act is however to be construed to prevent the comptroller entering on the register, as an *addition* to any trade mark, in the case of an application for registration of a trade mark not used before the 13th August, 1875, 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 (sect. 74).

A mere word.

A mere word, not being a fancy word, used for the first time since the 13th August, 1875, will probably not be capable of registration under the Act (*Ex parte Stephens*, L. R. 3 Ch. D. 660). And the better opinion would appear to be that use before the Registration Act of 1875 of a word as part of a trade mark is not sufficient to render the word registrable as a mark (*Rose v. Evans*, 48 L. J. Ch. 618); and it would seem to be doubtful whether the scientific name of a particular tree, "Limetta," is a distinctive word capable of registration as a mark in use before the 13th August, 1875, in respect of lime juice, a product of the tree, or preparations of lime juice (*ibid.*, and see *In re Rotherham*, 14 L. R. Ch. D. 585; *Leonard v. Wells*, 53 L. J. Rep. (Ch.) 233). Where a mark consisted of the words "Kitchen Crystal Soap" which had been applied by the applicant and his predecessors in business for over twelve years to a compound manufactured and sold by them, consisting of soap mixed with crushed quartz or crystal, and used for cleaning and scouring purposes, it was held that these words were "special and distinctive"

words, and not merely descriptive of the article, and were consequently entitled to registration (*Re Kaelman's Trade Mark*, W. N. 1880, p. 128).

A mere collection of words amounting to a description of the character and quality of goods, such as "S. C.'s Improved Patent Gold Medal Self-cleaning Rapid Water Filters," cannot be registered, and in point of fact do not in themselves constitute a trade mark even independently of the Act (*Chearin v. Walker*, 5 Ch. D. 850 ; 46 L. J. Ch. 686). A collection of words amounting to an advertisement.

A single letter will not be registered (*Re Mitchell*, 46 L. J. Rep. Ch. 876 ; L. R. 7 Ch. D. 36), but it is difficult to reconcile this decision with the judgment of Malins, V.-C., in *Barrow & Sons' Trade Mark*, in which it was held that whatever has been used in accordance with law as a trade mark, and protected as such before the passing of the Trade Marks Acts, 1875 and 1876, might be registered under them (*Re Barrow & Sons*, 46 L. J. Ch. 450 ; 5 Ch. D. 353), and if so, under the Act of 1883 also. A single letter.

It would seem also that a mere collocation of letters is not included in the expression "distinctive device, mark, heading, label, or ticket" (*Ex parte Stephens*, 3 Ch. D. 659 ; 46 L. J. Ch. 46), but it is possible that they might amount to a fancy word or words. And where the series or combination of such letters serves to indicate to purchasers that the goods are made by the person using the mark, and that the quality of such goods is different from that of other goods of the same kind which bear the other marks in the same series, it is probable that the rule will be otherwise (*Ransome v. Githam*, 47 L. T. Rep. (N. S.) 218). Collocation of letters.

Before the Act of 1875, initials, either with or without additional distinctive marks, have been treated as valid trade marks ; thus "H. H. G," forming part of a mark, has been protected by injunction (*Ransome v. Bentall*, 3 L. J.

Ch. (N. S.) 161). So have the letters "M. C." standing alone (*Motley v. Downman*, 3 My. & Cr. 1; 6 L. J. Ch. (N. S.) 308); and for other examples see *Millington v. Fox*, 3 My. & Cr. 338; *Crawshay v. Thompson*, 4 Man. & G. 357; *Hall v. Barrowe*, 32 L. J. Ch. 548; 4 De G. J. & S. 150.

It has been held that a trade mark consisting of the initials of the first manufacturers of the goods, may in course of time become a mere mark of quality, without implying a guarantee that the goods are still manufactured by the same traders (*Leather Cloth Co. v. American Leather Cloth Co.*, 33 L. J. Ch. 199; 10 Jur. (N. S.) 81; but how far several letters not used as a trade mark before the 13th August, 1875, and not stamped or worked upon any distinctive device, mark, brand, heading, label, or ticket, or used in conjunction with the name of an individual or firm, or with a written signature or copy of a written signature, can of themselves form a distinctive "device or mark," is a matter of inquiry. Initials consist of a combination of letters, and it has been seen that a mere combination of letters is not included in the term "distinctive device, mark, heading, label, or ticket" (*Ex parte Stephens*, 3 Ch. Div. 659), and such a combination would seem to be regarded rather as forming the additional material, which by sect. 64, subsect. 2 of the Act of 1883, is allowed to be *added* to the three classes of essential particulars, than such essential particulars themselves. If this is so, a collection of letters, whether disguised under the term "initials" or not, and even if worked or blended together in the form of a monogram, or possessed of any other distinguishing peculiarity either of shape or colour, and not amounting to a fancy word, could not of itself be registered under the Act. The particular function of "letters" or "combination of letters" is, that they shall be "added" to any one or more of the particulars

in the section mentioned, and not that they shall of themselves form a subject of registration (see sect. 64, sub-sect. 3). When, however, the letters are in addition to some regularly formed trade mark, there is no doubt but that the whole figure can be registered under the Act (*In re Barrows*, 46 L. J. Rep. 450).

Signatures, even before the Registration Act of 1875, ^{Signatures.} have been held to constitute valid trade marks (*Farina v. Silverlock*, 1 K. & J. 509; 6 De G. M. & G. 214; *Welch v. Knott*, 4 K. & J. 747; *Massam v. Thorley's Cattle Food Co.*, 6 Ch. D. 574; 46 L. J. Ch. 707), and may now, if consisting of a written signature, or copy of a written signature, "of the individual or firm applying for registration thereof as a trade mark," be registered either with or without any additional letters, words, or figures, or combination thereof. In connection with this subject it is important to inquire how far an assignee of a trade mark consisting of a signature would be justified in using it, and the question in every such case would seem to be, whether the assignee in continuing the use of the original trade mark, would, according to the ordinary usages of trade, be understood as saying more than that he was carrying on the same business as had been formerly carried on by the person whose name constituted the trade mark (*Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. & C. 523, *per* Lord Cranworth).

Any person who, without the authority of her Majesty, ^{Penalty for unauthorised use of Royal Arms.} or any of the Royal Family, or of any government department assumes or uses in connection 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, is liable on summary conviction to a fine not exceeding £20

(s. 106). It is apprehended that the word "Royal" would be objectionable, but whether the person using it without authority, could be proceeded against for the recovery of the penalty, is more than doubtful (*In re Royal Baking Powder Co.*, W. N. 1880, p. 49).

*Removal
from the
register.*

Provision is made for the removal of a trade mark from the register after the expiration of fourteen years, unless the proprietor pays to the comptroller a certain prescribed fee; but where a trade mark has been removed as aforesaid it shall nevertheless, for the purpose of any application for registration during the five years next after the date of such removal, be deemed to be a trade mark which is already registered (sect. 79).

Section 64. The 64th section of the Patents, Designs, and Trade Marks Act, 1883, comprises within the essential particulars necessary to form a valid trade mark, "a distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use," and some of these terms have from time to time received a judicial interpretation.

"Device." Thus, a "device" is an emblem or representation of some object, whether natural or fantastic, as for instance a triangle (*In re Worthington*, 14 Ch. D. 8), an eagle, or the like. But *query* whether it may not consist of a word, "Excelsior," for instance (*Ex parte Stephens*, 46 L. J. Ch. 47).

*"Head-
ing."*

A "heading" consists of a separate label affixed above the ordinary one, and on which the special mark is exhibited (*Ex parte Stephens*, 24 W. R. 963), and the term is also applicable to the margin produced by the practice of inweaving patterns into the edge of certain descriptions of textile manufactures, and it is not material whether such inwoven pattern constitutes of itself the mark to be protected, or is associated with stamps on the goods (*Harter v. Souvazoglu*, W. N. 1875, p. 11; also refer to *Singer Manufacturing Co. v. Wilson*, 2 Ch. D. 448).

A "label" is, as its name implies, a small slip or scrip *Label.* which is affixed to goods or to the vessel or envelope containing them (*Wotherspoon v. Currie*, L. R. 5 H. L. 508; *Blackwell v. Cribb*, 36 L. J. Ch. 504; *Cocks v. Chandler*, L. R. 11 Eq. 446; 40 L. J. Ch. 575; *Lea v. Miller*, Seton, 4th ed. 242). And the sole distinction between "label" and "ticket," lies in the method in which they *Ticket.* are attached to the goods; the former is fastened securely, the latter may be pinned thereto or tied (see *Edelsten v. Edelsten*, 1 De G. J. & S. 185; *Hirst v. Denham*, L. R. 14 Eq. 542; 41 L. J. Ch. 752).

It will be observed that neither the Registration Act nor the rules supplementary thereto, at all affect the numerous classes of cases founded on principles similar to those regulating trade marks properly so called. The *Registration Act not applicable to quasi trade marks.* Registration Act was passed to consolidate and systematise an intricate and fairly extensive body of law, affecting marks and symbols only when they are affixed to a particular species of goods or to some receptacle containing them; it does not interfere with false representations, made otherwise than by piracy of such marks and symbols by means of other devices. Such representations are dealt with by the Court by virtue of its inherent jurisdiction to prevent the commission of wrongs which cannot be codified, on account of their variable nature and extent. It is, however, certain that a breach of faith, or a wilful misrepresentation tending to the hurt or damage of the trade of another, will be punished none the less because the principles involved rest *in gremio legis*, rather than upon an act of the legislature.

In *Ex parte Stephens*, 46 L. J. Ch. 47, Jessel, M.R., observed that it would be a remarkable result of the Act, if an unregistered trade mark could be used as a trade mark, and other persons prevented from using it. It is submitted that the exclusive right to a trade mark may be

*Title in
unregis-
tered trade
mark.*

acquired in two ways, namely, by registration under the Act, and also independently of the Act, *i.e.*, without registration. With respect to the latter contention, if an article has been placed in the market, in connection with a particular symbol which has become so well known as to lead the public dealing in the article to connect the symbol with that particular article, and if, moreover, the goods so marked have acquired such a reputation as to lead people to ask for them with the mark affixed, then, provided such mark is not copied from another already used in the trade, and is not itself calculated to deceive the public, it is further submitted that the proprietor of the mark is just as much entitled to it as he would be to any other description of property; and if this is so, he might commence proceedings to prevent or to recover damages for the infringement of his mark at any time, the only essential being that he should *before action* have registered it (if capable of registration) under the Act (see sect. 77; *Wheeler v. Johnston*, 3 Ir. Rep. Ch. Div. 284).

CHAPTER X.

ON THE INFRINGEMENT OF TRADE MARKS.

IN every question involving a suspicion of infringement, reference is, in the first instance, made to the title of the plaintiff, for if he has no exclusive right either by himself or jointly with others—the defendant not being one of them—to that which he has been deprived of, his action will necessarily fail. *Title of the plaintiff.*

Thus where three persons entered into an arrangement for the manufacture, exportation, and sale of certain goods, to bear a distinctive device or mark, it was held that this in reality gave a character to the goods in the export of which the several parties were interested, and that the particular design contained something which represented the interest, more or less, which each of the three several parties had in the goods so exported. So long as the purpose for which the mark was invented continued, such mark was joint property, and when the parties ceased to carry on the particular adventure it could not be said that any of them had an exclusive right to it (*Robinson v. Finlay; Ward v. Robinson*, L. R. 9 Ch. D. 487).

So also, where the inventor of a new substance gave to it a name and took out a patent for his invention, this did not in itself entitle him to the exclusive use of that name after the expiration of the patent (*Linoleum Manufacturing Co. v. Nairn*, L. R. 7 Ch. D. 834).

Where a trade mark was registered in the sole name of one of the members of a partnership firm, it was decided

that on the death of the registered proprietor, the proper method was for the surviving members of the partnership to take an assignment from the personal representatives of the deceased partner (*Re Farina*, 44 L. T. Rep. (N. S.) 99 (note)); during the lifetime of such partner, however, an application might have been made to the court for the rectification of the register, by cancelling the name of the registered proprietor and registering the names of all the partners trading under the style of the firm (*Re Rust*, 44 L. T. Rep. (N. S.) 98 (note)). This, however, cannot be done when the registration is the result of the wrongful act of the party registered, and in this case the only remedy is to apply to have the entry expunged, and then to make a fresh application for registration (*Re Lawrence*, *ibid.* (note)).

Trade
mark con-
sisting of
a name.

The mere fact of a trade mark having been registered under the Act is no guarantee that such mark is valid, and the defendant may, if so advised, plead that it is bad ; that it does not contain the necessary elements. For instance, a trade mark consisting of a name, must indicate the plaintiff more than a multitude of other persons, or no action will lie for the infringement of it (*Leather Cloth Co. v. American Leather Cloth Co.*, 1 Hem. & M. 290, and see *Beard v. Turner*, 13 L. T. (N. S.) 746) ; and where a name, though not descriptive, does not serve to distinguish the person using it from other persons who use or are entitled to use it, it cannot be the subject of a valid trade mark (*Batty v. Hill*, 1 Hem. & M. 264 ; 11 W. R. 745) ; it is otherwise, however, where the class of persons so entitled is necessarily very limited (*Dent v. Turpin*, 2 J. & H. 139 ; *Hine v. La:t*, 10 Jur. 106 ; *Southorn v. Reynolds*, 12 L. T. (N. S.) 75). Every person has of course a right to use his own name, and cannot be restrained from using it by the fact that some other person bearing the same name has previously

used it in connection with the same class of goods (*Burgess v. Burges*, 3 De G. M. & G. 890); but where a person is selling goods under a particular name, and another person not having that name is using it, it may be presumed that he so uses it to represent the goods sold by himself as the goods of the person whose name he so uses (*ibid.*), and this is likewise the ground upon which the courts interfere in all cases of disputes between parties having the same name, for if it can be proved that the defendant is taking advantage of the similarity of names to palm off his goods as the goods of the plaintiff he will be restrained from the use even of his own name (*Holloway v. Holloway*, 13 Beav. 209; *Taylor v. Taylor*, 23 L. J. Ch. 255; *Dent v. Turpin*, 2 J. & H. 139; *Schweitzer v. Atkins*, 16 W. R. 1080; and see *Sykes v. Sykes*, 3 B. & C. 541; *Foot v. Lea*, 13 Ir. Eq. 490). And so the court has restrained persons from using their own names (even apart from a trade mark), in such a manner as to represent their goods to be the goods of another, although that other was only the successor of the original maker and had a different name (*Croft v. Day*, 7 Beav. 84; and see *Rodgers v. Nowell*, 3 De G. M. & G. 614; *Churton v. Douglas*, Johns. 174). Where the name of the original inventor is the trade mark in question, and that has in process of time become the name of the thing sold, such name will be protected as a trade mark (*Leather Cloth Co. v. American Leather Cloth Co.*, 1 H. & M. 271; 53 L. J. Ch. 199; 11 H. L. Cas. 523; *Bury v. Bedford*, 32 L. J. Ch. 741; 33 L. J. Ch. 465; but see the remarks of Lord Blackburn in *Singer Machine Manufacturers v. Wilson*, 3 App. Cas. 400); in an action on the case at Common Law it is submitted that it will be necessary to prove that the commodity in question was sold "as and for" the plaintiff's preparation (*Singleton v. Bolton*, 3 Doug. 298).

The name selected as a trade mark, need not be the name of the actual manufacturer of the goods to which it is attached, for the mark may in process of time become the property of a person who has purchased the goodwill of the business (46 & 47 Vict. c. 57, s. 70, and refer also to *Shipwright v. Clements*, 19 W. R. 599; *Cotton v. Gillard*, 44 L. J. Ch. 90), and whose name may consequently be quite different from that of the original manufacturer.

The mere fact of a name standing alone will not of itself be any objection, nor can such a name be considered as an arbitrary or fancy name, provided that it has or has had connection with that of the manufacturer (*Dent v. Turpin*, 2 J. & H. 139; *Dixon v. Fawcus*, 8 Ell. & Ell. 537), or selector (*Hirsch v. Jones*, 8 Ch. D. 584); but a name may also be used with any letters, words, or figures, or combination thereof (46 & 47 Vict. c. 57, s. 64; and refer also to *Collins Co. v. Brown*, 8 K. & J. 423; *Sume v. Cowen*, 8 K. & J. 428; *Rodgers v. Nowill*, 6 Hare, 325); and it is obvious that the presumption of fraud in the event of infringement, would be as proportionately great as the registered device is unusual and peculiar.

Where an unpatented article was manufactured and described by the name applied to it by the original inventor, it was held that such name might be used *simpliciter* after his death, though not in his lifetime, in those cases where the name had become *publici juris*, and was the inventor's own name (*James v. James*, L. R. 13 Eq. 421, and see *Massam v. Thorley's Cattle Food Co.*, L. R. 14 Ch. D. 748). This, however, does not justify the person so using it in putting off any article other than a genuine one, or in leading the public to suppose that his preparation is the manufacture of the successors in business of the original discoverer, nor

must he assert that his is the only genuine article, or suggest that the article manufactured by the successors of the original discoverer is spurious (*James v. James, supra*, and see *Liebig's Extract of Meat Co. v. Anderson*, W. N. 1882, p. 147; on appeal, W. N. 1888, p. 185). The same remarks apply to the use of a trade name, which no one can adopt if by so doing he might lead the public to suppose that they are dealing with one person when they are in reality dealing with another (see *Kerr on Injunctions*, 361). It has, however, been recently decided that a trader has a perfect right to make and sell machines similar in form and construction to those of a rival trader, and even to refer to his rival's name and machines in his advertisements, provided that this is done in such a way as to obviate any reasonable probability of misunderstanding or deception (*Singer Manufacturing Co. v. Looy*, 18 Ch. D. 395; on appeal, L. R. 8 App. Cas. 15). Trade names considered independently of the Act.

The mortgagee of stock-in-trade and goodwill, and of the right to use a name, cannot restrain persons claiming under the mortgagor from using the name; at least this was so held in a case where the mortgagee had never used the name, and had no apparent intention of doing so (*Beazley v. Soares*, 22 Ch. D. 660).

Where the defendants had been in the habit of describing certain beer manufactured by them as "Tivoli" beer, not in advertisements, but upon their price lists and invoices, it was held that this constituted sufficient material upon which an interim injunction could be granted (*Berliner, &c. v. Knight*, W. N. 1883, p. 70). The sole right, therefore, to restrain a person from using any name he pleases in the course of his business, is a right in the nature of a trade mark (see *Pemberton on Judgments*, ed. 1882, p. 479).

The mere user by a man of his own name is of itself no

evidence of fraud, but that it may be fraudulently used there is no doubt, and in this event the whole question resolves itself into a matter of evidence (*Holloway v. Holloway*, 13 Beav. 209; *Taylor v. Taylor*, 23 L. J. Ch. 255; 2 Eq. Rep. 290; *Dent v. Turpin*, 2 J. & H. 139; *Schuritzer v. Atkins*, 16 W. R. 1080; *James v. James*, 13 Eq. 421; *Du Boulay v. Du Boulay*, L. R. 2 P. C. 441; and see *Glen & Hall Manufacturing Co. v. Hall*, 16 Sickles (Amer.), 226; *Boulnois v. Peake*, 13 Ch. D. 513 (note)); but the assumption of another man's name is of itself, as previously stated, the strongest possible proof of fraud (*Burgess v. Burgess*, 3 De G. M. & G. 905, *per* Sir J. Turner).

Where a person uses a plaintiff's name and copies certificates given of the efficacy of certain manufactured articles, he will be restrained, even although he proceeded in such a manner as ostensibly to benefit the plaintiff by so doing, and although he did not in fact appropriate and apply the name and certificate to his own goods, but only drew comparisons between such goods and those of the plaintiff (*Franks v. Weaver*, 10 Beav. 297). So also where the defendants, who were needle manufacturers, purchased from one Abel Morrall, a nephew of the testator Abel Morrall, a patent for making double-eyed needles, together with the goodwill of a small trade in needles carried on by him at the same place as the testator formerly carried on his business, it was held that the defendants by soliciting through their travellers the plaintiffs' customers, and by supplying needles of all descriptions in addition to the patent double-eyed needles, to those purchasers who asked for Abel Morrall's needles, had so used the name as to deceive the public, and an injunction was accordingly granted (*Perks v. Hall*, W. N. 1881, p. 111).

An assumed or fictitious name may constitute a valid

trade name (see *Montague v. Moore*, Seton, 4th ed. 238; *Isaacson v. Thompson*, 20 W. R. 196; 41 L. J. Ch. 101; *Millner v. Reed*, V.-C. Wickens, Chancery of Lancashire, Feb. 3rd, 1870), but in America, the Court refused to enjoin infringement of the plaintiffs' firm name where it falsely implied that such firm was a corporation (*McNair v. Cleave*, 10 Phila. (Pa.) 135).

A man may so use his own name as to intentionally injure the plaintiff and deceive the public, and it is no defence that the name is the defendant's own name either in the civil or criminal courts (see *Reg. v. Dundas*, 6 Cox Cr. Cas. 380). If it does not appear that the assumption of a name somewhat similar to the plaintiff's name, is likely to cause any injury to the plaintiff, the courts will not interfere (*London & Provincial Law Assurance Society v. London & Provincial Joint Stock Life Assurance Co.*, 17 L. J. Ch. 37), especially when the name is compounded of words in every-day use (*ibid.*; and see also *The London Assurance Co. v. The London and Westminster Assurance Corporation, Limited*, 32 L. J. Ch. 664), or where it is manifest that the plaintiff's object is to obtain a monopoly of a general and common word forming part of the name (*The Colonial Life Assurance Co. v. The Home and Colonial Assurance Co., Limited*, 33 Beav. 548; 33 L. J. Ch. 741). There is nothing, however, to prevent a tradesman from using a name not in use at the time, even although he is aware that a neighbouring tradesman intends to use it (*Civil Service Supply Association v. Dean*, 13 Ch. D. 512), nor is there anything to preclude the owner of a dwelling-house from calling it by the same name as another house in the immediate neighbourhood, unless a charge of malicious intention to injure can be substantiated (*Day v. Brownrigg*, 10 Ch. D. 294).

On the general subject of a fraudulent user of a trade

name refer to *Purser v. Brain*, 17 L. J. Ch. 141; *Lawson v. Bank of London*, 18 C. B. 84; 2 Jur. (N. S.) 716; *Lee v. Halsey*, L. R. 5 Ch. 155; 39 L. J. Ch. 284; *Churton v. Douglas, Johns*, 174; *Mitchell v. Condry*, 37 L. T. (N. S.) 268; *Condry v. Mitchell*, *ibid.* 706, affirmed on appeal; *Massam v. Thorley's Cattle Food Co.*, 14 Ch. D. 748; *Civil Service Supply Association v. Dean*, 18 Ch. D. 512; *Boulnois v. Peake*, *ibid.* (note) 513; and as to the registration of a limited liability company under the same name as a company previously registered, see 25 & 26 Vict. c. 80, s. 20.

Trade
name on
dissolution
of part-
nership.

On the dissolution of a partnership and sale of the business and goodwill, the trade name is included (*Banka v. Gibbon*, 34 Beav. 566; 34 L. J. Ch. 591; *Hoffman v. Duncan*, Seton, 4th ed. 256; *Witt v. Corcoran*, *ibid.* 257; 2 Ch. D. 69; and therefore where a decree for the dissolution of a partnership is made, and it is ordered that the partnership business, stock-in-trade, goodwill, &c., shall be sold as a going concern, it would appear that the assignment of the goodwill and business includes the exclusive right to use the name of the old firm (*Levy v. Walker*, 10 Ch. D. 436), and on an ordinary dissolution without sale, either partner may use the firm's name as before (*supra*, and also refer to *Clarke v. Leach*, 32 Beav. 14; *Dence v. Mason*, W. N. 1877, p. 23; *Mitchell v. Condry*, 37 L. T. (N. S.) 268); but in most cases it will be found that a retiring partner has practically the power to prevent further use of his name, for the retention of it might lead the public to believe that he was still a partner; and again he might be liable for the debts of the partnership so long as it remained part of the title, and the latter contingency at least would justify the withdrawal of his name (*Scott v. Rowland*, 20 W. R. 508, and see Lindley on Partnerships, 863); the question whether he would incur such liability

as a fact is, however, a matter of evidence (*Levy v. Walker*, 10 Ch. Div. 447).

If by arrangement one partner takes over the entire concern there must be a valuation of the whole, including the trade name (*Banks v. Gibson*, 34 Beav. 566; 34 L. J. Ch. 591); and unless there is a covenant to the contrary the retiring partner may start a similar business in his own name wherever he pleases (*Bond v. Millbourn*, 20 W. R. 197; *Scott v. Scott*, 16 L. T. (N. S.) 148; *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191), and however similar it may be to that of the old firm, but he must be careful not to do anything calculated to induce the belief that his business is identical with the one he has left (*Cruttwell v. Lye*, 17 Ves. 335; 1 Rose, 123; *Churton v. Douglas*, Johns. 174; *Johnson v. Helleley*, 34 Beav. 63; *Hudson v. Osborne*, 39 L. J. Ch. 79), for the use of a name, whether fictitious or real, or any description or statement calculated to represent to the world that one business is the business of another, will be restrained (see *Levy v. Walker*, 10 Ch. D. 448), as also will the issuing of circulars framed with a similar object, or which may fairly be considered as amounting to such a representation (*Churton v. Douglas*, *supra*; *Stevens v. Paine*, 18 L. T. (N. S.) 600; *Burrows v. Foster*, Seton, 4th ed. 257; *Graveley v. Winchester*, *ibid.*; *Ansell v. Gaubert*, *ibid.* 236).

Enough has been said to show the very strong analogy that exists between trade names as connected with a particular trade or business, and names forming part of a trade mark necessarily annexed to goods and chattels, or to the receptacle containing them. Practically the same law prevails to prevent the use of the name of a place of business itself, and in these and similar instances it is only necessary for the plaintiff to prove that the defendant's conduct is of such a nature as to be cal-

*Name of
a place of
business.*

culated to deceive the public into believing that the defendant's business is the same business as that of the plaintiff (*Hudson v. Osborne*, 39 L. J. Ch. 79, and see *The Singer Manufacturing Co. v. Wilson*, 8 App. Cas. 876; *Dunachie v. Young*, 10 Sc. Sess. Cas. 4th Ser. 874).

Where, therefore, the plaintiffs had for a long space of time carried on business in Pall Mall under the style of the "Guinea Coal Company," they were held entitled to an injunction restraining their former servant and manager from setting up a rival business in Pall Mall under the name of the "Pall Mall Guinea Coal Company" (*Lee v. Haley*, L. R. 5 Ch. 155).

But where a bootmaker having a shop running up Bedford Street, with the front and entrance in the Strand, used as a sign the words "Civil Service Boot Supply," it was held that this was in itself insufficient to entitle the Civil Service Supply Association to an injunction, more especially as that association had not, at the time the plaintiff affixed his sign, been in the habit of selling boots and shoes, but only intended to sell them (*Civil Service Supply Association v. Dean*, 13 Ch. D. 513).

In another very similar case the plaintiffs carried on their business of sellers of carriages by auction and commission, in a part of the Baker Street Bazaar. They had always used the title of "Carriage Bazaar," and headed their bills with these words. The defendant took a house in Baker Street, and before opening it as a shop and standing place for carriages, announced it on a board as a "Carriage Repository," afterwards altering the title to "New Carriage Bazaar." Held that the defendant must be restrained from using these latter words or any other description which would lead customers to suppose that they were trading with the plaintiffs (*Boulnois v. Peake*, 13 Ch. D. 513).

Again, certain coal had for a long time been known in

the market as "Lochgelly" coal, and was the only coal so called, although there was a seam known as the "Lochgelly Splint Seam," which was not confined to the Lochgelly collieries, but extended under other estates as well. The lessees of one of the estates under which the Splint Seam extended, began to advertise and sell coal got by them as "Lochgelly Splint Coal;" held that the lessees of the Lochgelly colliery were entitled to an injunction against the user of the word "Lochgelly" by the owners of the Splint Seam, except in conjunction with other words and under certain circumstances sufficient to prevent any possibility of deception (*Lochgelly Coal Co. v. Christie*, 6 Sc. Sess. Cas. 4th Ser. 482).

This principle of protection has been extended to many similar cases, as for instance where a defendant was restrained from imitating the plaintiff's line of omnibuses by employing similar colours, words, and devices, to decorate omnibuses of his own (*Knott v. Morgan*, 2 Keen, 213, and *per Wood*, V.-C., in *Woollam v. Ratcliff*, 1 H. & M. 261; and refer also to the American case, *Marsh v. Billings*, 7 Cush. (61 Mass.) 322). Line of omnibuses.

It would seem that in America the recognized title of an inn will be protected (*Howard v. Henriques*, 3 Sand. 725; *Woodward v. Lazar*, 21 California, 448; *Sebastian on Trade Marks*, 160; *Reillon v. Barker*, 4 Kansas, 445; and see also *Charleson v. Campbell*, Court Sess. Cas. 4, 4th Ser. 149). And so, independently of the law relating to copyright, the recipient of private letters will be restrained from publishing them (Story, Eq. Jur. ss. 944-947), as will also a person, from opening letters addressed to, and thus obtaining orders or custom intended for, another (*Edgington v. Edgington*, 11 L. T. (N. S.) 299; *Scheile v. Brakell*, 11 W. R. 796; *Witt v. Corcoran*, Seton, 4th ed. 253). In fact it may be broadly stated, that when a person endeavours to obtain Title of an inn.
Private letters.

custom or to dispose of goods by the assumption of another's personality, he will be restrained from so doing, and hence in America a defendant was even restrained from using the words "established 1780" on his labels, bill heads, &c. (*Hazard v. Caswell*, 37 How. (N. Y.), Pr. 1).

Right of manager or partner to make known that he has been with a late firm.

A trader who has been a manager or partner, or even a servant in a firm of established reputation, cannot on setting up an independent business for himself be restrained from making known to the public that he has been with that firm (*Hookham v. Pottage*, L. R. 8 Ch. 91, and see *Leather Cloth Co. v. American Leather Cloth Co.*, 1 H. & M. 281, in which see the remarks of Wood, V.-C.); but it has been held by Bacon, V.-C., that a person has no right to use the name of his late firm, even by way of reference, in a circular; there seems, however, in this case, to have been proof of suspicious solicitation (*Selby v. Anchor Tube Co.*, W. N. 1877, p. 191).

In this class of case, as in the others, any colourable attempt to injure the plaintiff's business by devices calculated to deceive the public will be at once suppressed. In *Glenny v. Smith*, 11 Jur. N. S. 964; 2 Drew. & Sm. 476, the defendant left the plaintiff's firm, and put up a sign on premises of his own, bearing the inscription "From Thresher and Glenny," the word "From" being printed diagonally to, and in smaller letters than the rest, the defendant's own name being obscured by a sun blind partly drawn down. The restrictive law on this subject will be found laid down *in extenso* in the *Leather Cloth Co. v. The American Leather Cloth Co.*, 1 H. & M. 271; and in *Perry v. Truefitt*, 6 Beav. 66; *Hookham v. Pottage*, L. R. 8 Ch. 91.

No remedy in equity for mere libel.

Some of the points previously referred to rest upon the very verge of the law in its relation to libel and slander, and the distinction should be carefully sought for, as it

arises in practice. The Court will not, it is clear, restrain the publication of a libel, *qua* libel (*Emperor of Austria v. Day*, 3 De G. F. & J. 239, *per* Turner, L. J.; *Hinrichs v. Berndes*, W. N. 1878, p. 11); but the rule is different where the publication of the libel is injurious to trade or property (*Thorley's Cattle Food Co. v. Massam*, 6 Ch. D. 582, *ibid.*, 14 Ch. D. 763; *Thomas v. Williams*, 14 Ch. D. 873, *per* Fry, J.; *Hill v. Hart-Davies*, 21 Ch. D. 798; *Prudential Assurance Co. v. Knott*, L. R. 10 Ch. 142, not followed; *ante*, p. 25); and therefore where the defendant had published a statement indicating or suggesting that the plaintiff's goods were spurious, the Court granted an injunction to restrain him from so doing (*James v. James*, L. R. 13 Eq. 421).

On the other hand, where a person unwarrantedly makes use of the name of another, for the purpose of lending importance to the commodity which he has to sell, this is not such a misrepresentation as the Court will restrain (*Clarke v. Freeman*, 11 Beav. 112; 17 L. J. Ch. 142). In *Clarke v. Freeman* the plaintiff did not complain that the defendant's conduct had in any way injured his trade or property, or even that it was likely to have that effect, but merely that he had used his name as a physician, for the purpose of puffing a quack medicine which he, the defendant, in order to sell the better, represented as made from the plaintiff's receipt. It is a matter of question, however, how far the decision in *Clarke v. Freeman* would be followed at the present day, for it is the better opinion that the Court will restrain the unauthorised use of a plaintiff's name, not on the ground of such use amounting to a libel, but on the principle that every man has a sufficient right of property in his own name. (See the remarks of Sir Hugh Cairns in *Maxwell v. Hogg*, L. R. 2 Ch. 307; *Dixon v. Holden*, L. R. 7 Eq. 488.)

Where the name of a person is wrongfully used in such a way as may be calculated to injure him, he has a right to an injunction, and therefore where the defendants, a joint stock company, inserted the plaintiff's name in their prospectus without his consent, they were restrained (*Routh v. Webster*, 10 Beav. 561; and see *Clover v. Royden*, L. R. 17 Eq. 190).

Words of
quality.

"Excelsior."

"Superfine," "superior," "nourishing."

With reference to a trade mark properly so called, it will have been noticed that words implying a guarantee of the special quality of the goods to which the mark is applied, will not be protected as new marks or part of new marks. And in connection with this statement it will be observed that the word "Excelsior" is not a word of quality (*Braham v. Bustard*, 1 H. & M. 447), and consequently anyone infringing such a word (*Ex parte Stephens*, 46 L. J. Rep. Ch. 46; 3 Ch. D. 659; 46 & 47 Vict. c. 57, s. 64, sub-s. c), will be restrained. The words "superfine," "superior" (*Braham v. Bustard*, *supra*), are, however, words of quality, and so is the word "nourishing" under certain circumstances (*Raggett v. Findlater*, 43 L. J. Ch. 64). It is thought that words which suggest a *variable* quality, and are at the same time suggestive of the manufacturer or seller, may well be protected (*Hirst v. Denham*, L. R. 14 Eq. 542); consequently where a manufacturer marked goods of a certain superior class with a number of letters to distinguish them as belonging to that class, it was held that the marks being exclusively used by the manufacturer were valid trade marks, notwithstanding that they were indicative of the quality of the goods to which they were applied (*Ransome v. Graham*, 47 L. T. Rep. (N. S.), 218).

English
adjective.

A plaintiff cannot claim to himself a right of property in a mere English adjective, or word in common use, such as "Colonial" (*The Colonial Life Assurance Co. v. The Home and Colonial Assurance Co.*, 33 Beav. 548;

88 L. J. Ch. 741). because to do so would infringe on the right of traders to call their articles by a quality they possess (*Raggett v. Findlater*, L. R. 17 Eq. 29; *Braham v. Bustard*, 1 H. & M. 447); without in any way serving to identify the articles in question with any particular person or origin. It must be remembered, however, that when persons come into equity, they must not themselves be guilty of anything having a tendency to mislead the public, and therefore the original inventor of a new manufacture, and persons claiming under him, are alone entitled to designate such manufacture as "original;" if he or they have been in the habit of so designating their manufacture, an injunction will be granted to restrain another manufacturer from applying a similar designation to his goods (*Cocks v. Chandler*, L. R. 11 Eq. 446).

An official stamp or brand cannot become a private trade mark (*Chase v. Mayo*, 7 Lathrop (Mass.), 343). A mere name indicative of a natural product cannot be appropriated (*Young v. Macrae*, 9 Jur. N. S. 322), but it is apprehended that the rule is otherwise in those cases in which the owner of the mark has the exclusive means of obtaining the natural product indicated by it (*Radde v. Norman*, 41 L. J. Ch. 525), or practically the only means of obtaining it (*Braham v. Beauchamp*, 7 Ch. D. 848; 47 L. J. Ch. 348). The manufacturer of a substance containing the same chemicals or ingredients as the natural product, is not justified in using the name of the latter (*Apollinaris Co. v. Norrish*, 33 L. T. N. S. 242; *Same v. Edwards*, Seton, 4th ed. 237), *semble*, that it might be used if a new way of getting at the natural product itself can be discovered (*Young v. Macrae*, 9 Jur. N. S. 322).

Again, a plaintiff had formerly no exclusive right of property in a fancy word, that is to say, a name or word

or combination of names or words used arbitrarily, or in a sense contrary to their ordinary use and application; but by 46 & 47 Vict. c. 57, s. 64, a trade mark may now consist *inter alia* of a fancy word or words not in common use, and a person might have had the exclusive right to such a word or words, if it or they were in actual use before the passing of the Registration Act, 1875, for in this event the latter part of sect. 10 of that Act would have been a protection (*Ex parte Stephens*, 3 Ch. D. 659). Fancy names in common use in any particular trade, could not be appropriated even before the Registration Act of 1875 (*Williams v. Osborne*, 13 L. T. N. S. 498; but see *Gout v. Aleploglu*, 6 Beav. 69 (note); *Broadhurst v. Barlow*, W. N. 1872, p. 212).

The exclusive right to a fancy name is not lost by the inventor habitually using it in conjunction with his own name as maker of the article (*Ford v. Foster*, L. R. 7 Ch. 611), but a trade mark to which a trader had originally an exclusive right may in course of time become *publici juris*, and the exclusive right may be lost, and the proper test of this having happened is, whether the use of the trade mark by other persons has ceased to deceive the public as to the maker of the article (*ibid.*). A fancy name may consist of either a single or compound word, or of a collection of words (*Cotton v. Gillard*, 44 L. J. Ch. 90; *Field v. Lewis*, Seton, 4th ed. 237), generally taken from the ancient or modern classics, as, for instance, "Excelsior" (*Braham v. Bustard*, 1 H. & M. 447; 11 W. R. 1061); "Eureka" (*Ford v. Foster*, L. R. 7 Ch. 611); or compounded of ordinary English words as "Pain Killer" (*Davis v. Kendall*, 2 Rhode Island, 566 (Amer.)); "Licensed Victuallers' Relish" (*Cotton v. Gillard*, 44 L. J. Ch. 90); "The Guinea Coal Company" (*Lee v. Haley*, L. R. 5 Ch. 155), and the like. "Valvoline," the name of a particular kind of oil, is not however, a fancy

name, but merely a descriptive word (*Leonard v. Wells*, W. N. 1884, p. 60).

And so a fancy name may consist of the name of a place, Geographical names. and will be protected if the plaintiff can show that such name is identified in the market with his goods obtained from such place (*Wotherspoon v. Currie*, L. R. 5 H. L. 508; 42 L. J. Ch. 180; *Radde v. Norman*, 41 L. J. Ch. 525; *Hirst v. Denham*, L. R. 14 Eq. 542; and see also *Cocks v. Chandler*, L. R. 11 Eq. 446; 40 L. J. Ch. 575). Hence, where the plaintiff had manufactured a certain description of bitters, generally known as "Angostura Bitters," although described by him as "Aromatic Bitters," the defendant was restrained from vending other bitters under the title of "Angostura," he being guilty of an attempt to deceive, inasmuch as he had endeavoured to induce the public to believe that his commodity was that of the plaintiffs (*Siegert v. Finullater*, 7 Ch. D. 801). On the subject of local and geographical names, refer also to *Taylor v. Taylor*, 28 L. J. Ch. 255; *Hine v. Lart*, 10 Jur. 106; *Seixo v. Provezende*, L. R. 1 Ch. 198; *Bulloch v. Gray*, 19 Journ. of Jurisp. 218.

Where a trade mark consists of the name of certain goods, it should not indicate goods of a general nature and description (*Braham v. Bustard*, *supra*; *Young v. Macrae*, 9 Jur. N. S. 322; *Browne v. Freeman*, 12 W. R. 305; *Williams v. Osborne*, 13 L. T. N. S. 498; *Leonard v. Wells*, 53 L. J. Rep. N. S. (Ch.) 233; on appeal, W. N. 1884, 60); unless perhaps where the matter indicated is a natural product accessible to the owner of the mark only (*Radde v. Norman*, 41 L. J. Ch. 525). Hence where the plaintiff carried on business at a certain place, selling coal under her own name, and adding to it on waggons and bill heads the words "Radstock Collieries," the defendants, though coal dealers at Radstock, were enjoined from carrying on business there Trade mark consisting of name of goods must not be descriptive merely.

under the title of "The Radstock Colliery Proprietors," they having no collieries at the place named. The plaintiff had practically speaking, the monopoly of all the coal in Radstock (*Braham v. Beauchamp*, 7 Ch. D. 848; and see the *Lochgelly Coal Co. v. Christie*, 6 Sc. Sess. Cas. 4th Ser. 482).

*Names
indicative
of mode of
manufac-
ture, &c.*

So also there cannot be any exclusive property in a name which is merely indicative of the manner in which a certain article is manufactured (*Wheeler & Wilson Manufacturing Co. v. Shakespeare*, 39 L. J. Ch. 36; *Singer Manufacturing Co. v. Wilson*, L. R. 3 App. Cas. 376; 47 L. J. Ch. 481; *Cheavin v. Walker*, 5 Ch. D. 850; 46 L. J. Ch. 686; *Linoleum Manufacturing Co. v. Nairn*, 7 Ch. D. 834). Such a name must indicate ownership or origin, and not merely quality, kind, texture, composition, utility, intended use, or class of consumers (*Joyce on Inj.* 173).

*General
summary.*

A word or name therefore which is merely descriptive of an article (*Burgess v. Burgess*, 3 D. M. & G. 896; *Cheavin v. Walker*, *supra*, 862; *Linoleum Manufacturing Co. v. Nairn*, *supra*; *Re Palmer's Application*, 21 Ch. D. 47; *Leonard v. Wells*, 53 L. J. Rep. (N. S.) (Ch.) 233; on appeal, W. N. 1884, p. 60; *Re Ralph*, *ibid.* 188); or is indicative of the quality or composition thereof (*Raggett v. Finallater*, 17 Eq. 29; *Wheeler & Wilson Manufacturing Co. v. Shakespeare*, 39 L. J. Ch. 36; *Singer Manufacturing Co. v. Wilson*, L. R. 3 App. Cas. 376), or is a current name by which a particular article is known in the market (*Braham v. Bustard*, 1 H. & M. 447; *Young v. Macrae*, 9 Jur. (N. S.) 822; *Browne v. Freeman*, 12 W. R. 305; *Williams v. Osborne*, 13 L. T. (N. S.) 498), or is a name which merely denotes the general character of a business (*London and Provincial Law Assurance Society v. London and Provincial Joint Stock Life Insurance Co.*, 11 Jur. 988; *London*

Assurance v. London and Westminster Assurance Corporation, 32 L. J. Ch. 664; *Colonial Life Assurance Co. v. Home and Colonial Assurance Co.*, 33 L. J. Ch. 741), or which designates a particular trade or occupation (*Choynski v. Cohen*, 39 Cal. 501), cannot be the subject of a trade mark (see Kerr on Inj. 359).

The infringement of a trade mark may assume a two-fold shape, either the defendant deliberately copies the plaintiff's mark in detail, or what is far more common, he copies it with such variations and additions as will suffice to produce a colourable imitation, for it is obvious that if a defendant were to exactly copy a trade mark belonging to another, without at the same time drawing such distinctions either on the mark itself or otherwise, as to lead the public back again to him or his agents, he would in a great measure be losing the benefit of his fraudulent practices, and therefore it is necessary in the first place to mislead the public, and in the next to secure a benefit to the party practising the deception by preserving his own individuality (*per* Lord Langdale in *Croft v. Day*, 7 Beav. 84). The question in all cases of colourable imitation is, whether the resemblance between the genuine trade mark and the colourable imitation, is so close as to be calculated to deceive the ordinary public, and it is not necessary therefore that on the consideration of such a question the two marks should be placed side by side (*Seixo v. Provezende*, L. R. 1 Ch. 192; 12 Jur. (N. S.) 215), at least so far as the public is concerned.

The law as laid down in *Seixo v. Provezende* was discussed and approved of in a recent case, and there would appear to be no doubt that in cases of the infringement of a trade mark, the proper questions to ask are—

(a.) Have the plaintiffs shown that the defendants'

user of their mark will cause their goods to be taken for the plaintiffs'?

(β.) Will it be the inevitable consequence of the use by the defendants of their mark, that purchasers in purchasing the defendants' goods will believe that they are purchasing the plaintiffs'?

(γ.) Is it true that the defendants' mark cannot fail to attribute to their goods the same name as is used by the plaintiffs? (See *Cope v. Evans*, L. R. 18 Eq. 150, *per* Hall, V.-C.).

(δ.) On a comparison of the genuine and forged marks, judging them as an Englishman, and knowing the habits of English people, would the one be taken for the other by dealers or purchasers of ordinary prudence. Should I be deceived so as to take the one ticket for the other, even if the two were not before me together, supposing me to be a purchaser of ordinary caution and ordinary intelligence (*Orr Ewing v. Johnston*, 13 Ch. D. 445, *per* Fry, J.)? The use of a trade mark may be restrained by injunction even although no purchaser has actually been misled, for the very life of a trade mark depends upon the promptitude with which it is vindicated (*Johnston v. Orr Ewing*, L. R. 7 App. Cas. 219.)

The principles according to which the Court acts in preventing a man from passing off his goods as those of another were not altered by the Trade Marks Registration Act, 1875, and it is apprehended that these principles are the same with respect to the Act of 1883 (*Mitchell v. Henry*, 15 Ch. D. 181).

*What
amounts to*

The question as to what amounts to an imitation is a

matter of evidence in each case as it arises, and the Court must ascertain whether any points of resemblance or difference are such as naturally arise from the necessity of the case, or whether the differences are merely colour-able (*Taylor v. Taylor*, 23 L. J. Ch. 255; and see *Woollam v. Ratcliff*, 1 H. & M. 259). In *Taylor v. Taylor*, *supra*, the plaintiffs, who were sewing thread manufacturers and winders at Leicester, used reels labelled at one end "Taylor's Persian Thread" in a circular form, having an inner circle, in which was marked the particular quality of the article wound on the reel. On the other end of the reel was placed another circular label, having in the centre the armorial bearings of the city of Leicester, the words "J. and W. Taylor, six-cord," and a number denoting the quantity of yards wound on the reel. The defendant, who was a thread manufacturer, used for his thread, reels of the same size and description as the plaintiffs, and placed at one end a circular label with the words "Taylor's Persian Thread" thereon, and at the other end of the reel a circular label with his own armorial bearings surrounded by the words "Sam Taylor." The Court, after looking at all the facts of the case, granted an injunction.

In a recent case it appeared that the plaintiffs were in the habit of shipping goods to India, and on the outside wrapper of each bundle of goods an oval-shaped ticket was affixed. The ground of this ticket was white, and it was surrounded by an ornamental border of red and gold. Inside the border was an oval-shaped red line, and between that line and the border were printed in red letters the words "Archibald Orr Ewing & Co., Levenbank Works." Inside the red line was an egg, printed in gold, with the words "Trade Mark" printed across, in white letters, and under the egg were the words, in red, "Dyed Yarns, Glasgow." This ticket was known as the egg ticket. When

the plaintiffs shipped the goods they affixed to the wrapper enclosing them another ticket in the shape of a right-angled triangle. The ticket was of a glazed green. Under the middle of the base (which was uppermost) was a golden crown, and on each side of the crown a golden elephant, supporting a golden banner, whereon were the words "Prime Turkey Red," in Guzerathi characters, and "Levenbank." This ticket the plaintiffs charged the defendants with infringing, and the question before the Court consequently was whether the defendants had taken a material and substantial part of the plaintiffs' ticket. The defendants had repeated the two elephants, placing each in a corner of a triangular ticket as the plaintiffs had done, but the elephants were dissimilar in many respects. The ticket was the same in shape and colour as the plaintiffs' ticket, and had also a golden banner upon it; it differed, however, inasmuch as in the place of the crown was a Hindoo goddess named "Gunputty," and on the banner were printed the words, "Prime Turkey Red, R. Johnston & Co., London." The plaintiffs' goods had long been sold in the market under the name of "Bhé Hathi," meaning two elephants, and the presence of a representation of these animals on the ticket consequently became a matter of considerable importance. It was decided by the Court of Appeal that if one trader appropriates a material and substantial part of a trade mark which belongs to another, he is bound to use such precautions as to avoid the reasonable probability of error and deception, and the *onus* is on him to show that purchasers of the goods will not be deceived, and further that where the trade mark has caused certain goods to be known by a certain name (in this case "Bhé Hathi") a person cannot use a ticket which is likely to lead to the application of a similar name to his own goods (*Orr Ewing v. Johnston*, 13 Ch. D. 434; on appeal to the

House of Lords, L. R. 7 App. Cas. 219 ; and see *Reud v. Richardson*, 45 L. T. Rep. (N. S.) 54).

Where a trader had produced and sold an ink, which he designated "Stephens' Blue Black," and it was shown to the public on a label in white capital letters of large type, and the defendant then sold an ink in bottles similar in size to the plaintiff's, designated "Steelpen's Blue Black," written in the same type, this was held to be a colourable imitation (*Stephens v. Peel*, 16 L. T. (N. S.) 145).

Again where the plaintiffs used the word "Leopoldshall" in connection with a description of crude salt called "Kainit," which they obtained from Leopoldshall in Anhalt, they having the exclusive access to the mines there, and the defendants began to employ the word "Leopoldsalt" to another and inferior description of Kainit, they were restrained from so doing, V.-C. Wickens remarking in the course of his judgment: "The defendants have clearly used the name of Leopoldshall, or an imitation of it, and have not attempted to show, or at any rate have not shown, that they had any excuse whatever for so doing. There is nothing in the evidence that I can see to lead to a serious belief that they have used this name *bonâ fide*" (*Ruddle v. Norman*, L. R. 14 Eq. 348; 41 L. J. Ch. 525).

Slight differences which would not be perceived without strict examination, will not protect an imitation from injunction (*Williams v. Johnson*, 2 Bosw. 1 (Amer.)), and in another American case it was decided that the use of a trade mark simulating another trade mark and calculated to mislead the public into a belief that it is the plaintiff's, will be restrained, although it bear the defendant's name (*Walton v. Crowley*, 3 Blatchf. 440).

It is not of course necessary that the whole of a trade mark should have been taken or imitated (*Braham v.* Whole trade mark need not be taken.

Bustard, 11 W. R. 1061), for an infringement may consist in the adoption of the essential part of it (*Ford v. Foster*, L. R. 7 Ch. 611; *Wotherspoon v. Currie*, L. R. 5 H. L. 508; *Apollinaris Co. v. Norrish*, 33 L. T. (N. S.) 242); or in imitating its general appearance (*Seixo v. Provezende*, L. R. 1 Ch. 192; *Franks v. Weaver*, 10 Beav. 297), so that "the unwary, the heedless, and the incautious portion of the public would be likely to be misled" (*per* Kindersley, V.-C., *Glenny v. Smith*, 11 Jur. (N. S.) 965).

It has, however, been decided that even an unwary and incautious person must bestow some attention upon the mark when purchasing the article (*per* Lord Cranworth, *Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. L. Cas. 531), and it is probable that the true test is, whether ordinary purchasers, purchasing with ordinary caution, are likely to be misled (*Seixo v. Provezende*, *supra*, and the remarks of Hall, V.-C. thereon, in *Cope v. Evans*, L. R. 18 Eq. 148; *Wotherspoon v. Currie*, L. R. 5 H. L. 508; *The Leather Cloth Co. v. The American Leather Cloth Co.*, *supra*, p. 535; *per* Lord Cranworth, *Condy v. Mitchell*, 37 L. T. (N. S.) 766).

It must not be forgotten however, that although the mere appearance of the ticket or label complained of could never lead anyone in this country to mistake it for the original, yet it is possible that the natives of a foreign country, unable to read and understand the English language, might take them both as equally symbolical of the plaintiff's goods. Reference must, consequently, be made to the place where the goods are to be disposed of, as well as to other circumstances (*Johnston v. Orr Ewing*, L. R. 7 App. Cas. 225, *per* Selborne, L. C.).

Where the plaintiff's trade mark was described as a trade mark applicable to "worsted stuffs" by the following description, "a white selvage on each side of the piece,

having a red and white mottled thread interwoven the full length of the selvage between the edge of the piece and the edge of the selvage," it was decided that the intermixture of colours constituted a distinctive device entitled to protection, but that in the particular case the defendants were not guilty of infringement (*Mitchell v. Henry*, 15 Ch. D. 181 ; on appeal, *ibid.* 188).

It sometimes happens that a defendant packs up his goods in imitation of the plaintiff, and this may be an aggravation of any other existing circumstances, or it may be a fraud in itself (*Eldelsten v. Vick*, 11 Hare, 78 ; *Woollam v. Ratcliff*, 1 H. & M. 259 ; *The Anglo Swiss Condensed Milk Co. v. The Swiss Condensed Milk Co.*, W. N. 1871, p. 163 ; *Orr v. Diaper*, 4 Ch. D. 92 ; 46 L.J. Ch. 41), although the surrounding circumstances may point to an opposite conclusion (*Singer Manufacturing Co. v. Wilson*, 2 Ch. D. 443—55). Where therefore one trader sells an unpatented production of his own in bottles or casks indelibly marked with his known design, the Court will restrain a rival trader from selling a similar production in the same bottles or casks, although the rival trader puts a label of his own thereon (*Rose v. Loftus*, 38 L. T. Rep. (N. S.) 409). Imitation
by means
of wrap-
pers and
packing.

Where the plaintiffs' firm had long been accustomed to pack a compound, in long cylindrical packages with pink wrappers, and to have a crimson paper of directions, and yellow ones of warning, tied in with each package, and their firm's name printed across a white label, so that the package would be at once known by its general appearance, it was held in America that a person who commenced to use the exact form and style of package, substituting his own name for that of the firm on the labels, must be restrained (*Frese v. Bachof*, 14 Blatchf. 432 ; and see *Enoch Morgan's Sons Co. v. Schwachofer*, 5 Abb. (N. Y.) N. Cas. 265).

*Sale by
defendant
of genuine
goods, with
genuine
labels
affixed.*

Where a person sells the genuine goods of another and obtains from him a supply of labels, it is submitted that he is then entitled to sell the goods as and for such other person's goods with the label affixed, and that in the absence of any contract or agreement no case can be made out against such person, even though he represented on the purchase of the goods that he intended to sell them in England, instead of which he takes them abroad and competes with such other person's own agents there (see

*Of his own
goods, with
plaintiff's
labels
affixed.*

Browne on Trade Marks, 337), but a defendant will clearly be restrained if he makes use of a true and genuine trade mark for the purpose of selling his own goods (*Rose v. Henley*, cited 88 L. T. (N. S.) 410; 47 L. J. Ch. 577);

*Genuine
mark upon
genuine
goods, but
of a differ-
ent quality
to that
intended.*

and so also he will if he places a genuine mark upon goods which the manufacturer did not intend to be so marked, and this although such goods are of the plaintiff's manufacture (*Richards v. Williamson*, 30 L. T. (N. S.) 746).

But when the plaintiff registered a label, which he requested the manufacturer who supplied him with goods of a particular description to affix to the receptacle containing them, it was held that there being no evidence of any contract that the manufacturer should supply the plaintiff exclusively with goods of that particular kind, the Court could not, on an interlocutory application, restrain the agents of the manufacturer from using the label (*Hirsch v. Jonas*, 3 Ch. D. 584).

*Use of a
different
mark re-
strained.*

And where the goods of a trader have acquired a specific name from the appearance of a trade mark, no other trader will be allowed to use a mark, which though different would cause his goods to be known by the same name (*Neixo v. Provezende*, L. R. 1 Ch. 195, per Lord Cranworth; *Edelsten v. Edelsten*, 1 De G. J. & S. 185; 9 Jur. (N. S.) 479).

*Trade
secrets.*

The rule with respect to trade secrets is, that the discoverer of such a secret without fraud or breach of trust,

may use it in the preparation of an unpatented compound, and this he may even call by its original name, so long as he does not lead the public to suppose that his preparation is that of another person. Thus in an American case (*Davis v. Kendall*, 2 Rhode Island, 566), where the plaintiff had no patent, and therefore no exclusive property in a medical compound invented and sold by him, and known as the "Pain Killer," the Court decided that anyone was entitled to make and vend the compound; and in another American case the same doctrine was held, although the result was different, owing to proof of breach of trust (*Comstock v. White*, R. Cox, T. M. Cases, 232; and see *James v. James*, L. R. 13 Eq. 421; 41 L. J. Ch. 353; *Mitchell v. Condry*, 37 L. T. (N. S.) 268; *Condry v. Mitchell*, *ibid*, 766).

Where the defendant has acquired the knowledge of a trade secret by means of fraud or a breach of trust, he will be restrained from using it, and so will third persons who derive their information through the defendant (*Williams v. Williams*, 3 Mer. 157; *Tipping v. Clarke*, 2 Hare, 383; *Morison v. Moat*, 9 Hare 241; *Estcourt v. Estcourt Hop Essence Co.*, L. R. 10 Ch. 276). It would, however, seem to be doubtful whether the Court will interfere by injunction to prevent the violation of an agreement not to impart the secret of an invention, the ground of the hesitation being that from the nature of the case a decree for specific performance could not be made (*Newbery v. James*, 2 Mer. 446; *Williams v. Williams*, 3 Mer. 157); it has been remarked that the Court did not in these cases seem to have looked upon the secret receipt in the light of property liable to injury from divulgation: had this been done, there would probably not have been serious difficulty in framing an injunction in restraint of such a contemplated injury, even although the Court might not have been able to decree specific performance of the agreement (Browne

*Restraint
of breach of
agreement
not to dis-
close a
trade
secret,
quære.*

on Trade Marks, 481); and this would appear to be the correct view to take (see *Youatt v. Winyard*, 1 Jac. & W. 394; *Tipping v. Clarke*, 2 Hare 393). The case of *Morison v. Mout*, 9 Hare, 241, does not affect the question as to injunctions against the violation of an agreement not to divulge a secret, but confines itself to the decision that a person who acquires a knowledge of any secret process in breach of contract, trust, or confidence, will be restrained from *using it*, even although third persons not standing in such a degree of relationship could not be restrained. In *Dietrichsen v. Cabburn*, 2 Phill. 52, Lord Cottenham decided that the jurisdiction of the court to restrain by injunction, an act which the defendant is by contract bound to abstain from, is not confined to cases in which there are either no other executory terms in the contract, or none which a court of equity has not the means of enforcing. This, however, is not a decision upon the point referred to, and is merely quoted as illustrating a general principle applicable in a great measure to the case.

*Agreement
not to use
a trade
secret,
valid.*

*Other
cases.*

Where a person has sold to another a trade secret and has bound himself not to use it, there can be no question as to his liability in the event of his breaking the agreement (*Bryson v. Whitehead*, 1 Sim. & S. 74; 1 L. J. Ch. 42; and see *Leather Cloth Co. v. Lonsont*, L. R. 9 Eq. 345; see *Allsopp v. Wheatcroft*, L. R. 15 Eq. 59). If a person should falsely represent that goods of his own make are made according to a receipt of which he is in point of fact ignorant, but which is used in the manufacture of an article well known in the market, he will be restrained (*Cotton v. Gillard*, 44 L. J. Ch. 90; *Ansell v. Gaubert*, Seton 4th Ed. 235).

Where a secret process is used for the manufacture of some quack medicine, or of an article made to deceive the public, the Court will not protect it, for he who comes into equity must come with clean hands (*Williams v. Wil-*

Williams, 3 Mer. 157; *Estcourt v. Estcourt Hop Essence Co.* L. R. 10 Ch. 276; 44 L. J. Ch. 223.

A bare secret cannot be the subject of a sale because the court is unable with certainty to carry it out (*Green v. Folgham*, 1 Sim. & S. 398; *Newbery v. James*, 2 Mer. 446); but it can and does inquire what the value of the secret is to sell, by reference to the profits made, and may order payment on that basis (*Newbery v. James*, *supra*).

Under the Merchandise Marks Act, 1862 (25 & 26 Vict. c. 88, s. 19) the vendor of any chattel or article bearing a trade mark, is deemed to warrant such trade mark to be genuine unless the contrary is expressed in writing, signed by or on behalf of the vendor, and the measure of damages is the difference between the actual value of the article, and what would have been its value had it conformed to the warranty (*Jones v. Just*, L. R. 3 Q. B. 197). Irrespective of the Act, where a person contracts to sell goods of a specified quality, the trade mark may or may not be a material factor in the case, and on this subject see *Hopkins v. Hitchcock*, 32 L. J. C. P. 154; *Nichol v. Godts*, 10 Ex. Rep. 191; *Power v. Barham*, 4 Ad. & E. 473; 1 H. & W. 683.

In every case of alleged infringement, it is absolutely essential that the plaintiff should be prepared to prove either that his reputation may suffer by reason of the defendant's conduct or that his trade may be injured (see *Robinson v. Finlay*; *Ward v. Robinson*, 9 Ch. D. 487). Injury to the public is not in itself sufficient to support the plaintiff's claim. It is not necessary, however, to allege or prove special damage, a bare possibility of injury being considered sufficient (*Blofield v. Payne*, 4 B. & Ad. 410; and see *Rodgers v. Nowill*, 5 C. B. 109; but where the plaintiff cannot possibly have suffered any loss, and where it is not possible that he can sustain any, as for instance in a case before the Registration Act

*Warranty
of trade
mark.*

*Right of
property
in plaintiff
must be
injured.*

of 1875, where he had not carried on business at all, then he cannot recover (see *Lawson v. Bank of London*, 18 C. B. 84; *Batty v. Hill*, 1 H. & M. 264, per Willes, J).

Cases of this nature are not, so far as trade marks proper are concerned, at all likely to arise, for by the Patents, Designs, and Trade Marks Act (46 & 47 Vict. c. 57, s. 77), all marks must be registered, and by section 76 it is provided that the registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of it, and this is in itself a private right sufficient to ground a cause of action. The title of the plaintiff is therefore absolute immediately on registration, subject to the provision in the same section contained that for the first five years the *evidence* of his right shall be *prima facie* only, but that after the expiration of that time it shall be conclusive.

CHAPTER XI.

ON THE REMEDIES FOR THE INFRINGEMENT OF TRADE MARKS.

A PERSON whose trade mark has been infringed has *Four different remedies.* four remedies open to him: he may proceed by action on the case at common law for deceit, in the High Court of Justice, for an injunction and an account, or damages; he may proceed criminally under the Merchandise Marks Act, 1862, or on an indictment for obtaining money under false pretences. The remedy in equity was the one usually adopted under the repealed Acts, but the writ may now be issued in any division of the High Court of Justice (46 & 47 Vict. c. 57, s. 117, see definition of "the Court"). In practice, however, the Chancery Division will doubtless retain its practically exclusive jurisdiction over trade mark cases.

An action at common law may be brought by the person *Action on the case at common law.* to whom the false or fraudulent representation is made, as well as by the manufacturer whose trade mark has been imitated (see *Southern v. Howe*, 3 Cro. 47, and the remarks of Coltman, J., in *Rodgers v. Nowill*, 5 C. B. 126).

Proof of fraud on the part of the defendant is absolutely necessary in an action of this nature, that is to say, a *scienter* must be shown and not merely legal fraud (*Singleton v. Bolton*, 3 Doug. 293; *Crawshay v. Thompson*, 4 Man. & G. 377, *per* Coltman, J.; *Edelsten v. Edelsten*, 1 De G. J. & S. 199, *per* Westbury, L. C.), and this *scienter* is equivalent to an intention existing in the mind

of the defendant that certain goods should pass "as and for" those of the plaintiff (*Sykes v. Sykes*, 3 B. & Cr. 541; *Morison v. Salmon*, 2 Scott. N. R. 449; see *Dixon v. Fawcus*, 3 Ell. & Ell. 537).

Since the Judicature Acts it is possible that a plaintiff in an action at common law would be entitled to at any rate nominal damages, on production of the same proof as would be considered necessary to support an action in the Chancery Division.

*Evidence
of fraud.*

The mere fact that the plaintiff has informed the defendant that he is using a mark calculated to deceive, is no evidence of intentional fraud, unless it should also appear that such notice is true, and that credence was given to it by the defendant (*Rodgers v. Nowill*, 5 C. B. 109; and see the *Leather Cloth Co. v. American Leather Cloth Co.*, 1 H. & M. 271; *McAndrew v. Bassett*, 33 L. J. Ch. 564; 4 De G. J. & S. 380); and evidence to show that the trade mark as used by the defendant is calculated to deceive, is not in itself sufficient, but it must be further shown that the defendant used the mark with the intention of supplanting the plaintiff (*Crawshay v. Thompson*, 4 Man. & G. 357).

An intention to injure will be inferred in those cases where a false representation is made by a person who well knows it to be false (see *Polhill v. Walter*, 3 B. & Ad. 114), and in this event the motive of the defendant is beside the question (*Foster v. Charles*, 7 Bing. 105).

It is to be observed that no allegation of special damage is necessary (*Rodgers v. Nowill*, *supra*); nor need the plaintiff show that the defendant has made any misrepresentation to his immediate purchaser (*Sykes v. Sykes*, *supra*; *Chappell v. Davidson*, 2 K. & J. 123).

The question whether an action upon the case at common law is founded upon fraud on the part of the defendant, or upon a certain *jus in rem* which the

plaintiff has in the subject-matter of the action, is a point which, owing to the preponderance of judicial opinion in favour of the former view now amounting to an almost absolute settlement, is of but little practical importance. It may therefore be taken that in an action of this nature, an intention on the part of the defendant to deceive buyers, added to a probability of deception, is a sufficient ground of action (see *Crawshaw v. Thompson*, 4 Man. & Gr. 357). The intention to deceive is a question for the jury (*ibid.*), and there is little doubt that where a trader has innocently adopted a trade mark which is calculated to deceive by its similarity to another person's trade mark, his continuing to use it after complaint has been made, is strong evidence of fraud (*Orr Ewing v. Johnston*, 13 Ch. D. 434).

It is evident, therefore, that in an action at common law for the infringement of a trade mark, a mere attempt to deceive is sufficient (see *Crawshaw v. Thompson*, *supra*; *Rodgers v. Nowill*, 5 C. B. 109).

The Court can, in an action on the case, award an injunction against a defendant who has infringed a trade mark (see the Judicature Act, 1873, 36 & 37 Vict. c. 66, s. 25, sub-s. 8). Injunction.

The practice of remitting matters in dispute for determination at law, was first checked by Sir John Rolt's Act (21 & 22 Vict. c. 27), and an action upon the case is now of such rare occurrence as to be practically obsolete.

Originally, the Court of Chancery interfered upon principles similar to those prevailing at law, and the jurisdiction was merely of an ancillary nature (*Molloy v. Downman*, 3 My. & Cr. 14, *per* Lord Cottenham), and so when a case was sent to be tried at law, the action proceeded there upon ordinary common law principles. It is not, however, in the case of a trade mark proper, necessary in equity to prove fraud of any description Action in the Chancery Division.

(*Millington v. Fox*, 3 My. & Cr. 338), nor that the defendant know that he was pirating such mark (*Cartier v. Carlile*, 31 Beav. 292; *Kinahan v. Bolton*, 15 Ir. Ch. 75; *Edelsten v. Edelsten*, 1 De G. J. & S. 185; *Buryean v. Hills*, 26 Beav. 244; *Harrison v. Taylor*, 11 Jur. (N. S.) 408), but merely that he has acted in such a way as to render it probable that deception will occur; and a similar rule would now seem to be applicable to the infringement of a trade name, even although such name be used in a manner analagous to though not as a trade mark (*Singer Manufacturing Co. v. Wilson*, 3 App. Cas. 376). In some instances it may be absolutely necessary to prove fraud, even in equity (See Chapter on Evidence, *post*).

Actions to restrain the infringement of a trade mark will probably still for the most part be brought in the Chancery Division, although the exclusive jurisdiction which such division formerly enjoyed under the Repealed Acts has not been retained by the Act of 1883. The action will be commenced in the ordinary way by writ, which should be endorsed with a claim for an injunction where the obtaining of an injunction is a substantial object of the action (*Colebourne v. Colebourne*, 1 Ch. D. 690), and this will be so in an action on the case at common law for deceit (Rules S. C., 1883, O. 2, r. 1. *Ibid.* Ord. 111, rr. 1, 2, 3).

Injunction.

The proprietor of a trade mark taken or imitated by the defendant is entitled to an injunction, notwithstanding defendant's promise not to repeat the illegal act (*Routh v. Webster*, 10 Beav. 563; *Millington v. Fox*, 3 M. & C. 338; *Welch v. Knott*, 4 K. & J. 747; *Edelsten v. Edelsten*, *supra*; *Geary v. Norton*, 1 De G. & S. 9; *Tonge v. Ward*, 21 L. T. (N. S.) 480); and where a person infringes a trade mark at the request of a third party, both will be restrained (*Collins Co. v. Reeves*, 4 Jur. (N. S.) 865; *Collins Co. v. Walker*, 7 W. R.

222); and so also will the seller of such goods (*Coats v. Holbrook*, 2 Sand, 586, R. Cox, T. M. Cases, 20; *Chubb v. Griffiths*, 35 Beav. 127); a defence that a trade mark has been taken and placed upon defendant's goods by a servant without the knowledge of the defendant, is bad (*Tonge v. Ward*, 21 L. T. (N. S.). 480, and see *Twentsche v. Ellinger*, 26 W. R. 70).

The principles upon which interlocutory injunctions are granted, are very clearly explained in the judgment of the Court of Appeal in *Read v. Richardson*, 45 L. T. Rep. (N. S.) 54.

Where everything that a plaintiff can reasonably require is offered by the defendant before action, the plaintiff is entitled to an injunction and an account, but he is not entitled to costs (*Nunn v. D'Albuquerque*, 34 Beav. 595, and with respect to damages, see *Tonge v. Ward*, *supra*). The Court, however, will not take notice of any negotiations between the parties before action, unless they amount to a release or binding agreement with respect to the cause of action, or unless there is evidence of bad faith (*Edelsten v. Edelsten*, 1 De G. J. & S. 203, *per* Lord Westbury).

Delay in taking proceedings may disentitle the plaintiff to an interlocutory injunction, and he should also apply at an early stage of those proceedings (*Chubb v. Griffiths*, 35 Beav. 127), otherwise it may be refused (see *Pickford v. Grand Junction Ry. Co.*, 3 Railway Cas. 538; *Flavel v. Harrison*, 10 Hare, 467; *Isaacson v. Thompson*, 20 W. R. 196; *Lee v. Haley*, L. R. 5 Ch. 155). On an interlocutory motion for an injunction the onus of proof lies on the plaintiff, but it may under certain circumstances be thrown on the defendant (*Welch v. Knott*, 4 Jur. (N. S.) 330).

An engraver who makes and prints, and is in the habit of selling imitations of the plaintiff's labels, will be re- *Injunction against an engraver.*

strained, even although he himself makes no use of them, and the only proof necessary, is the imitation, right of property in the plaintiff, and the fact that the defendant is in the habit of selling the labels to anyone who asks for them (see *Farina v. Silverlock*, 1 K. & J. 509; *Guinness v. Ullmer and Another*, 10 L. T. (O.S.) 127). The statement of claim consequently need not allege any fraudulent purpose, or that any of the labels have in fact been made use of to defraud the plaintiff (see *Delondre v. Shaw*, 2 Sim. 240; *Farina v. Silverlock*, *supra*), but the plaintiff is bound to show that the defendant threatens and intends to make an improper use of the labels (*Farina v. Silverlock*, *supra*; *Emperor of Austria v. Day*, 3 D. F. & J. 217; *Gout v. Aleploglu*, 6 Beav. 69, note).

An injunction will be issued against an engraver of blocks for printing forged labels, and in fact against any person whomsoever who can be shown to be assisting in the manufacture or disposition of such forged labels (see *Guinness v. Ullmer*, *supra*; *Upmann v. Forester*, 24 Ch. D. 231).

Against a
wharfinger
or ware-
houseman.

On similar principles, where a wharfinger in possession of goods marked with a counterfeit brand, refused to deliver them up to the holder of the dock warrants after receipt of a notice that an injunction was about to be applied for, there is no doubt that he adopted a proper and legitimate course (*Hunt v. Maniere*, 34 Beav. 157); and in an action for damages against him for non-delivery, the wharfinger should apply to the Court in which the action is brought for a stay of proceedings with costs, under the Judicature Act, 1873, s. 24, sub-s. 5. If, however, the wharfinger, after the receipt of a communication addressed to him, does not offer to submit to the jurisdiction of the Court, either by detaining the goods or offering to erase the mark (*Upmann v. Elkan*, L. R. 12 Eq. 140; L. R. 7 Ch. 130, *per* Lord Hatherley), an

injunction will issue against him to restrain his parting with the goods, and he will have to pay the costs (*ibid.*). According to the decision in this same case of *Upmann v. Elkan*, it would appear that a person having in his hands or under his control goods bearing a forged trade mark, *is bound*, upon the fact being brought to his knowledge, at once to submit to do whatever he might be compelled to do by action, and if he fails, he will be liable for the costs, however innocently the goods may have come to him (and refer to *Ponsardin v. Peto*, 33 Beav. 642).

It is, however, doubtful whether a plaintiff would have any lien for his costs on goods so warehoused by the defendant; although there is no doubt but that the wharfingers have a lien upon such goods, and that the mere fact of fraudulent labels being affixed, of which they knew nothing, will not deprive them of their right (*Mort v. Pickering*, 8 Ch. Div. 375).

Where a man had advanced money upon the security of dock warrants covering certain goods bearing spurious marks, and which were in the custody of a warehouseman against whom an injunction had been obtained, it was decided that the lender was entitled to have the goods delivered up to him, on the counterfeit marks being removed (*Ponsardin v. Peto*, *supra*).

In a very recent case it was held that the purchaser of goods bearing a spurious trade mark, is liable to pay all the costs of an action to restrain his disposing of any of them, and this although such goods were purchased for the defendant's own private consumption, and although the defendant immediately after being served with the writ and notice of motion, had stated that he had no intention of selling the goods, and offered all the relief asked for by the writ, and afterwards at the motion agreed to an undertaking in the terms of the writ. The learned judge

based his decision upon the ground that there had been an infringement, and that the goods purchased by the defendant constituted an exceedingly large order for personal consumption, and that even if the goods were given away to friends and relatives, and not sold, there would be a large distribution, and one calculated to do the plaintiff's material injury (*Upmann v. Forester*, 24 Ch. D. 231).

*Title of a
newspaper
or periodi-
cal.*

There is nothing analogous to copyright in the name of a newspaper (*Bell v. Locke*, 8 Paige (Amer.) 75); but the proprietor has a right to restrain the adoption of the same name or any colourable imitation thereof by another person, on the principle that the right in such name is a right of property in the nature of a trade mark (*Kelly v. Hutton*, L. R. 3 Ch. 708; *Clement v. Maddick*, 1 Giff. 98). Therefore, where the plaintiffs were the publishers of "Hemy's Royal Modern Tutor for the Pianoforte," which they had neglected to register under the Copyright Acts, they were held entitled to an injunction to restrain the defendant from offering a work for sale, entitled "Hemy's New and Revised Edition of Jousse's Royal Standard Pianoforte Tutor," and this, although Hemy had actually revised the work referred to (*Metzler v. Wood*, 8 Ch. D. 606).

The absence of a fraudulent intention is no defence against an application to the Court for an injunction by the person whose property has been injured (*Clement v. Maddick*, *supra*, per Stuart, V.-C.) The ground upon which an injunction is applied for is usually substantial similarity, and an intent to continue the manufacture or conduct complained of (*Bradley v. Norton*, 33 Conn. 157 (Amer.)).

*Injunction
under the
Judicature
Act, 1873.*

It was at one time thought that the Court might grant an injunction under the extended words made use of in sub-s. 8 of s. 25, Judicature Act, 1873, so as to cover those classes of cases where equity would not seem to supply any

adequate remedy, but in *Day v. Brownrigg*, 10 Ch. D. 807, Lord Justice Turner laid it down that the power given to the Court by this sub-section, to grant an injunction in all cases in which it shall appear to the Court to be "just or convenient," does not in the least alter the principles on which the Court should act (refer also to *Beddow v. Beddow*, 9 Ch. D. 93; *Gaskin v. Balls*, 13 Ch. D. 324; *Thorley's Cattle Food Co. v. Musson*, 14 Ch. D. 763; *Quartz Hill Mining Co. v. Beall*, 20 Ch. D. 507).

Independently of the Merchandise Marks Act, 1862 (25 & 26 Vict. c. 88, ss. 2, 3, 21), Courts of Equity have long exercised jurisdiction to order the delivery up and destruction of counterfeit labels (*Edelsten v. Vick*, 11 Ha. 86; *Farina v. Silverlock*, 4 K. & J. 650; *Dent v. Turpin*, 2 J. & H. 139; *Upmann v. Elkan*, L. R. 12 Eq. 140; L. R. 7 Ch. 130). Delivery up and destruction of counterfeit labels.

Where a person is employed to make certain articles and to affix thereto the trade mark of another person, he has (if he acted in ignorance) a right of action against his employer to recover such damages and costs as he may have sustained in an action brought against him by such other person (*Dixon v. Fawcus*, 9 W. R. 415; and see *Spedding v. Nerell*, L. R. 4 C. P. 212; *Goldwin v. Francis*, L. R. 5. C. P. 295); even although he compromised the original action (*ibid.*). And so also the vendee of goods, who has been restrained by injunction from parting with them, is doubtless entitled to recover from the vendor all the expense he may have been put to in defending himself (*Dixon v. Fawcus*, *supra*; *Collen v. Wright*, 7 E. & B. 301; 26 L. J. Q. B. 147; In Error, 8 E. & B. 647; 27 L. J. Q. B. 215); and he may also recover the price of the goods in an action for money had and received (*Clarke v. Dickson*, 1 E. B. & E. 148). Right of action by innocent employee.

The Court has authority to restrain a representation that articles not the production of a certain person. By vendee. Restraint of misrepresentation.

son, are in fact the production of such person (*Lord Byron v. Johnston*, 2 Mor. 29), but the remedy of an author against the publisher of an inaccurate edition of his works falsely purporting to be executed by him, is by action on the case at law for injury to his reputation, and the fact of the publisher being the owner of the copyright makes no difference (*Archbold v. Sweet*, 1 Moo. & R. 162). This example bears a very close resemblance to those in which a person having a reputation for the manufacture of a particular commodity, not protected by a patent, brings an action against another for selling an inferior article in his name (*ibid.*, per Lord Tenterden). Where, however, a person reproduces the production of another in an entirely different form, as in the case of a diorama purporting to be a copy of a picture, there the plaintiff has no remedy by way of injunction, for at the most the misrepresentation is only a sort of libel (*Martin v. Wright*, 6 Sim. 297).

Trade
mark be-
coming
publici
juris.

By reason
of laches.

It is essential that the owner of a trade mark should use due diligence in protecting it, otherwise it will become *publici juris*. (See *Brown v. Freeman*, 12 W. R. 305; *Beard v. Turner*, 13 L. T. (N. S.) 746; *Isaacson v. Thompson*, 41 L. J. Ch. 101), or he may forfeit his right to damages or an account (*Cartier v. Carlile*, 31 Beav. 292; *Kinahan v. Bolton*, 15 Ir. Ch. 75; *Harrison v. Taylor*, 11 Jur. (N. S.) 408). The mere assertion of a claim by the plaintiff without any attempt to enforce it will not, however, absolve him from *laches* (*Clegg v. Edmondson*, 8 De G. M. & G. 810; *Lehmann v. McArthur*, 37 L. J. Ch. 625; but see *Attorney-General v. Sheffield Gas Co.*, 3 De G. M. & G. 327; *Kinahan v. Bolton*, *supra*). Delay is, however, no bar to an injunction in aid of a legal right, unless the legal remedy is barred by lapse of time (*Fullwood v. Fullwood*, 47 L. J. Ch. 459).

By reason

A trade mark may also become *publici juris* by reason of

some intrinsic defect, and as any defect of this nature may ^{of inherent defect.} be pleaded in bar, notwithstanding registration, it obviously becomes necessary to inquire what is sufficient to invalidate the plaintiff's title to relief in this respect. It may be pointed out that by 46 & 47 Vict. c. 57, it is not 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 (s. 73). No proceedings can be successfully conducted on account of a trade mark of such universal use that nobody could be induced from the use of it to believe that he is buying the goods of the original manufacturer (*Ford v. Foster*, 41 L. J. Ch. 689; *Wheeler & Wilson Manufacturing Co. v. Shakespeare*, 39 L. J. Ch. 40; *Liebig's Meat Co. v. Hamburg*, 17 L. T. (N. S.) 298), for the name then becomes a mere brand of quality, or a denomination of the commodity itself (*Hall v. Barrows*, 33 L. J. Ch. 204; see *ante*, p. 276).

The test of a trade mark having become *publici juris* ^{Test.} is whether the use of it has or has not ceased to deceive the public (*Ford v. Foster*, L. R. 7 Ch. 611; 41 L. J. Ch. 682); and a trade mark may become *publici juris* as between the wholesale dealer and the retail dealer, while at the same time it may not be so as between the retail dealer and the public (*ibid.*).

"Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were before the 13th day of August, 1875, publicly used by more than three persons on the same or a similar description of goods, shall for the purposes of the section be deemed common to the trade in such goods" (46 & 47 Vict. c. 57, s. 74 sub-s. 3); but it is by the same section provided that nothing in the 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 13th August, 1875 :

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 13th August, 1875 :

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.

Further the applicant for entry of any such common particular or particulars must disclaim in his application any right to the exclusive use of the same (sub-s. 2).

Where a term has become known and been used as a term of art to designate a process, the exclusive right to use it as a trade mark is gone (*Liebig's Extract Co. v. Hanbury*, 17 L. T. (N. S.) 298; *Mitchell v. Condry*, 37 L. T. (N. S.) 268).

*Alien
plaintiff.*

An alien may register a trade mark, and may also take proceedings in respect thereof, though resident abroad, and although he does not carry on business in this country and his goods are not usually sold here (*Re Riviere*, W. N. 1884, p. 27; *Collins Co. v. Brown*, 3 K. & J. 425; *Same v. Cowen*, *ibid.* 428; *Same v. Reeves*, 28 L. J. Ch. 56; *Howe v. McKernan*, 30 Beav. 547). The right of property in a trade mark is therefore a *jus in personam* as well as a *jus in rem*, and is not limited by territorial bounds (*Derringer v. Plate*, R. Cox, T. M. Cases, 324 (Amer.); *Taylor v. Carpenter*, *ibid.*, 14; *Coats v. Holbrook*, *ibid.*, 20; but the remedy is as complete as in the case of an action for libel

(*Collins Co. v. Cowen*, 3 K. & J. 428). In the construction of the Merchandise Marks Act, 1862 (25 & 26 Vict. c. 88), the word "person" includes any person, whether a subject of Her Majesty or not (s. 1).

The forgery or imitation of a trade mark is a criminal offence under the Merchandise Marks Act, and by sect. 11 it is provided that any proceeding, judgment, or conviction under the Act, shall not take away or diminish, or prejudicially affect, any civil remedy to which the person aggrieved may be entitled. The proprietor of a trade mark may therefore proceed concurrently in the civil and criminal courts. An alien may take proceedings under the Act, so may a body corporate or body of the like nature, whether constituted according to the law of this country or otherwise (s. 1).

In every indictment, information, pleading, or other proceeding under the Act, it is necessary to allege an attempt to defraud or to enable another to defraud, but it is not necessary to allege any attempt to defraud a particular person, and on the hearing it is only necessary to prove that the person accused did the act charged, with intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud (s. 12).

The Act makes it a misdemeanor to forge or counterfeit any trade mark, or to apply any forged or counterfeited trade mark to any article not being the production of the person denoted by the mark, and in addition to criminal proceedings the person offending forfeits the articles to the Crown, and the Court may order them to be destroyed (s. 2). A "false, forged, and counterfeited" trade mark may consist in an addition to, or alteration or imitation of, any trade mark with intent to defraud, and every act of making, applying, or otherwise using any such addition to or alteration or

Prosecution under the Merchandise Marks Act.

Allegations in indictment.

Forging or applying forged trade marks.

*Selling or
exposing
articles
bearing
forged
trade
marks.*

imitation of a trade mark is a "forging and counterfeiting" (s. 5). It is also a misdemeanor to apply any trade mark, whether genuine or not, and with intent to defraud, to any vessel containing any article intended to be sold or exposed for sale, or to place any article in any vessel to which a trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied, and in addition to other proceedings the person offending forfeits the article or vessel, as the case may be, to the Crown, and the Court may order such forfeited articles to be destroyed (s. 3). Any person who knowingly sells, utters, or exposes for sale, any chattel or article bearing a forged or counterfeited trade mark, or a genuine mark wrongly applied, forfeits to the Crown a sum equal to the value of the article, and a further sum not exceeding £5 and not less than 10s. (s. 4), and can, at the instance of the party aggrieved, be compelled to give full information in writing of the name and address of the person from whom he obtained the chattel or article (s. 6). The provisions of the Act do not, however, apply to cases where the person charged has applied as a trade mark a name, word, or expression generally used for indicating that any chattel or article is of some particular class or description of manufacture only, nor is it any offence to sell, or expose for sale, any article to which any such generally-used name, word, or expression, shall have been applied (s. 9). The expression trade mark, made use of in the Act, applies only to names, signatures, words, &c., *lawfully* used, &c. (s. 1), and therefore a prosecutor who himself wrongfully uses the word "patent" as part of his trade mark, cannot avail himself of the benefit of the Act any more than he could hope to succeed in the civil courts (*Morgan v. McAdam*, 86 L. J. Ch. 228).

Although a court of Equity may not interfere in certain cases, it does not therefore follow that the trade mark is

not lawfully used, but only that the plaintiff, in consequence of misconduct, is not entitled to the protection of an injunction (Poland, Merchandise Marks Act, 21).

In every indictment, pleading, proceeding, and document, it is sufficient to mention that the trade mark is in point of fact a trade mark, without further describing it or setting forth any copy thereof (s. 10). Any person who aids, abets, counsels, or procures the commission of any offence made a misdemeanor under the Act, is himself guilty of a misdemeanor (s. 13), and in connection with this provision it is necessary to observe that abettors of offences punishable on summary conviction can be dealt with under 11 & 12 Vict. c. 43, s. 5. Where, however, a master intends a servant to commit an offence punishable summarily under the Act, he should be summoned as principal and the servant as aiding and abetting (*Wilson v. Stewart*, 3 B. & S. 913); on the other hand, the master may sometimes be charged with aiding the servant (*Howells v. Wynne*, 32 L. J. C. P. 281).

Allegations in indictment.

Aiding and abetting.

A person convicted of a misdemeanor under the Act, is liable to two years' imprisonment, or less, with or without hard labour, and he is also liable to a fine, either in addition to or in substitution for imprisonment (s. 14).

Punishment on conviction.

In cases in which any person shall have committed an offence under the Act for which he is liable to a penalty, such penalties may be recovered in England, Wales, or Ireland in a *Qui Tam* action brought in any Court of Record, or in England and Wales by a summary proceeding before two justices of the peace (s. 15). All cases by way of summary proceeding are within 11 & 12 Vict. c. 43, one of Jervis's Acts (s. 16), except in so far as the limitation as to commencing proceedings is concerned, for by s. 18 of the Merchandise Marks Act, it is provided that no person shall commence any action or proceeding for the recovery of any penalty, after the

Recovery of penalties.

expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding. In any action, whether at common law or otherwise, the Court has power to award an injunction (s. 21), and the plaintiff may recover damages (s. 22). A definition of what constitutes a "mark," and what a "trade mark," is laboriously set out in the first section of the Act.

Jurisdiction of Quarter Sessions.

It would appear to be questionable whether the Courts of Quarter Sessions have jurisdiction to try any person charged with a misdemeanor under the Act (see Poland, *Merchandise Marks Act*, p. 26).

Indictment for forgery.

It is evident that an indictment for the forgery of a trade mark may be preferred under the *Merchandise Marks Act*, but at common law there is no forgery; there is no fraudulent making or alteration of a writing to the prejudice of another man's right; no forging of a false document to represent a genuine one (*Reg. v. Smith*, 8 Cox, 32), and even where a trade mark consists of a signature, the imitation of it does not at common law amount to forgery (*Reg. v. Closs*, 7 Cox, 494). It appears to be certain, therefore, that if a prosecutor wishes to succeed on a charge of this nature he must lay his information under the *Merchandise Marks Act*, and not at common law.

Indictment for false pretence.

An indictment will also lie at the instance of the party who has been induced to part with any chattel, money, or valuable security in exchange for an article bearing a fraudulent imitation of a trade mark, against the person who fraudulently represented the article to be of a kind different to what it really was (*Reg. v. Dundas*, 6 Cox, 380; *Reg. v. Suter*, 10 Cox, 577); it is not necessary that the misrepresentation should be made in actual words, and all persons who have concurred and assisted in the fraud may be indicted and convicted as principals, though

not present at the time of making the pretence and obtaining the money or goods (*R. v. Moland*, 2 Mood. C. C. 276).

An indictment for obtaining money, &c., under false pretences cannot be presented to a grand jury without a previous investigation before a magistrate, or unless the *fiat* of the Attorney or Solicitor-General or one of the judges of the Supreme Court be first obtained (22 & 23 Vict. c. 17), but an indictment for *attempting* to obtain, &c., may be preferred without taking any of these steps (*R. v. Burton*, 13 Cox, 71).

In some cases the prisoner may be indicted for a cheat at common law (see *R. v. Cross*, 7 Cox, 494).

Indictment for a cheat at common law.

In an indictment for false pretences, it is not necessary to allege any attempt to defraud a particular person, or any ownership of the chattel, money, or valuable security (24 & 25 Vict. c. 96, s. 88), but it is necessary to show on the face of such indictment that the defendant did the act charged with intent to defraud (see *Reg. v. Henderson*, 2 Moo. C. C. 192).

Indictments, whether preferred under the Act or at Common Law, are very unusual, the remedy almost exclusively sought being in the Chancery Division of the High Court of Justice.

It is provided by the Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), that any person who, *inter alia*, describes any 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 £5, and a person is deemed to represent that a trade mark is registered, if he sells the article with the word "registered," or any word or words expressing or implying that registration has been obtained for the article (*sic*) stamped, engraved, or impressed on, or otherwise applied to the article (s. 105). This section, as drawn, limits the

Penalty on falsely representing articles to be registered.

offence to the actual selling of an article with the false representation affixed, the mere exposure for purposes of sale would not therefore be sufficient to convict a defendant. If any person makes or causes to be made a false entry in any register kept under the 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 (*ibid.* s. 93).

CHAPTER XII.

ON EVIDENCE AND PLEADING AND HEREIN OF INSPECTION AND DISCOVERY, JOINDER, ACCOUNT, DAMAGES, AND COSTS.

A DEFENCE that a registered trade mark is intrinsically bad by reason *inter alia* of false representation or fraud on the part of the plaintiff is a good defence, and so is a defence that such trade mark, although registered, possesses none of the features insisted on by the 64th section of the Act of 1883 (46 & 47 Vict. c. 57). (See *Re Palmer's Application*, 21 Ch. D. 47); the books of the Comptroller which show marks the registration of which has been refused, would not seem to be evidence that these marks are *publici juris* (see *Orr Ewing v. Johnston*, 13 Ch. D. 434.)

The 72nd section of the same Act provides that except where the Court has decided that two or more persons are entitled to be registered as proprietors 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; furthermore, 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.

Independently of the Act, however, it would seem to be settled that any misrepresentation on the part of the

Defence that trade mark although registered is intrinsically bad.

Evidence of misrepresentation.

tion on
part of
plaintiff.

plaintiff calculated to deceive the public, will destroy the plaintiff's title to relief (*Pidding v. How*, 8 Sim. 477; 6 L. J. Ch. (N. S.) 345; *Perry v. Truett*, 6 Beav. 66; *Flavel v. Harrison*, 10 Hare, 467; 22 L. J. Ch. 866; *The Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. L. Cas. 523; 35 L. J. Ch. 53; *Morgan v. McAdam*, 36 L. J. Ch. 228; 15 L. T. (N. S.) 348), but where the misrepresentation is conclusively proved, it will not affect the plaintiff's title to relief unless it took place before the commencement of the action (*Siebert v. Findlater*, 7 Ch. D. 801; *Estcourt v. Estcourt Hop Essence Co.*, L. R. 10 Ch. 276).

The false representation must appear on the face of the trade mark and not merely collaterally (*Ford v. Foster*, L. R. 7 Ch. 611; but see the remarks of Lord Blackburn in *Singer Manufacturing Co. v. Wilson*, 47 L. J. Ch. 493); but in America, this rule would appear to be the reverse, for where a person who claimed property in a trade mark, had acquired it, if at all, by the use, in circulars, of fraudulent and deceptive and untrue language as to the origin and qualities of the article in respect of which the trade mark was claimed, it was held that he had lost his right to claim the assistance of a Court of Equity to protect his trade mark (*Seabury v. Grosvenor*, 14 Blatchf. 262). Where the matter complained of refers in an extravagant manner to the value and effect of the goods, amounting to mere puffing, the plaintiff's rights will not be affected (*Holloway v. Holloway*, 13 Beav. 211).

Evidence tending to show that the misstatement is so gross that no one could possibly be deceived by it, will not be accepted (*Leather Cloth Co. v. American Leather Cloth Co.*, 38 L. J. Ch. 199), but the rule is occasionally otherwise where the false statement refers to, or consists in, the use of a fictitious name (*Hogg v. Kirby*, 8 Ves.

213). The Court will not protect a person who is carrying on an immoral or deceitful trade (*Lee v. Huley*, L. R. 5 Ch. 158, *per* Clifard, L.J.).

Before the Registration Act, 1875, a very common method of deception consisted in the use of the word "patent;" there being in point of fact no patent taken out, and now by 46 & 47 Vict. c. 57, s. 105, it is provided that 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 £5. 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. If, moreover, a person should endeavour to use his right in a trade mark as if he had a monopoly by patent for the manufactured goods, such trade mark will not be protected (*Singer Manufacturing Co. v. Wilson*, 11 H. L. Cas. 543, *per* Lord Kingsdown; *Morgan v. McAdam*, 36 L. J. Ch. 228, *per* Wood, V.-C.; *Flavel v. Harrison*, 10 Hare, 467); but any action he may bring in respect thereof will be dismissed with or without costs (*Leather Cloth Co. v. Lonsmont*, L. R. 9 Eq. 352), and if words are first inserted in a trade mark after the expiration of a patent, the rule is the same (*Edelsten v. Vick*, 11 Hare, 78), and, after some difference of opinion, it is now settled that a similar rule prevails where the word has been retained after the patent has run out (*Edelsten v. Vick*, 11 Hare, 78; *Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. L. C., 523; *Morgan*

v. McAdam, supra ; *Cheavin v. Walker*, 5 Ch. D. 850).

The evidence in this class of case is, however, entirely one of probability of deception, and therefore where the word "patent" is used only as part of the designation of an article (*Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. L. Cas. 541, *per* Lord Kingsdown), or to indicate some particular class or description of manufacture, the trade mark will not be vitiated (*Morgan v. McAdam*, 36 L. J. Ch. 229, *per* Wood, V.-C. ; *Marshall v. Ross*, L. R. 8 Eq. 651).

*Collateral
misrepresentation.*

A collateral misrepresentation by the owner of the trade mark will not disentitle him to relief, and therefore when the plaintiff had falsely represented in his invoices, and in a few advertisements, that he was a "patentee" of a particular article, it was held that such false representation was not sufficient to prevent him from sustaining an action (*Ford v. Foster*, L. R. 7 Ch. 611). The word "patentee" is equivalent to "patent" (*Nirey v. Roffey*, W. N. 1870, p. 227, and see *Lamplough v. Balmer*, W. N. 1867, p. 293). In a very recent Scotch case it was considered that where the proprietor of a trade mark wrongfully uses the word "patent," or any variation of such word, either in an advertisement or in any other collateral manner, it is doubtful whether the trade mark ought to be protected (see *Macfarlane v. Oak Foundry Co.*, 10 Ct. of Sess. Cas. 801).

*Penalty
under the
Merchan-
dise Marks
Act.*

Under the Merchandise Marks Act, 1862, s. 7, the employment of any mark for the purpose of falsely indicating any chattel or article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege, or copyright, is punishable by a penalty of £5 or less, and a sum of money equal to the value of the chattel or article sold or exposed for sale.

The employment of any name, word, or expression generally used for indicating a chattel or article to be of some particular class or description of manufacture only, is not to be construed as an offence under the Act (s. 9).

As the cases on the subject of a false representation on the part of the plaintiff are tolerably clear, so also are those which define the responsibility of the defendant and point out the allegations necessary to be proved against him. In an action for an injunction it is no longer necessary to prove any fraudulent intent on the part of the defendant (*Millington v. Fox*, 3 My. & Cr. 338; *Hall v. Barrows*, 33 L. J. Ch. 204; *Leather Cloth Co. v. American Leather Cloth Co.*, 33 L. J. Ch. 199; *McAndrew v. Bassett*, 33 L. J. Ch. 561); but where it is clearly shown that there is no intention to deceive, or probability of deception whether intentional or otherwise, there the Court will not interfere (*Welch v. Knott*, 4 K. & J. 747; 4 Jur. (N. S.) 330; and see *Woollam v. Ratcliff*, 1 Hem. & Mill, 259); nor will it where the defendant has an abstract right to do what he has done, although his procedure may militate against the moral law (*Batty v. Hill*, 1 H. & M. 264; 8 L. T. (N. S.) 791; see *Braham v. Bustard*, 1 H. & M. 447; 11 W. R. 1061). It is, however, certain that much less proof of the plaintiff's title is required where there is reason to doubt the defendants' good faith, and when the defendants swear to that good faith in so many words, but give the Court no reason whatever to believe in it, and certainly considerable reason for doubting it, the rule is the same (*Ruddle v. Norman*, L. R. 14 Eq. 356).

Where an imitation is such as to satisfy the Court of a probability of deception, the *onus* of proving the contrary is immediately thrown on the defendant: in any other event the probability of deception must be shown by the

Evidence of fraud on the part of the defendant.

plaintiff, or his action will fail (*Cope v. Evans*, L. R. 18 Eq. 138).

In all cases of false representation not amounting to the infringement of a trade mark strictly so called, it was at one time considered that fraud must be proved even in Equity (*Singer Manufacturing Co. v. Wilson*, 2 Ch. D. 434), as, for instance, in those cases where the defendant, without putting any trade mark at all on his goods, or putting a trade mark which was admittedly different in substance from the trade mark of the plaintiff, had represented the goods as being manufactured by the plaintiff (*ibid.* 443, *per* Jessel, M. R.; and see *Wheeler & Wilson v. Shakespear*, 39 L. J. Ch. 36). It would seem that in the case of a trade name it is not now necessary to prove any intent to defraud (*Singer Manufacturing Co. v. Wilson*, on appeal, 3 App. Cas. 376), and it is thought that a similar principle would probably be extended in practice to other cases analogous to trade marks properly so called (see *Singer Manufacturing Co. v. Looy*, 8 App. Cas. 15). It is always advisable, if possible, to prove a fraudulent intent, for an account will not be directed to be taken during such time as the defendant was in ignorance that he was infringing the plaintiff's rights (*Edelsten v. Edelsten*, 1 De G. J. & S. 185), and so where the plaintiff has been guilty of *laches*, so as to preclude himself from recovering judgment, he may, nevertheless, escape the effects of his neglect by clearly proving intentional fraud on the part of the defendant (*Rodgers v. Rodgers*, 31 L. T. (N. S.) 285), and it is also quite obvious that much less absolute proof of the plaintiff's title is required where there is reason to doubt the defendant's good faith (*Rudde v. Norman*, L. R. 14 Eq. 356).

Advantages of proving fraud if possible.

It is certainly advisable, therefore, to prove, if possible, a fraudulent intent on the part of the defendant, for in addition to other advantages, the plaintiff will be able to

prevent the defendant from ever employing the same description of trade mark again; this he cannot do where the defendant is able to establish his *bona fides* in the matter, for here the Court will be satisfied with the least alteration consistent with the plaintiff's interest (*Bass v. Dawber*, 19 L. T. (N. S.) 626, *per* Lord Romilly).

A fraudulent intention may arise and be proved by reference to surrounding facts and circumstances—*noscitur a sociis*—by what precedes and follows. Thus, where the defendant uses a name which is not his own, the Court will presume that he must have done so with an intent of some kind, and this intent frequently grows more and more fraudulent as the defendant's motives and objects come to light, as, for instance, where he adopts the plaintiff's name, and when complaint is made, tenders as an excuse that he was authorised so to do by some person bearing the same name as the plaintiff (*Linsworth v. Walmsley*, L. R. 1 Eq. 518, and see also the American case, *Meriden Britannia Co. v. Parker*, 39 Conn. 450); or that he has taken such a person into partnership (*Croft v. Day*, 7 Beav. 84; *Southorn v. Reynolds*, 12 L. T. (N. S.), 75; *Schweitzer v. Atkins*, 37 L. J. Ch. 847).

So, on the other hand, there may be circumstances pointing to the absence of fraud on the part of the defendant (*Chevin v. Walker*, 5 Ch. D. 850).

A reasonable length of time is allowed to the plaintiff to enable him to procure proof of actual deception, and if this time is not exceeded, the defendant cannot impute laches (*Lee v. Haley*, 21 L. T. (N. S.) 546; 39 L. J. Ch. 284 (App.); *Isaacson v. Thompson*, 41 L. J. Ch. 101). Evidence need not be produced to show that any particular person has been deceived, or that the plaintiffs have actually suffered any loss (*Lee v. Haley*, 21 L. T. (N. S.) 546; *Rodgers v. Rodgers*, 31 L. T. (N. S.) 285; *Hookham* *Of the absence of fraud.*
Evidence of deception of particular person, or of loss, not necessary.

v. Pottage, 26 L. T. (N. S.) 755 ; and see *Sykes v. Sykes*, 3 B. & Cress. 541 ; 5 Dowl. & Ry. 292 ; *Blofeld v. Payne*, 4 B. & Ad. 410). Under no circumstances, however, is the fact that one person has been deceived, conclusive evidence as to misrepresentation (*Civil Service Supply Association v. Dean*, 13 Ch. D. 512 ; and see *Braham v. Beacham*, 7 Ch. D. 848).

Misrepresentation.

A person is not at liberty to represent that the manufactures of another person are spurious (*James v. James*, L. R. 13 Eq. 421 ; *Thorley's Cattle Food v. Mawman*, 6 Ch. D. 582), or to falsely assert that his own article is the "genuine" (*ibid.*), or the "original" one (*Cocks v. Chandler*, L. R. 11 Eq. 446) ; but rebutting evidence may be brought forward by a person who is alleged wrongfully to have employed the word "original" (*Broome v. Freeman*, 12 W. R. 305).

Where proof of actual deception wanting.

Where proof of actual deception is for any reason unable to be obtained, the plaintiff must show that the defendant has by his conduct raised a reasonable probability of deception ; and the mere fact of the defendant's trade mark being somewhat similar to that of the plaintiff, is not a material factor in the case if such mark is different in the points to which a customer would look, in order to see whose manufacture he was purchasing (*Blackwell v. Crabb*, 36 L. J. (N. S.) Ch. 504 ; *Bass v. Darber*, 19 L. T. (N. S.) 626 ; *Cope v. Evans*, L. R. 18 Eq. 138 ; 30 L. T. (N. S.) 292 ; *Mitchell v. Condry*, 37 L. T. (N. S.) 268 ; *Condry v. Mitchell*, *ibid.* 766). It is never necessary to show that a purchaser or other person has actually been misled (*Johnston v. Orr Ewing*, L. R. 7 App. Cas. 219).

Opinion of witnesses.

The mere opinion of witnesses who have not themselves been deceived is of no value unless connected with other evidence (*Cope v. Evans*, L. R. 18 Eq. 146) ; and where the Court is, upon inspection alone, not satisfied of the

identity of the two trade marks, or of such a similarity as will suffice to ground an opinion that the one must be deemed a colourable imitation of the other, it will not grant an injunction upon such opinion (*ibid.*).

In the case of an action against aiders and abettors, as against a printer, it is submitted that evidence must be adduced to show that some of the spurious goods have actually been sold (see *Farina v. Silverlock*, 6 De G. M. & G. 214; *Delondre v. Shaw*, 2 Sim. 237), and the statement of claim should contain an averment to that effect (*Farina v. Silverlock*, *supra*). But under the Merchandise Marks Act (25 & 26 Vict. c. 88), this is not necessary, and aiders and abettors are guilty of a misdemeanor (s. 13).

If the plaintiff can show that he has an exclusive right of property in the trade mark, and that the defendant imitated it without leave or licence, to the probable deception of the public, and the consequent injury of the plaintiff, the Court will restrain on that evidence alone (see *Kincham v. Bolton*, 15 Ir. Ch. 75; *Leather Cloth Co. v. American Leather Cloth Co.*, 33 L. J. Ch. 199; *Cope v. Evans*, L. R. 18 Eq. 138), and so it will where it is shown that the defendant's object is to pass off his goods as those of the plaintiff, and that there is a probability of deception (*Cope v. Evans*, *supra*, and see *Woolham v. Ratcliff*, 1 H. & M. 259). Where the defendant has imitated the plaintiff's mark, the latter should proceed for an injunction, giving in evidence the imitation of the mark, even though it be unregistered and therefore invalid, for if evidence of wilful and intentional fraud can be procured, it is submitted that there is nothing in the Trade Marks Act of 1883 to prevent proof of the imitation of such mark being given as corroborative evidence of the fraud (see Sebastian on T. M., 122).

It is not necessary to show that the defendant's goods

*Evidence
in action
against
aiders and
abettors.*

*In support
of motion
for injunc-
tion.*

Evidence

of quality of defendant's goods. are of an inferior quality, or that the plaintiff has sustained any specific damage (*Blofeld v. Payne*, 4 B. & Ad. 410, and see the remarks of Taunton, J., in *Marzetti v. Williams*, 1 B. & Ad. 425). It will under no circumstances be assumed that the plaintiff would have sold the goods that the defendant has sold, but for the latter's wrongful user of the trade mark (*Leather Cloth Co. v. Hirschfield*, 1 Eq. 299).

Injunction to restrain the opening of letters evidence. Where an action is brought to restrain a person from opening letters addressed to or forming part of the property of the plaintiff, a mere isolated case of opening is not sufficient (*Edgington v. Edgington*, 11 L. T. (N. S.) 299).

Evidence of resemblance question for jury. Where the statement of claim charges the defendant with stamping or marking his goods in imitation of those of the plaintiff, the question whether there is such a close resemblance in the mark as to be calculated to impose on the unwary and injure the plaintiff's sale, should be left to the jury (*Cresswell v. Thompson*, 4 Man. & G. 384; see the remarks of Cresswell, J.).

Of non-registration. Evidence that the plaintiff has not registered the mark for the infringement of which he sues, or has not obtained a certificate of refusal, is in either case sufficient, and so is evidence tending to prove that the plaintiff has no right or title in the trade mark in question, as where goods of a particular kind have been habitually manufactured at certain works, in which case the tenants have not such an interest in the trade mark as to be able to sell it with the goodwill of the business (*Motley v. Downman*, 3 My. & Cr. 1; and see *Harper v. Pearson*, 3 L. T. (N. S.) 547).

Want of title in the plaintiff.

In actions relating to trade marks, properly so called, such points as the above cannot after the lapse of a certain time arise, for by 46 & 47 Vict. c. 57, s. 76, the registration of a person as proprietor of a trade mark, is, after the expiration of five years from the date of the registration, to be

conclusive evidence of his right to the exclusive use of the trade-mark.

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 all documents in the office, and of or from all registers and other books kept there, are to be admitted in evidence in all Courts in Her Majesty's dominions, and in all proceedings, without further proof, or production of the originals (46 & 47 Vict. c. 57, s. 89, and see r. 50 as to dispensing with evidence). *Extracts certified by comptroller to be evidence.*

By the 11th section of the Merchandise Marks Act, it is provided that no evidence, statement, or discovery, which any person shall be compelled to give or make in any suit or other civil proceeding, shall be admissible in evidence against such person in support of any indictment for a misdemeanour at common law, or otherwise, or of any proceeding under the provisions of the Act, and in connection with this provision it is to be observed that there may be nothing to prevent *other evidence* being adduced against the defendant (refer to *Reg. v. Skeen and Another*, 8 Cox, Crim. Cas. 143). *Evidence under Merchandise Marks Act.*

Where a summons is directed by the comptroller under sect. 69 of the Act of 1883, and rule 29 made in pursuance thereof, the better plan will be for the applicant to file his own affidavit in support, stating the facts of the case, and exhibiting the notice of opposition, counter statement, and other material documents (see *Ex parte Stephens*, 24 W. R. 819; *In re Meikle*, 24 W. R. 1067; *In re Barrows*, 5 Ch. D. 353). *Evidence on summons under the Patents, Designs, and Trade Marks Act.*

In an action for the infringement of a trade mark the statement of claim should allege all the material facts upon which the plaintiff relies in support of his claim, *e.g.*, his title; that he, or his predecessors in the particular trade or business had used the trade mark; that such mark was duly registered (giving the date when), or that a certi- *Statement of claim. Allegations.*

ficate of refusal has been obtained (Patents, Designs, and Trade Marks Act, 1883, s. 77); that the goods of the plaintiff, or his business, are designated and called in the market after the trade mark; that the defendant has used or threatened to use such trade mark, or a mark only differing therefrom to a colourable extent, to the probable deception of the public and injury to the plaintiff: in other words, the statement of claim must allege with sufficient clearness a false representation of some kind on the part of the defendant (*Morison v. Salmon*, 2 Scott, N. R. 449); it should also allege that the defendant has pirated the plaintiff's mark in connection with goods of the same class, and that the plaintiff used a similar mark in a similar manner (*Lawson v. Bank of London*, 25 L. J. (N. S.) C. P. 188). It is, however, a serious, and in most cases probably a fatal error, to allege in an action for the improper use of a trade mark, that such trade mark is "similar" when it is in fact identical or *vice versa* (*Welch v. Knott*, 4 Jur. (N. S.) 330).

Of fraudulent intent.

As we have already seen it is unnecessary, either to allege or prove any fraudulent intent on the part of the defendant, but if such an allegation can be sustained by evidence, it ought to be alleged. So also, although it is not necessary to show that any particular person or persons has or have actually been deceived, yet, where the fact can be proved it should be alleged.

In action against engraver.

In an action against an engraver to restrain him from printing and selling spurious labels, the statement of claim should allege that there have been sales of goods with the labels attached, but it need not allege that the defendant sold the labels with the intention of their being fraudulently applied (*Delondre v. Shaw*, 2 Sim. 240; and see *Farina v. Silverlock*, 1 K. & J. 509).

Of false statements by defendant.

A declaration alleging that the defendant "deceitfully and fraudulently" prepared and sold medicines in imita-

tion of medicines prepared by the plaintiffs, and wrapped up the same in wrappers in order to denote that such medicine was the genuine medicine prepared and sold by the plaintiffs, was held to disclose a good cause of action, notwithstanding the fact that the declaration did not contain a distinct allegation that the defendant represented that the article sold by him was manufactured by the plaintiffs, but only that he represented it to be medicine in imitation of the medicine prepared by the plaintiffs (*Morison v. Salmon*, 2 Man. & G. 385).

Where the plaintiffs' pleading is tainted with scandal, or anything contained in it is unnecessary or embarrassing, the defendants should proceed to strike out the obnoxious clauses under O. XIX. r. 27, R. S. C., 1883.

In the case of the infringement of trade marks, as in other cases, the statement of claim should set out all the material facts upon which the plaintiff relies, and particularly the user by the plaintiff, or his predecessors, of the particular trade mark or trade name (describing it). If the plaintiff claims as assignee he should show how and when such assignment was made. The acts complained of should also be set forth and charged as being calculated to deceive the public to the detriment of the plaintiff (see *Mitchell v. Henry*, 15 Ch. D. 181). The remedies for an illegal user of a trade mark or trade name are (a) An injunction. (β) Damages. (γ) Account. (δ) The delivery up of counterfeit labels for the purpose of destruction, or in some cases the production of the goods, and erasure of marks or brands.

The plaintiff cannot claim both damages and an account, but must make his election.

The statement of defence may, and in most cases does, deny the allegations contained in the statement of claim. It may in addition set up that the trade mark is bad in itself, or by reason of its being severed from the goodwill;

that the defendant had the leave and license of the plaintiff to use it, or that the plaintiff is precluded by laches from complaining of the infringement. If the plaintiff is guilty of any misrepresentation with respect to the mark, that also should be pleaded (see *Macfarlane v. Oak Foundry Co.*, 10 Ct. of Sess. Cas. 801), as well as want of registration.

*Of infancy
—laid.*

It is no defence to an action, or to any indictment for infringement, that the defendant is an infant, nor can the defendant show that the plaintiff's trade marks have been infringed by others, unless at the same time he can prove that the infringement took place with the plaintiff's knowledge and acquiescence (*Ford v. Foster*, L. R. 7 Ch. 611).

*Inspection
and pre-
servation.*

Under 25 & 26 Vict. c. 88, s. 21, the Courts may either in an action on the case, or in the more usual action for an injunction and account, make an order for the inspection of any manufacture or process, and of every chattel, article, and thing in the possession or power of the defendant alleged to have thereon, or in any way attached thereto, any forged or counterfeit trade mark, or any trade mark, falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used, for producing or making any forged or counterfeit trade mark, or for falsely or wrongfully applying any trade mark (see also R. S. C., 1883, O. L. rr. 3, 4, 5).

Discovery.

By the Merchandise Marks Act, 1862, s. 6, any person who shall have sold, uttered, or exposed for sale or for the purpose of trade or manufacture, any article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse, is bound upon demand in writing, to give full information in writing of the name and address of the person from whom

he purchased or obtained such chattel, and in case of refusal may be summoned before a justice and fined. Such refusal is also to be *prima facie* evidence that the person so refusing was aware of the illegal circumstances. Full provision for discovery by means of interrogatories, and for the production and inspection of documents is made by R. S. C., 1883, O. XXXI. r. 1—28. The provisions of the Merchandise Marks Act respecting any proceeding, judgment, or conviction for any act thereby declared to be a misdemeanour or offence, are not to exempt or excuse any person from answering or making discovery upon examination as a witness, or upon interrogatories in any suit or other civil proceeding. No evidence, however, which any person shall be compelled to give or make, is admissible in evidence against such person in support of any indictment for a misdemeanour at common law, or otherwise, or of any proceeding under the provisions of the Act (25 & 26 Vict. c. 88, s. 11).

A defendant is bound to disclose the names of all persons to whom he has sold any goods with the mark complained of affixed, or to whom he has sold goods, which he will not swear were not so marked (*Leather Cloth Co. v. Hirschfeld*, 1 Eq. 299), but where the defendants declined to show certain entries and letters admitted to relate to the matters in question in the cause, it was held that they were justified in their refusal, for if compelled to disclose the names of customers, or the names of persons to or from whom letters were sent or received, or any prices, such discovery might be used in a manner prejudicial to the defendants in their trade, and was not in the particular case at all likely to assist the plaintiffs in making out their case at the hearing (*Currier v. Pinto Leite*, L. R. 7 Ch. 90.)

The owner of a trade mark and his agent cannot sue *Joinder*, jointly, although the name of the agent appear on the trade mark (*Delondre v. Shaw*, 2 Sim. 237). Where,

however, two persons are interested in a trade mark, either can sue to the extent of his interest (*Hine v. Lart*, 10 Jur. 106; *Dent v. Turpin*, 2 J. & H. 139); but if they are assignees they must first be registered in lieu of the assignor, and it has been seen that under certain circumstances the title of a plaintiff assignee is intrinsically bad. (*Note*, pp. 236, 244.) Where two persons derived from a common predecessor in their respective businesses, the right to use a certain name as a trade mark, it was held that either might sue for an injunction and an account without the joinder of the other (*Southorn v. Reynolds*, 12 L.T. (N.S.) 75.) The question as to how far the multiplication of owners of a trade mark may be carried, so as to enable all or any of them to take proceedings in respect thereof, has not yet been judicially determined (see the judgment in *Batty v. Hill*, 1 H. & M. 264.)

The registered owner of a trade mark having, since notice of an application under the old Act to strike the trade mark off the register, gone into liquidation, the trustee was made a party to the proceedings by notice, under R. S. C. O. L. r. 4 (now R. S. C., 1883, O. XVII. r. 4); (*Re Rowe*, 48 L.T. (N.S.) 388).

The fullest provision for amendment is made by the Rules of the Supreme Court, 1883, O. XVI., by the substitution and addition of parties, and in case of doubt two defendants can be joined.

Account. It is a universal practice in every action for the infringement of a trade mark, to claim either an account or damages in addition to an injunction, and the writ should be endorsed with a statement of the relief required. Formerly, it was considered that the injunction was subordinate to the account, but as in many and indeed most cases at the present day, the primary object is to obtain an injunction, it may be taken as a well defined rule that the account is subordinate to the injunction

(*Barnett v. Leuchars*, 18 L. T. (N. S.) 495; *Shipwright v. Clements*, 19 W. R. 599; and see the remarks of Romilly, M. R., in *Cartier v. Carlile*, 31 Beav. 292).

Where a person has innocently made use of another's trade mark, and sold goods marked therewith, he will be restrained by injunction, but he cannot be made to account save in respect of sales and profits acquired after the facts came to his knowledge (*Moet v. Coustou*, 33 Beav. 578; *Edelsten v. Edelsten*, 1 De G. J. & S. 185), but if the defendant knew he was using a trade mark belonging to somebody, he is liable to account, and the fact of his not knowing the particular owner is immaterial (*Cartier v. Carlile*, *supra*).

Where a plaintiff is guilty of gross laches he cannot claim either an account or an injunction (*Beard v. Turner*, 13 L. T. (N. S.) 747; see *Harrison v. Taylor*, 11 Jur. (N. S.) 408), and under no circumstances can he have both an account and an inquiry as to damages, but he must make his election between them (*Neilson v. Betts*, L. R. 5 H. L. 1).

Where one of two or more joint owners of a trade mark obtains an account, the proper method of taking it, is to find out what profits the defendant has made from the sale of the articles wrongfully marked, and the plaintiff is then entitled to his proper proportion thereof (*Dent v. Turpin*, 2 J. & H. 139). A defendant will as a rule have to account for the profit made by him during the six years previous to the issuing of the writ (*Cartier v. Carlile*, *supra*; *Ford v. Foster*, L. R. 7 Ch. 611), unless he was ignorant of his own wrong-doing, in which case he will, as already mentioned, only account from the time he became aware of it.

In taking the account, bad debts cannot be entered as profits, nor on the other hand can the cost of manufacturing the goods in respect of which the bad debts have been

incurred, be set against the contra side of the account (see *Edelsten v. Edelsten*, 10 L. T. (N. S.) 780).

Damages. Damages are either nominal or special, and to recover the latter a plaintiff must prove special injury proximately resulting from the defendant's conduct, but to obtain nominal damages he need not prove anything save that his rights have been invaded (*Blofeld v. Payne*, 4 B. & Ad. 410; *Morison v. Salmon*, 2 Scott, N. R. 453, *per* Erskine, J.; *Rodgers v. Nowill*, 5 C. B. 122, *per* Wilde, C. J.; *Chappell v. Davidson*, 2 K. & J. 123); therefore, where the acts of the defendant are calculated to induce purchasers to believe that the defendants are selling the plaintiff's commodity, it is not necessary for the plaintiff to prove any actual damage (*Braham v. Beutchtamp*, 7 Ch. D. 848).

As in the case of an account, a defendant is liable in damages from such time, not exceeding six years, when he first became aware that he was infringing the trade mark, but not further or otherwise (see *Edelsten v. Edelsten*, *supra*; *Cartier v. Carlile*, 34 Beav. 292; *Mort v. Couston*, 33 Beav. 578). No definite rule seems to exist for ascertaining the extent of any actual damage, and in practice the plaintiff's remedy lies, perhaps, more commonly in the equitable "security for the future," than in the legal indemnity for the past (Sedgwick on Damages, 728).

Measure of damages. The measure of damages has been said to be the plaintiff's loss of profit on sales sustained in consequence of the defendant's sales of the pirated article (*Taylor v. Carpenter*, 2 Woodb. & M. (Amer.) 1); but this is a rule difficult of application, for it cannot be assumed that the goods sold by the defendant would in the ordinary course, and but for the defendant's conduct, have been sold by the plaintiff (*Leather Cloth Co. v. Hirschfield*, 1 Eq. 299), the inquiry is "what damages, if any," not as in Patent cases

"what damage, &c." (see *Davenport v. Rylands*, 1 Eq. 308). An order is sometimes made that the defendant do keep an account of the sales made by him, with a view to the payment of the illegal profit to the plaintiff (*Spotiswoode v. Clark*, 10 Jur. 1043, 2 Ph. 154).

In the absence of any special reason to the contrary it might fairly be argued that the true measure of damages in cases of the kind, should be arrived at by reference to the defendant's sales (see *Pitts v. Hall*, 2 Blatch. 229; *Graham v. Plate*, 40 Cal. 593).

In an action on the case for deceit by the *vendee* of goods having a trade mark improperly affixed, the measure of damages would seem to be the difference between the actual value of the article, and what would have been its value if the proper trade mark had been affixed, together with damages for any loss which is the direct and natural consequence of the plaintiff's acting on the faith of the vendor's tacit statement (*Mullett v. Mason*, L. R. 1 C. P. 559; *Clarke v. Dickson*, 6 C. B. (N. S.) 453). *In action for deceit.*

Under the 19th section of the Merchandise Marks Act, 1862, the vendor of an article bearing a trade mark, warrants the latter to be genuine and true, unless the contrary is expressed in writing, signed by or on behalf of the vendor. In an action under this section, the measure of damages would be the difference between the actual value of the article, and what would have been its value had it conformed to the warranty (see *Jones v. Just*, L. R. 3 Q. B. 197); it would however seem to be doubtful whether the vendee is entitled to damages arising from his acting on the faith of the warranty being true (*ibid.*). *Under 19th sect. Merchandise Marks Act, 1862.*

In an action on the case at Common Law, it is probable that at least nominal damages would be recoverable, on proof of such facts as would be satisfactory to a court of Equity in an action there (see *Sebastian on Trade Marks*, 99; *Judicature Act*, 1873, s. 25, sub-sec. 11). *In action at Common Law.*

*Under
22nd sect.
Merchandise
Marks
Act, 1862.*

By the Merchandise Marks Act, 1862 (25 & 26 Vict. c. 88, s. 22), an action of damages may be brought against any person who forges or counterfeits a trade mark or does any of the other acts or things specified in this section, and an injunction will also be granted for preventing a repetition or continuance of the wrongful act complained of.

Costs.

The question of costs turns upon the conduct of the parties in the matter (Kerr on Injunctions, 382), and as a rule the costs follow the event as in other actions. Where, however, a plaintiff engages in litigation which has become unnecessary, he will get no costs (*Hudson v. Bennett*, 12 Jur. N. S. 519), and the same is the rule where a defendant has offered to submit and volunteered to give everything that the plaintiff can reasonably require (*Nunn v. D'Albuquerque*, 34 Beav. 595), and such offer on the part of the defendant must include an offer of all costs occasioned by his improper conduct (*Burgess v. Hills*, 26 Beav. 244; *Burgess v. Hately*, 26 Beav. 249; *Nunn v. D'Albuquerque*, *supra*), since an offer to pay part of the costs will not suffice (*Geary v. Norton*, 1 De G. & S. 9). The mere fact that a defendant submitted to an injunction, was held not to be a special ground under O. LXV. r. 9, for taxing the costs on the higher scale; otherwise the Court would be inflicting a punishment on him for submitting at once (*Hudson v. Osgerby*, W. N. 1884, p. 83). Should a plaintiff however demand more than the defendant has offered, he proceeds at his peril (*Bass v. Darber*, 19 L. T. (N. S.) 627).

Where an innocent person has in his hands or under his control goods bearing a forged trade mark, he should submit directly the fact is brought to his knowledge, otherwise he will be liable to the costs of an action (*Upmann v. Forester*, 24 Ch. D. 231).

Where both plaintiff and defendant are guilty of decep-

tion each must pay his own costs (*Estcourt v. Estcourt Hop Essence Co.*, L. R. 10 Ch. 276), and where a person charged with imitating another's trade mark, escapes an injunction by an adroit nicety of procedure he will barely get his costs (*Bass v. Dawber*, 19 L. T. (N. S.) 627).

Where the defendant's fraudulent intent is evident, or even merely suspicious, and the plaintiff loses his remedy through *laches*, the defendant may still have to pay his own costs (see *Rodgers v. Rodgers*, 31 L. T. (N. S.) 285).

Should a plaintiff make charges which he is unable to substantiate, he may have to pay the costs occasioned thereby, even although he obtains an injunction with costs (*Pierce v. Franks*, 15 L. J. Ch. 122; see *Perks v. Hall*, W. N. 1881, p. 111), and on a motion for an interlocutory injunction, where the plaintiff is barred by reason of his delay, the costs are costs in the cause (*Isaacs v. Thompson*, 20 W. R. 196; *Brook v. Evans*, 2 L. T. (N. S.) 740; *Wallis v. Wallis*, 4 Drew. 458. A plaintiff need not give notice of action in order to entitle himself to his costs (see *Upmann v. Forester*, *supra*).

Where the registration of certain trade marks was ordered to be rectified, and the registered proprietor did not consent to the rectification, but appeared by counsel at the hearing, the question of costs was held regulated by certain considerations, which are explained and set forth in a recent case on the subject (*Re Kuhn*, 53 L. J. Rep. (Ch.) 238, and refer to *Re Hyde & Co.*, 7 Ch. Div. 724).

A respondent who was a forwarding agent had notice from the appellant that the latter did not seek to vary the order of the Court below as to costs: held that he appeared on the hearing of the appeal at his own cost (*Upmann v. Elkan*, L. R. 7 Ch. 130).

The expression "costs of and incident to all proceedings

in the Supreme Court" (R. S. C. 1883, O. LXV. r. 1), means the costs of and incident to all proceedings that have actually come unto the Court. A case under the Trade Marks Registration Acts, 1875-77, did not "stand for the determination of the Court" within the 16th rule of the Trade Marks Rules, 1876, until the parties opposing registration had given security for costs as provided by that rule, and consequently the Court refused to order payment of previous costs incurred before the Registrar (*In re Brandreth's Trade Mark*, 9 Ch. D. 618, and see now 46 & 47 Vict. c. 57, s. 69; T. M., Rule 29).

Where in an action for infringement, the judge certified under 3 & 4 Vict. c. 24, that such action was brought to try a right so as to entitle the plaintiff to costs, it was held that he was justified in so doing (*Morison v. Salmon*, 2 Man & G. 385); by O. LXV. r. 1 (R. S. C. 1883), the costs of and incident to all proceedings in the Supreme Court are in the discretion of the Court, provided that when any action, cause, matter, or issue, is tried with a jury, the costs shall follow the event, unless the judge or the Court shall for good cause otherwise order (see *Parsons v. Tinsling*, 2 C. P. D. 119, approved in *Garnett v. Bradley*, 3 App. Cas. 944).

Costs on
qui tam
action
under
25 & 26
Vict. c. 88.

Security
for costs.

Under 25 & 26 Vict. c. 88, s. 23, a defendant in a *qui tam* action under the Act, recovers costs as between attorney and client unless the Court shall otherwise order, in which event he obtains costs as between party and party only, and by section 24, a plaintiff in a similar action may be compelled to give security for costs :

- (a) Where in the opinion of the Court or a judge he has no ground for alleging himself aggrieved, and
- (β) Where he is not within the jurisdiction, or
- (γ) Where he has not sufficient property to be able to pay costs to the defendant in case the latter should be successful.

The effect of the section would appear to be, that in order to compel the plaintiff to give security for costs, it will be necessary for the defendant to show that the plaintiff has no ground for alleging himself aggrieved, and *in addition* either that he is not within the jurisdiction of the Court, *or*, that he has not sufficient property to satisfy the defendant's costs in case he should be called upon to pay them.

APPENDIX A.



FORMS OF INFORMATION, PLEADINGS, AND NOTICES

UNDER THE SEVERAL COPYRIGHT ACTS, THE MERCHANDISE MARKS
ACT, 1862, AND THE PATENTS, DESIGNS, AND TRADE MARKS
ACT, 1883, TOGETHER WITH TRANSCRIPTS OF FORMS OF INJUNC-
TIONS.

1. *Information - Importing a Book published in the United Kingdom,
and reprinted out of the British Dominions (ante, pp. 32, 174).*

— to wit. } The information [or complaint] of A. B., of _____,
Gentleman, taken this _____ day of _____, in the year
of our Lord _____, before me, the undersigned, one of her 5 & 6 Vict.
Majesty's Justices of the Peace in and for the said [county] of c. 45, s. 17.
at _____ in the same [county], who saith that C. D.,
of _____, in the county of _____, not being the proprietor of
the copyright, or a person authorised by him, of a certain printed
book entitled _____, and first composed [or written, or printed]
and published in that part of the United Kingdom called [England],
and in which said book there then was and now is copyright, and
reprinted out of the British dominions, to wit, at _____, unlaw-
fully did on the _____ day of _____ import or bring [or cause to be
imported or brought] for sale [or hire] into that part of the British
dominions called _____ [five] copies of the said book, contrary to
the 45th chapter of the stat. 5 & 6 Vict. section 17.

Sworn, &c.

N.B. If the defendant is charged with *knowingly* selling,
publishing, or exposing to sale or letting to hire, or with having
in his possession for sale or hire any such book, the above form
must be altered accordingly.

2. *Information—Infringing Copyright in Painting, Drawing, or Photograph (ante, pp. 93, 181).*

(Heading as in No. 1.)

25 & 26
Vict. c. 68,
s. 6.

Who saith that C. D., of _____, in the county of _____, on the _____ day of _____ at _____, being the author of a certain painting [drawing, *or* photograph] representing [describing it] or called [naming it], in which there is subsisting copyright, did unlawfully, and without the consent of A. B., the proprietor of the said copyright, and after having sold or disposed of such copyright, repeat [copy, colourably imitate, or otherwise multiply] for sale [hire, exhibition, or distribution, or cause or procure to be repeated, &c.], the said painting [*or* drawing, *or* photograph, *or* the design of such painting, &c.], contrary to the 68th chapter of the stat. 25 & 26 Vict. section 6].

N. B. If the defendant (whether the author or not, so long as he is not the proprietor) is charged with *knowingly* importing into any part of the United Kingdom, or *knowingly* selling, or publishing, or letting to hire, or exhibiting, or distributing, or offering for sale, &c., or causing or procuring, &c., any repetition, copy, or imitation of the said painting, &c., or the design thereof, without the required consent, the above form should be altered accordingly.

3. *Information—Putting off Painting, &c., containing alterations, as or for the unaltered work of the author or maker (ante, pp. 96, 183).*

(Heading as in No. 1.)

25 & 26
Vict. c. 68,
s. 7.

Who saith that C. D., of _____, in the county of _____, on the _____ day of _____, at _____, without the consent of A. B., the author or maker of a certain painting [drawing, *or* photograph, *or* negative of a photograph], called _____, unlawfully did make, during the life of the author or maker of such painting [drawing, *or* photograph, *or* negative, &c.] the said work [or a copy or copies of such work] with certain alterations therein made by some other person as or for the unaltered work of such author or maker, contrary to the 68th chapter of the statute 25 & 26 Vict. section 7.

N. B.—If the defendant is charged with *knowingly* selling or publishing, or offering for sale, such work or any copies so altered as aforesaid, the above form must be varied accordingly.

4. *Information—Forging a Trade Mark.*

25 & 26
Vict. c. 88,
s. 2.

_____ } The information and complaint, &c. (see Form No. 1),
to wit. } who saith that C. D. of _____ in the county of _____
on the _____ day of _____, at _____, with intent to

defraud [*or to enable A. B., to defraud*], E. F. unlawfully did forge [*or counterfeit, or cause or procure to be forged or counterfeited*] a certain trade mark, to wit [see sec. 10] contrary to the 88th chapter of the statute 25 & 26 Vict. section 2.

Sworn, &c.

5. Information—Assisting in the Forging of a Trade Mark.

(Heading as in Form No. 4.)

Who saith that C. D., of, &c., on, &c., at, &c., with intent to defraud unlawfully did aid, abet, counsel, and procure the commission of an offence which is by the Merchandise Marks Act, 1862, made 25 & 26 a misdemeanor, that is to say, the said C. D. did, with such intent *Vict. c. 88,* as aforesaid, unlawfully aid, abet, counsel, and procure one A. B., *s. 13.* of to forge [*or counterfeit*] a certain trade mark, to wit [see sec. 10], contrary to the 88th chapter of the statute 25 & 26 Vict. section 13.

6. Information—Falsely Applying a Trade Mark, with intent, &c.

(Heading as in Form No. 4.)

Who saith that C. D., of, in the city of, did on the day of at aforesaid, with intent to defraud [*or to enable A. B. to defraud*] E. F. unlawfully apply [*or cause or procure to be applied*] a certain trade mark [*or any 25 & 26 forged or counterfeited trade mark*] to wit [see sec. 10] belonging *Vict. c. 88,* to one G. H., to a certain chattel or article, to wit a, not *s. 2.* being the manufacture, workmanship, production, or merchandize of the said G. H. denoted [*or intended to be denoted*] by the said trade mark [*or forged or counterfeited trade mark*] contrary to the 88th chapter of the statute 25 & 26 Vict. section 2.

N.B.—If the charge against the defendant is of applying or causing to be applied a trade mark or any forged, &c., to any chattel or article, not being the particular or peculiar description of manufacture, workmanship, production, or merchandize denoted [*or intended to be denoted*] by the trade mark or forged, &c., the above form must be altered accordingly (see sec. 2).

7. Information—Applying a forged Trade Mark to any vessel enclosing an article.

(Heading as in Form No. 4.)

Who saith that C. D. of, &c., on, &c., at, &c., with intent to defraud [*or to enable A. B. to defraud*] E. F., unlawfully did apply [*or cause or procure to be applied*] a certain trade mark [*or any*

25 & 26 forged or counterfeited trade mark] to wit (see sec. 10) to a certain
Vict. c. 88, cask [or bottle, or stopper, or vessel, or case, or cover, or wrapper,
s. 3. or band, or reel, or ticket, or label, or other thing] in [or on, or
 with] which a certain chattel [or article] was intended to be sold
 [or was sold, or was uttered, or exposed for sale, or intended for
 any purpose of trade or manufacture] contrary to the 88th chapter
 of the statute 25 & 26 Vict. section 3.

*8. Information—Selling articles with forged or false Trade Marks
 attached.*

(Heading as in Form No. 1.)

25 & 26 Who saith that C. D., of at , on the day
Vict. c. 88, of , unlawfully did sell [or utter, or expose for sale, or
s. 4. expose for any purpose of trade, or manufacture, or cause or procure
 to be sold, or uttered, or exposed for sale, or for purposes of trade,
 or manufacture] a certain chattel, [or article] to wit a ,
 together with a certain forged and counterfeited trade mark, which
 he the said C. D. then well knew to be forged and counterfeited
 [or together with the trade mark of one A. B. applied, or used
 falsely, or wrongfully, or without lawful authority and excuse,
 which he the said C. D. then well knew to have been so applied or
 used as aforesaid], contrary to the 88th chapter of the statute 25 &
 26 Vict. section 4.

*9. Information—Summons on Refusal of Vendor of Article bearing
 false Trade Mark to give information as to where he procured it
 (ante, p. 324).*

(Heading as in Form No. 1.)

25 & 26 Who saith that C. D., of , did, on the day of
Vict. c. 88, , sell [utter, or expose for sale, or for the purpose of trade
s. 6 or manufacture, or cause, or procure to be sold, &c.] a certain
 chattel [or article], to wit, a , together with a certain forged
 and counterfeited trade mark belonging to this complainant [or
 together with the trade mark of this complainant used without
 lawful authority or excuse], and that this complainant did on the
 day of last, at the last-known dwelling-house of
 the said C. D. [or at the place of sale or exposure for sale of the
 said chattel [or article]] deliver or cause to be left a demand in
 writing requiring the said C. D. to give to this complainant [or
 to , his attorney or agent] within forty-eight hours after
 such demand, full information in writing of the name and address of
 the person from whom he the said C. D. purchased or obtained such
 chattel [or article], and of the time when he obtained the same,

and that the said C. D. hath refused and neglected to give the information aforesaid, contrary to the 88th chapter of the statute 25 & 26 Vict. section 8.

10. *Information—Selling or Exposing, &c., Articles with False Statements of Quantities, &c.*

(Heading as in Form No. 1.)

Who saith that C. D., of at on unlawfully did sell [or utter, or expose for sale, or for any purpose of trade or manufacture, or did cause or procure to be sold, &c.] a certain chattel [or article] to wit , upon which to the knowledge of the said C. D., was then put [or upon any cask, bottle, or stopper, or vessel, or case, or cover, or wrapper, or band, or reel, or ticket, or label, or other thing, together with which such chattel [or article] was sold, or uttered, or exposed for sale, or for any purpose of trade or manufacture, used or employed to expose or exhibit the said chattel [or article] for sale] a certain false description [or statement, or indication] of or respecting the number [or quantity, or measure, or weight] of such chattel [or article, or the place or country in which such chattel [or article] was made, manufactured, or produced], to wit [describe the false description], contrary to the 88th chapter of the statute 25 & 26 Vict. section 8. 25 & 26
Vict. c. 88,
s. 8.

11. *Information—Falsely Describing a Trade Mark as Registered. (Patents, Designs, and Trade Marks Acts, 1883.)*

(Heading as in Form No. 1.)

Who saith that C. D., of in the county of , did on the day of at aforesaid, unlawfully sell a certain article, to wit, a , having thereon a certain device [or mark, or brand, or heading, or label, or ticket] with the word “registered” [or any other word] impressed on [or otherwise applied to] the said article, contrary to the 57th chapter of the statute 46 & 47 Vict. section 105. 46 & 47
Vict. c. 57,
s. 105.

12. *Action, or Damages for the Piracy of an Engraving (17 Geo. III. c. 57, ante, p. 219).*

Enrolment on Writ.—The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

APPENDIX A.

Statement of Claim.

1884, Lotter , No. .

In the High Court of Justice,

Queen's Bench Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

Statement of Claim.

1. The plaintiff is the proprietor of an engraving or print called _____, and representing _____.
2. The plate from which the said engraving or print was taken and each and every copy of the said engraving or print, were truly engraved and printed with the name of the proprietor, and the date of the first publication thereof.
3. The plaintiff was before the commencement of this action duly entered as the proprietor of the said engraving or print, pursuant to the 13th section of statute 5 & 6 Vict. c. 45.
4. The defendant has infringed the plaintiff's copyright in the said engraving.
5. The following are the acts complained of [set them out].

The plaintiff claims—

1. £ damages in respect of the said infringement.
2. Forfeiture of the plate or plates on which such engraving or print is copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied or printed).
3. £ penalty in respect of pirated copies of the said engraving or print found in the defendant's custody.
4. An injunction to restrain the defendant from [here set out as shortly as possible a minute of the particular injunction required. For forms of injunctions, see *post*].

*Place of
trial,
London.*

(Signed.)

Delivered this day of , 1884.

Defence.

1. The plaintiff is not and never was the proprietor of the said engraving or print.
2. The plate and every copy of the said engraving or print were not truly engraved and printed, nor was the plaintiff entered as proprietor of the said engraving or print before action as set forth in the 2nd and 3rd paragraphs of the plaintiff's statement of claim.

3. The defendant did not infringe as alleged, or at all.

4. The plaintiff's copyright in the said engraving or print had expired at the time of the alleged infringement.

5. The plaintiff's remedy was barred by the 4th section of the statute 8 Geo. II. c. 13.

6. At the time of the publication of the said engraving or print the author thereof not being a British subject, was not resident within the dominions of the Crown.

(Signed)

Reply.

The plaintiff joins issue upon the defence.

(Signed)

13. *Action for Damages for the Infringement of Copyright in a Book* (5 & 6 Viet. c. 45, s. xv. ; Rules S. C. 1883 ; App. C. (sec. vi. No. 7), and App. D. (sec. vi.)).

(Heading as before.)

Statement of Claim.

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the day of .

Particulars of special damage are as follow :—

Loss of sale of 50 copies	£50
-------------------------------------	-----

Loss of profit in the copyright	£50
---	-----

The plaintiff claims £100.

Place of trial, Surrey.

(Signed.)

Delivered the day of , 18 .

Defence.

The plaintiff is not the author (assignee, &c., as the case may be).

The book was not registered.

The defendant did not infringe.

Reply.

The plaintiff joins issue upon the defence.

N.B.—A variety of defences in an action of this description are set out at p. 217.

14. Notice of Objections to be given with the Defence in an Action for Infringement of Copyright, pursuant to 5 & 6 Vict. c. 45, section 16.

1884. Letter . No. .

In the High Court of Justice.
Division.

(Heading.)

Take Notice, that the above-named defendant intends to rely on the trial of this action, on the following objections :—

1. That he is not guilty of the infringements laid to his charge, or of any of them.

2. That at the time of committing the said alleged infringements the plaintiff was not the proprietor of the copyright of and in the said book mentioned in the statement of claim [and that no person whatsoever was the proprietor thereof, inasmuch as there was no subsisting copyright in the said book].

3. That at the time of committing the said alleged grievances one of and not the plaintiff was the proprietor of the copyright in the said book.

4. That there was no valid assignment of the copyright to the plaintiff, inasmuch [here set forth how and in what way the assignment was invalid].

5. That the plaintiff was not the author [or first publisher] of the said book, but that of was the author [or first publisher] thereof.

6. That the said book in the statement of claim named was first published on the day of , with the title [give the title at length] at .

7. That the said book was not the work or composition of any natural born subject or of any British author or naturalized person or denizen, but was the work and composition of an alien, who was the author thereof, to wit , and who composed the same out of the British dominions, to wit at .

8. That the plaintiff made his copies from plates engraved abroad.

9. That a proper entry of copyright has not been made in respect of the said book, pursuant to the 45th chapter of the statute 5 & 6 Vict. section 13, inasmuch [set out how and in what manner the registration is imperfect].

10. That the matter in respect of which the infringement took place is not a proper subject of copyright, inasmuch [here set out how and in what way the matter referred to is defective].

11. That the plaintiff has acquiesced in the infringement (if any) of the said copyright, after knowledge thereof, to wit [say when he acquiesced and in what manner].

12. That the book is immoral [*or libellous, or blasphemous, &c.*]
[State any other objections in the same manner.]

Yours, &c.,

Defendant's solicitor.

To Mr. _____,
Plaintiff's solicitor.

15. *Action for Damages for the Infringement of Copyright in a
Painting* (25 & 26 Vict. c. 68, s. 11).

Statement of Claim.

1. The plaintiff is the author of a certain painting entitled _____,
and representing _____, duly registered _____ day of _____.

2. The plaintiff made or executed the said painting for and on
behalf of one A. B. for a valuable consideration, and by agreement
in writing dated the _____ day of _____ and signed by the said
A. B. the copyright of and in the said painting was expressly reserved
to the plaintiff.

3. The defendant has infringed the plaintiff's copyright in the
said painting [set out shortly in what way].

The plaintiff claims—

1. £10 penalty in respect of each and every offence as
aforesaid.

2. That all such repetitions, copies, and imitations as aforesaid
may be ordered to be given up to the plaintiff.

3. An injunction to restrain the defendant from a continuance
and repetition of the said infringement, and in particular
[set out a minute of the particular injunction sought].

4. An account or damages.

Defence.

1. The plaintiff was not the author of the painting referred to in
the statement of claim.

2. The plaintiff did not reserve the copyright in the said painting
to himself as alleged in the 2nd paragraph of the said statement.

3. The defendant did not infringe in the manner alleged, or
at all.

4. The plaintiff did not register the said painting before the
alleged infringement took place.

5. The said painting was not original.

6. The plaintiff was not a British subject, nor resident within
the dominion of the Crown at the time of the making or execution
of the said picture.

Reply.

The plaintiff joins issue on the defence.

16. *Action for the Infringement of a Trade Mark* (App. C. sec. vi. No. 8 ; App. D. sec. vi. ; Rules S. C. 1883).

Statement of Claim.

1. The defendant has infringed the plaintiff's trade mark.
2. The defendant's trade mark is [describe it]. [If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived].

3. The following are the acts complained of [set them out].

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from infringing the plaintiff's said trade mark, and in particular from [stating any particular injunction sought].

The plaintiff also claims an account or damages.

Defence.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

17. *Injunction—Directory.*

Kelly v. Morris,
L. R. 1 Eq.
697.

Let a perpetual injunction be awarded against the defendant to restrain him, his workmen, servants and agents, from publishing, printing, selling, delivering, or otherwise disposing of, or causing or knowingly permitting to be published, printed, sold, delivered, or otherwise disposed of, any copies or copy of his book, called the "Imperial Directory of London, 1866," in the plaintiff's bill, mentioned, containing the divisions headed Streets, Official, Parliamentary, Court, Civic, Parochial and Clerical, Customs, Banking and Insurance, Legal, Postal, Public Institutions, Conveyance, and Miscellaneous, or any or either of them, or any part thereof respectively. Defendant to pay plaintiff's costs of suit, to be taxed, &c. (Pemberton on J., 226).

18. *Injunction—Dictionary.*

Lewis v. Fullarton,
2 Beav. 14.

Let the defendant, his agents, servants, and workmen, be restrained, &c., from further printing, publishing, selling, or otherwise disposing of any copy or copies of a book called "a new and comprehensive Gazetteer," containing any articles or article, passages or passage, copied, taken, or colourably altered from a book called "The Topographical Dictionary of England," published by the plaintiffs. (Pemberton on J., 226).

19. *Injunction—Part of a Book.*

The plaintiff by his counsel undertaking as to damages, &c.

Let the defendants, their servants and agents, be restrained until the hearing of this cause, or further order, from printing, publishing, selling, delivering, or otherwise disposing of, any of the copies of the book or work called "The Guardian Angel" in the plaintiff's bill mentioned, printed or caused to be printed by the defendants as in the bill mentioned, or any other copy or copies of the said book or work, containing the last six chapters of the said book or work printed and published by the plaintiff, as in the bill mentioned, or any parts of such said six chapters. (Pemberton on J., 227).

Low v. Ward,
L. R. 6 Eq.
415.

20. *Injunction—Catalogue.*

Let a perpetual injunction be awarded to restrain the defendant, his servants, agents, and printers, from publishing, printing, selling, delivering or otherwise disposing of the sheet of monumental designs in the bill mentioned, or any other sheet in the compilation of which the plaintiff's book of monumental designs has been used, and from copying or pirating any parts of the said book.

Let the defendant on or before the 2nd day of April, 1875, deliver to the plaintiff on oath (if required) any such sheets in the power or custody of the defendant for the purpose of being destroyed. (Pemberton on J., 227).

Grace v. Newman,
L. R. 19
Eq. 623.

21. *Injunction—Map—Inquiry as to Damages.*

Let a perpetual injunction be awarded against the defendants, to restrain them, their servants, agents, and workmen, from printing, publishing, selling, or otherwise disposing of, and from offering or exposing for sale, the "Bird's-eye View or Plan of Paris and its Fortifications," in the plaintiffs' bill mentioned to have been published by the defendants.

Let the defendants deliver up to the plaintiffs all unsold copies of the said view or plan now in their possession or power. Let an inquiry be made what sum of money is proper to be awarded to be paid by the defendants to the plaintiffs in respect of any damage which has been sustained by the plaintiffs by reason or on account of the publication or sale of the said view or plan by the defendants. Defendants to pay to plaintiffs the sum certified within one month after date of Chief Clerk's certificate. Defendants to pay costs of suit. Liberty to apply. (Pemberton on J., 227).

Stannard v. Harrison,
24
L. T. (N.S.)
570.

22. *Injunction—Illustrated Book—Engravings.*

Boque v. Houlston, 5 De G. & Sm. 267. Let the defendants, their servants, agents, and workmen, be restrained until from printing or publishing or selling or exposing for sale or hire, or otherwise disposing of any further or other copies or copy of a book called "The Comical History and Tragical End of Roynard the Fox," or any other book, work, publication or thing containing any passage, article, print, woodcut, engraving, matter, or thing contained in the book of the plaintiffs intituled, &c. (Pemberton on J., 227).

23. *Injunction—Visitor's Guide—Assignment.*

Colburn v. Simms, 2 Hare, 543. Let the defendants S. & Co. and T. & Co., their servants, workmen, and agents be restricted until from printing, publishing, selling, or otherwise disposing of "The Invalids and Visitors' Hand Book," in the plaintiff's bill mentioned, or any copy thereof, or any part of the work "Spas of England," published by the plaintiff, or any work written or composed by the defendant, Dr. G., of a similar nature or description to the work so published by the plaintiff, or to any part thereof.

Let the defendant Dr. G., his servants, workmen, and agents, be restrained until, &c., from assigning or otherwise disposing of to the defendants, or any of them, or any other person, &c., the copyright of the same work, or of any part thereof, and from being concerned in any work of a similar description to, or which might interfere with the value of the copyright of, the work so published by the plaintiff. (Pemberton on J., 227).

24. *Injunction—Essays—Delivering up for Cancellation—Damages.*

Pike v. Nicholas, (V.-C. J.) April 24th, 1869. Reversed L. R. 5 Ch. 251. Let a perpetual injunction be awarded against the defendant T. N. to restrain the said defendant, his servants and agents, from selling or disposing of, or causing to be published, sold, or disposed of, any copies or copy of the defendant's book, intituled "The Pedigree of the English People," in its present state, or of any book containing the 7th section of chapter 1 of part 3, or section 1 of chapter 5, part 3 of the defendant's said book. Let the defendant deliver up to the plaintiff the above-mentioned portions of the said book, to be cancelled.

Let the defendant T. N. within 21 days after service of this order pay to the plaintiff L. P. the sum of £70 as the ascertained amount of damages sustained by the plaintiff by sale of the number of copies of the defendant's book. Defendant to pay costs of suit. (Pemberton on J., 227).

25. *Injunction—Dramatised Novel.*

Let a perpetual injunction be awarded against the defendant to *Tinsley v. Lazen*,
 restrain him and his agents from further printing, publishing, 32 L. J.
 selling, or otherwise disposing of, any copies of the drama called (Ch.) 635.
 “Lady Audley’s Secret,” in the plaintiff’s bill mentioned, without
 first omitting therefrom all passages identical with, or copied or
 taken or only colourably differing from the book called “Lady
 Audley’s Secret,” in the plaintiff’s bill mentioned, published by the
 plaintiff’s firm, and also from further printing, publishing, selling,
 or otherwise disposing of any copies of the drama called “Aurora
 Floyd” in the plaintiff’s bill mentioned, without first omitting
 therefrom all passages identical with, or copied, or taken or only
 colourably differing from the book called “Aurora Floyd,”
 published by the plaintiff’s firm. Defendant to pay plaintiff’s cost
 of suit. Liberty to apply.

26. *Injunction—Opening Letters and Taking Orders.*

Let an injunction be awarded to restrain the defendants, their *Schiele v. Brookell*,
 agents, servants, and workmen, from receiving, retaining, or open- 11 W. R.
 ing any letters or letter addressed “C. Schiele,” or “Schiele 796.
 & Co.,” &c., or otherwise addressed to the plaintiff, Christian
 Schiele, or to the plaintiff’s said firm of C. Schiele & Co., as in the
 bill mentioned, and from taking advantage or making use of the
 communications or information, and from supplying the orders or
 any of them contained in any such letters, and from in any manner
 availing themselves of or using the contents of any such letters
 until, &c. (Seton, 253).

27. *Injunction—Design—Delivery up of Drawings, &c.*

Let the defendants, their agents, servants, and workmen, be *Norton v. Nicholls*,
 restrained until, &c., from manufacturing or making, or causing or cited 4 K.
 procuring to be manufactured or made, or selling, or exposing, or & J. 475.
 offering for sale, or exporting or otherwise disposing of, any of the
 shawls known in the trade as the Mantilla Shawl, in the plaintiff’s
 bill mentioned, having applied thereto the plaintiff’s design, re-
 gistered the 12th of February, 1857, and numbered in the Design
 Office, London, No. , or a design in fraudulent imitation
 thereof, or any shawls or shawl of the plaintiff’s said registered
 design, or of any design being an imitation thereof, or only colour-
 ably differing therefrom, and from in any way pirating or infringing
 the plaintiff’s said design, during the continuance of the plaintiff’s
 copyright in the said design, or of any extension thereof. (Pember-
 ton on J., 231).

Macne v. Holdsworth, 2 De G. & Sm. 400. Let the defendants forthwith deliver up to the plaintiffs for the purpose of being destroyed, the drawing or drawings, point paper, and the several cards used in applying the design in the plaintiff's bill mentioned; and also the articles manufactured by the defendants to which the said plaintiff's design had been applied; the same to be verified by affidavit. Direction for taxation of costs and payment by defendants. On payment of costs proceedings to be stayed except to enforce injunction. (Pemberton on J., 231.)

28. *Injunction—Engravings—Common Law.*

Prince Albert v. Strange, 2 De G. & Sm. 650. Let the defendant W. S., his servants, agents, and workmen, be restrained from exhibiting the gallery or collection of etchings in the bill mentioned, or any of such etchings, and from making or permitting to be made any engravings or copies of the same, or any of them, and from publishing the same or any of them, or parting with or disposing of the same or any of them, and from selling or in any manner publishing and from printing the descriptive catalogue in the plaintiff's bill mentioned.

29. *Injunction—Title of Newspaper.*

Ingram v. Stiff, 5 Jur. (N.S.) 947. Let the defendant, his servants, agents, and workmen, be restrained from printing, publishing, or selling any newspaper or other periodical under the name of the "Daily London Journal," or under any other name or style of which the words "London Journal" shall form part, and from doing or committing any act or default that may tend to lessen or diminish the sale or circulation of the plaintiff's periodical called "The London Journal."

30. *Injunction—Title of Newspaper.*

Clement v. Maddick, 1 Giff. 98. Let the defendants, their servants, workmen, and agents be restrained until, &c., from printing, publishing, or continuing to print or publish, any newspaper or other periodical paper with or under the name or style of "The Penny Bell's Life and Sporting News," or with or under any name or style, of which the name, style, or words of "Bell's Life" shall form a part, or in any way occur, and from using the said name, style, or title of "Bell's Life" by way of name, style, or title to any newspaper or periodical without the license or consent of the plaintiff.

31. *Injunction—Misrepresentation.*

Ward v. Beeton. Let the defendant be restrained from publishing, issuing, or circulating, any such advertisements, circulars, or letters as afore-

said, containing any statement or representation that the defendant is interested or concerned in any annual, book, or publication, other than "Beeton's Christmas Annual," so published from year to year by the plaintiffs, or that the defendant's connection with the plaintiff's firm is terminated, or that the use of the defendant's name by the plaintiffs for the purposes of their said "Beeton's Christmas Annual" is improper or unauthorized. L. R. 19
Eq. 211.

32. *Injunction—Trade Mark—Brand on Wine Cask.*

Let the defendants be restrained until, &c., from affixing or causing to be affixed to any casks of wine shipped to their orders, the brand or mark of a crown and the word "Seixo," or any other combination of marks or words so contrived as by colourable imitation or otherwise to represent the marks or brands of the plaintiff, and from employing any marks or words which should be so contrived as to represent or induce the belief that such wines were Crown Seixo, or the produce of the Quinta do Seixo, or otherwise using the word "Seixo" without clearly distinguishing the same from the wine produced by the Quinta do Seixo. (Pemberton on J., 239.) Seixo v.
Proce-
dure,
L. R. 1
Ch. 192.

33. *Injunction and Account—Trade Mark—"Eureka."*

Let a perpetual injunction be awarded against the defendants to restrain them, their agents, servants, and workmen, from applying the mark or title "Eureka" to any shirts manufactured by the defendants, or to any shirts sold by them, unless such shirts be manufactured by the plaintiff, and from selling or disposing of any shirts already marked with the mark or title "Eureka," unless such mark shall have been applied by the plaintiff and with his sanction, and from issuing any boxes or packages containing shirts upon or in which the mark or title "Eureka" shall be applied to shirts not of the plaintiff's manufacture. Ford v.
Foster,
L. R. 7
Ch. 611.

Let an account be taken of the profits made by the defendant in manufacturing and selling, and in selling shirts under the mark or title of "Eureka" since the 22nd February, 1870, the date of the filing of the plaintiff's bill. Defendants to pay to plaintiff the amount certified to be due within fourteen days after date of certificate. Directions for payment by defendants of the costs of suit, other than the costs of the appeal, and for return of appeal deposit. (Pemberton on J., 239.) Account.

34. *Injunction—Trade Mark—Glenfield Starch.*

Let an injunction be awarded to restrain the respondent (the defendant), his servants and agents, &c., from using the word Wether-
spon v.

Currie, L. R. 5 H. L. 509. "Glenfield" in or upon any labels affixed to packets of starch manufactured by or for him, and from in any other way representing the starch manufactured by or for him to be "Glenfield Starch," and from selling or causing the same to be sold as "Glenfield Starch," and from doing any act or thing to induce the belief that starch manufactured by or for him is "Glenfield Starch," or starch manufactured by the appellants. Respondent to pay costs of appellants in the Courts below. (Pemberton on J., 239.)

35. *Injunction—Trade Mark—Labels on Bottles—Trade Cards.*

Croft v. Day, 7 Beav. 90. Let the defendant, his servants, agents, and workmen be restrained from selling, or exposing for sale, or procuring to be sold, any composition or blacking described as, or purporting to be, blacking manufactured by Day and Martin, in bottles, having affixed thereto such labels as in the complainant's bill mentioned, or any other labels, so contrived or expressed, as, by colourable imitation, or otherwise, to represent the composition or blacking sold by the defendant, to be the same as the composition or blacking manufactured and sold by John Weston (the manager) for the benefit of the estate of Charles Day, the testator, and from using trade cards, so contrived or expressed, as to represent that any composition or blacking sold, or proposed to be sold, by the defendant, is the same as the composition or blacking manufactured or sold by John Weston.

36. *Injunction—Trade Mark—"Anchor Brand Wire"—Account—Delivery up for Cancellation.*

Edelsten v. Edelsten, 1 De G. J. & S. 189. Decree in the terms of the prayer of the bill. That an account be taken of the gains and profits made and obtained by the defendants by the sale of wire having tallies or labels attached thereto with the plaintiff's trade mark, or a trade mark in imitation of, or only colourably differing from that of the plaintiff, stamped or impressed thereon; and that the defendants do pay to the plaintiff the amount of such gains and profits. That the defendants be restrained from attaching to wire not the manufacture of the plaintiff, any tally or label with the plaintiff's trade mark, or any mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon, and from otherwise using the plaintiff's trade mark, or any mark in imitation thereof, so as to denote or represent that the said wire was the "Anchor Brand Wire," or was the manufacture of the plaintiff, and from selling or offering for sale, or procuring to be sold any wire not being of the plaintiff's manufacture, having a tally or label attached thereto with the plaintiff's trade mark, or a mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon,

or otherwise, in any manner, having the said trade mark, or a mark in imitation thereof, or only colourably differing therefrom attached thereto. That the defendants do deliver up to be cancelled all tallies, labels, and papers in their possession, or in the possession of their servants, or agents, having the said trade mark so in colourable imitation of the plaintiff's, as thereinbefore mentioned, and also all tallies, labels and papers in their possession, or in the possession of their servants or agents, having the plaintiff's trade mark, or any mark in imitation thereof, or only colourably differing therefrom, stamped or impressed thereon, and also all dies for stamping or impressing the same, and that the defendants do pay the costs of the suit.

37. *Injunction—Trade Mark—Labels.*

Interim injunction granted in the terms of the notice of motion, *Farina v. Silverlock*, viz., to restrain the defendant, his workmen, &c., from printing or selling, or exposing for sale, or procuring to be printed or sold, any labels similar to those in use by the plaintiff, as in the bill in this cause mentioned, or containing copies of the signature, or address, or flourish, seal, or stamp, or other marks invented or used by the plaintiff, as therein mentioned, or any signature, address, flourish, seal, or other mark merely colourably differing therefrom, or any other papers or labels so printed or contrived, as, by colourable imitation, or otherwise, to represent or lead to the belief that Eau de Cologne prepared by other parties was Eau de Cologne prepared by the plaintiff. *1 K. & J. 509.*

38. *Injunction—Trade Secret.*

Let a perpetual injunction be awarded against the defendant to restrain him, &c., from carrying on any manufactory for the production of Crockett's Leather Cloth in the bill mentioned, and from being engaged in any company for the sale of the said cloth, or any cloth or any production similar thereto, and from in any manner holding himself out as the manufacturer of such Crockett's Leather Cloth or any production similar thereto. (Pemberton on J., 223.) *Leather Cloth Co. v. Lonsont, L. R. 9 Eq. 315.*

39. *Injunction—Trade Mark—"Crowley Millington."*

Let the injunction granted in this cause on the — day of —, to restrain the defendants, and each of them, their and each of their servants and agents, until, &c., from stamping or impressing, or causing to be stamped or impressed, on any bars of steel or other pieces of steel, the names Crowley Millington, or either of them, or any of the names or marks, or any material part of any of the *Millington v. For, 3 My. & Cr. 338.*

marks in the plaintiff's bill mentioned, to be stamped by the plaintiffs on steel manufactured by the plaintiffs, and from manufacturing or causing to be manufactured, and also from selling or contracting to sell, any bars of steel or other pieces of steel stamped with any of the said names or marks, or any material part of any of the said marks, or any name or mark in imitation of any of the said names, or any material part of any of the said marks, be made perpetual against the said defendants respectively, and their respective servants and agents. (Pemberton on J., 238.)

40. *Injunction—Trade Mark—Figure.*

Harrison v. Taylor,
11 Jur.
(N.R.)
408.

Let an injunction be awarded to restrain the defendants, their agents, servants, and workmen, until, &c., from selling or otherwise disposing of, or exposing for sale, any packages of mustard to which the plaintiff's trade mark, or the figure of an ox, or any other figure or mark in imitation of the plaintiff's trade mark, or any label containing any such imitative mark or figure, has been or shall be affixed, and also from printing or circulating, or causing to be printed or circulated, any notices or other documents containing such imitative mark. (Pemberton on J., 239.)

41. *Injunction—Trade Mark—"Anatolia."*

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

Let the defendants, their agents and servants, be restrained until, &c., from stamping or marking, or causing or permitting to be stamped or marked, upon any liquorice manufactured or prepared by them, the word "Anatolia," or from colourably using any other word, and also from selling or offering for sale any liquorice marked "Anatolia," not being of the plaintiffs' manufacture, and also from selling or offering for sale any liquorice or preparation of liquorice not being of the plaintiff's manufacture, so as to represent that the same has been manufactured by the plaintiffs. (Pemberton on J., 239.)

42. *Injunction—Fraudulent Use of Testimonials.*

Franks v. Weaver,
8 L. J.
(O.S.) 512.

Injunction in terms of amended notice of motion. That the above-named defendant, and the firm of Mander, Weaver and Company, his and their servants, workmen, and agents be restrained from making, vending, or offering for sale, or in any manner disposing of any preparation, mixture, compound, or nostrum, having around or upon the same, or in connection therewith, or the bottles or other vessels containing the same, any cover, wrapper, envelope, label, bill, circular, notice, advertisement, or other

formula, in the terms, or to the purport or effect of the cover, wrapper, envelope, label, bill, circular, notice, advertisement, or other formula in the plaintiff's bill, stated to have been used by the said defendant; or any other cover, wrapper, envelope, label, bill, circular, notice, advertisement, or other formula of any kind, containing any testimonial in favour of the plaintiff's medicine, or medical preparation, in the said bill described as "Franks's Specific Solution of Copaiba," or in which any statement or representation is made or contained, indicating or implying, or tending to induce the public or purchasers to suppose, that such preparation, mixture, compound, or nostrum is the same as "Franks's Specific Solution of Copaiba," or referred to in connection with any preparation, mixture, compound, or nostrum, made, vended, or disposed of, by the said defendant, or the said firm, or in which any use is made of the character and reputation of the plaintiff, or his said Specific Solution of Copaiba, and from publishing or circulating, or causing to be published or circulated, or in any manner using such cover, wrapper, envelope, label, bill, circular, notice, advertisement, or formula, as aforesaid.

43. *Injunction—Imitating Plaintiff's Line of Omnibuses.*

Let an injunction be awarded to restrain the defendant, Robert Morgan, his servants and agents, from running, or in any manner using, or causing to be used, for the conveyance of passengers, his omnibus, in the bill mentioned, or any other omnibus, having painted, stamped, printed, or written thereon, the words or names "London Conveyance," or "Original Conveyance for Company," or any other names, words, or devices painted, stamped, printed, or written thereon, in such manner as to form or be a colourable imitation of the names, words, and devices painted, stamped, printed, or written on the omnibuses of the plaintiffs, and let the defendant pay to the plaintiffs their costs of this application.

Knott v. Morgan,
2 Keen.
219.

44. *Injunction—Trade Name.*

Let the defendant, his servants, &c., be restrained from painting or otherwise affixing the name of the plaintiff on or to the door or outside of the defendant's shop, or on the bill-heads, circulars, or advertisements used in his business, or from otherwise using the plaintiff's name in such a manner as to lead to the belief that the defendant was carrying on his former partnership business with the plaintiff, or that the plaintiff was in any way interested in the defendant's business.

Hookham v. Pottage,
L. R. 8
Ch. 92.

45. *Injunction—Trade Name.*

Scott v.
Scott, 18
L. T.
(N.S.) 145.

Injunction granted to restrain the defendants from allowing or permitting the brass plate so affixed by the defendants to the door of the premises in Regent Street, to remain affixed with any inscription thereon representing or holding out to the customers of the late partnership of Robert and Walter Scott, or to any other person whatsoever, that they are carrying on business in continuation of or in succession to the business carried on by the late firm of Robert and Walter Scott.

APPENDIX B.

STATUTES.

8 ANNE, c. 19.

An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such copies during the times therein mentioned. [1709.]

(Repealed, 5 & 6 Vict. c. 45, s. 1.)

8 GEO. II. c. 13.

An Act for the Encouragement of the Arts of Designing, Engraving, and Etching historical and other Prints, by vesting the properties thereof in the Inventors and Engravers, during the time therein mentioned. [1735.]

WHEREAS divers persons have by their own genius, industry, *Preamble.* pains, and expense, invented and engraved, or worked in mezzotinto or chiaro oscuro, sets of historical and other prints, in hope to have reaped the sole benefit of their labours;

And whereas printsellers, and other persons, have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof :

For remedy thereof, and for preventing such practices for the future, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, *After 24 June, 1735, the property of historical and other prints vested in* which shall be in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch, or work in mezzotinto or chiaro oscuro, or, from his own works and invention, shall cause to be designed and engraved, etched, or worked in mezzotinto or chiaro oscuro, any historical or other print or prints, shall have the sole right and liberty of print-

*The incu-
ber for 14
years.*

*Proprie-
tor's name
to be
affixed to
each print.*

*Penalty
on print-
sellers or
others
pirating
same.*

ing and reprinting the same for the term of fourteen years, to com-
mence from the day of the first publishing thereof, which shall be
truly engraved with the name of the proprietor on each plate, and
printed on every such print or prints; and that if any printseller,
or other person whatsoever, from and after the said twenty-fourth
day of June, one thousand seven hundred and thirty-five, within
the time limited by this Act, shall engrave, etch, or work, as afore-
said, or in any other manner copy and sell, or cause to be engraved,
etched, or copied and sold, in the whole or in part, by varying,
adding to, or diminishing from the main design, or shall print,
reprint, or import for sale, or cause to be printed, reprinted, or
imported for sale, any such print or prints, or any parts thereof,
without the consent of the proprietor or proprietors thereof first
had and obtained in writing, signed by him or them respectively,
in the presence of two or more credible witnesses, or knowing the
same to be so printed or reprinted without the consent of the pro-
prietor or proprietors, shall publish, sell, or expose to sale, or
otherwise, or in any other manner dispose of, or cause to be pub-
lished, sold, or exposed to sale, or otherwise, or in any other
manner disposed of, any such print or prints without such consent
first had and obtained as aforesaid, then such offender or offenders
shall forfeit the plate or plates on which such print or prints are or
shall be copied, and all and every sheet or sheets (being part of or
whereon such print or prints are or shall be so copied or printed)
to the proprietor or proprietors of such original print or prints, who
shall forthwith destroy and damask the same; and further, that
every such offender or offenders shall forfeit five shillings for every
print which shall be found in his, her, or their custody, either
printed or published, and exposed to sale, or otherwise disposed
of contrary to the true intent and meaning of this Act, the one
moiety thereof to the King's most excellent Majesty, his heirs and
successors, and the other moiety thereof to any person or persons
that shall sue for the same, to be recovered in any of his Majesty's
Courts of Record at Westminster, by action of debt, bill, plaint, or
information, in which no wager of law, essoin, privilege, or pro-
tection, or more than one imparlance, shall be allowed:

*Not to
extend to
purchasers
of plates
from the
original
proprie-
tors.*

*Limitation
of actions.*

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

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

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

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

V. And be it further enacted by the authority aforesaid, That *Public* this Act shall be deemed, adjudged, and taken to be a public Act, and *Act.* be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without specially pleading the same.

12 GEO. II. c. 36.

An Act for prohibiting the Importation of Books reprinted abroad, and first composed or written, and printed in Great Britain; and for repealing so much of an Act made in the 8th year of her late Majesty Queen Anne, as empowers the limiting the prices of books. [1739.]

(Repealed, 30 & 31 Vict. c. 59.)

7 GEO. III. c. 38.

An Act to amend and render more effectual an Act made in the eighth year of the reign of King George the Second, for encouragement of the Arts of Designing, Engraving, and Etching, Historical and other Prints; and for vesting in, and securing to, Jane Hogarth, widow, the property in certain prints. [1767.]

I. WHEREAS an Act of Parliament passed in the eighth year of the reign of his late Majesty King George the Second, intituled *Preamble,* "An Act for the Encouragement of the Arts of Designing, En- *reciting* *Act 8 G. 2.* graving, and Etching Historical and other Prints, by vesting the properties thereof in the Inventors and Engravers, during the time therein mentioned," has been found ineffectual for the purposes

The original inventors, designers, or engravers, &c., of historical and other prints, and such who shall cause prints to be done from works, &c., of their own invention,

and also such as shall engrave, &c., any print taken from any picture, drawing, model, or sculpture, are entitled to the benefit and protection of the recited and present Act; and those who shall engrave or import for sale copies of such prints are liable to penalties.

Penalties may be sued for as by the recited Act is directed; and be recovered with full costs;

provided the prosecution be commenced within 6 months after the fact.

The right of

thereby intended: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of January, one thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch, or work in mezzotinto or chiaro oscuro, or, from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in mezzotinto or chiaro oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said Act, and this Act, under the restrictions and limitations hereinafter mentioned.

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

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

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

VII. And be it further enacted by the authority aforesaid, That

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

for the term of 28 years from the first publication.

VIII. And be it further enacted by the authority aforesaid, That if *Limitation* any action or suit shall be commenced or brought against any per- *of actions.* son or persons whatsoever for doing, or causing to be done, anything in pursuance of this Act, the same shall be brought within the space of six calendar months after the fact committed ; and the defendant or defendants in any such action or suit shall or may *General* plead the general issue, and give the special matter in evidence ; *issue.* and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs ; for the *Full costs.* recovery whereof he shall have the same remedy as any other defendant or defendants, in any other case, hath or have by law.

15 GEO. III. c. 53.

An Act for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in perpetuity their Copy-right in Books, given or bequeathed to the said Universities and Colleges for the advancement of useful learning and other purposes of education ; and for Amending so much of an Act of the 8th year of the reign of Queen Anne as relates to the delivery of Books to the Warchouse-keeper of the Stationers' Company, for the use of the several Libraries therein mentioned.

[1775.]

(This Act, with the exception of sects. 6 and 7, repealed by 24 & 25 Vict. c. 101, is still in force, but its provisions are without the scope of this work.)

17 GEO. III. c. 57.

An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain cases. [1777.]

Recital of Acts 5 G. 2. WHEREAS an Act of Parliament passed in the eighth year of the reign of his late Majesty King George the Second, intituled, "An Act for the Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the time therein mentioned:" And whereas by an Act of Parliament, passed in the *and 7 G. 3.* seventh year of the reign of his present Majesty, for amending and rendering more effectual the aforesaid Act, and for other purposes therein mentioned, it was (among other things) enacted, that, from and after the first day of January, one thousand seven hundred and sixty-seven, all and every person or persons who should engrave, etch, or work in mezzotinto or chiaro oscuro, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, should have, and were thereby declared to have, the benefit and protection of the said former Act, and that Act, for the term thereafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draughtsman: And whereas the said Acts have not effectually answered the purposes for which they were intended, and it is necessary, for the encouragement of artists, and for securing to them the property of and in their works, and for the advancement and improvement of the aforesaid arts, that such further provisions should be made as are hereinafter mentioned and contained; May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the twenty-fourth day of June, one thousand seven hundred and seventy-seven, if any engraver, etcher, print-seller, or other person, shall, within the time limited by the aforesaid acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked, in mezzotinto or chiaro oscuro, or otherwise, or in any other manner copy in the whole, or in part, by varying, adding to, or diminishing from, the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation,

After June 24, 1777, if any engraver, etc., shall within the time limited by the aforesaid Acts, engrave or etch, etc., any print, without the consent of the pro-

landscape, or architecture, map, chart, or plan, or any other print ^{printer, he} or prints whatsoever, which hath or have been, or shall be, en- ^{shall be} graved, etched, drawn, or designed, in any part of Great Britain, ^{liable to} without the express consent of the proprietor or proprietors thereof ^{damages,} and ^{and double} first had and obtained in writing, signed by him, her, or them re- ^{costs.} spectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit. (*So much as relates to double costs repealed, 24 & 25 Vict. c. 101.*)

27 GEO. III. c. 38.

An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicos, and Muslins, by vesting the properties thereof in the Designers, Printers, and Proprietors for a limited time. [1787.]

(Repealed, 5 & 6 Vict. c. 100.)

29 GEO. III. c. 10.)

An Act for continuing an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the properties thereof in the Designers, Printers, and Proprietors for a limited time. [1780.]

(Repealed, 5 & 6 Vict. c. 100.)

34 GEO. III. c. 23.

An Act for amending and making perpetual an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the properties thereof in the Designers, Printers, and Proprietors for a limited period. [1794.]

(Repealed, 5 & 6 Vict. c. 100.)

38 GEO. III. c. 71.

An Act for Encouraging the Art of making New Models and Casts of Busts, and other things therein mentioned. [1706.]

(Repealed, 24 & 25 Vic. c. 101.)

41 GEO. III. c. 107.

An Act for the further encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books to the authors of such Books, or their assigns, for the time herein mentioned. [1801.]

(Repealed, 5 & 6 Vict. c. 45.)

54 GEO. III. c. 56.

An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned; and for giving further encouragement to such Arts. [18th May, 1814.]

38 G. 3,
c. 71.

WHEREAS by an Act, passed in the thirty-eighth year of the reign of his present Majesty, intituled, "An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned," the sole right and property thereof were vested in the original proprietors, for a time therein specified: And whereas the provisions of the said Act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same, and to make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in their works, and for the advancement of the said arts: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast, of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure, or other-

*The sole
right and
property of
all new
and origi-
nal sculp-
ture,
models,
copies,*

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

and casts,
vested in
the pro-
prieters,
for 14
years.

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

Works
published
under the
recited
Act, vested
in the pro-
prieters for
14 years.

III. And be it further enacted, That if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture, or model or copy, or cast of the human figure or human figures, or of any such bust or busts, or of any such part or parts of the human figure, clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matters or things put forth or published under the protection of

Persons
putting
forth
pirated
copies or
pirated
casts, may
be prose-
cuted.

Damages and double costs. this Act, or of any works which have been put forth or published under the protection of the said recited Act, the right and property whereof is and are secured, extended and protected by this Act, in any of the cases as aforesaid, to the detriment, damage, or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors, or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit. (*See 5 & 6 Vict. c. 97, s. 2, as to double costs.*)

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

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

An additional term of 14 years, in case the maker of the original sculpture, &c., shall be living. VI. Provided always, and be it further enacted, That from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years.

54 GEO. III. c. 156.

An Act to amend the several Acts for the encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns. [1814.]

(Repealed, 5 & 6 Vict. c. 45.)

3 & 4 WILL. IV. c. 15.

An Act to amend the Law relating to Dramatic Literary Property.
 [10th June, 1833.]

I. WHEREAS by an Act passed in the fifty-fourth year of the reign of his late Majesty King George the Third, intituled "An 54 G. 3, Act to amend the several Acts for the encouragement of Learning, c. 156. by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns," it was amongst other things provided and enacted, That from and after the passing of the said Act, the author of any book or books composed, and not printed or published, or which should thereafter be composed and printed and published, and his assignee or assigns, should have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same, and also, if the author should be living at the end of that period, for the residue of his natural life : And whereas it is expedient to extend the provisions of the said Act : Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published by the author thereof or his assignee, or which hereafter shall be composed, and not printed or published by the author thereof or his assignee, or the assignee of such author, shall have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever, in any part of the United Kingdom of Great Britain and Ireland, in the Isles of Man, Jersey, and Guernsey, or in any part of the British Dominions, any such production as aforesaid, not printed and published by the author thereof or his assignee, and shall be deemed and taken to be the proprietor thereof : and that the author of any such production, printed and published within ten years before the passing of this Act by the author thereof or his assignee, or which shall hereafter be so printed and published, or the assignee of such author, shall, from the time of passing this Act, or from the time of such publication respectively, until the end of twenty-eight years from the day of such first publication of the same, and also, if the author or authors, or the survivor of the authors, shall be living at the end of that period, during the residue of his natural life, have as his own property the sole liberty of representing, or causing to be represented, the same at any such place of dramatic entertainment as aforesaid, and shall

The author of any dramatic piece shall have as his property the sole liberty of representing it or causing it to be represented at any place of dramatic entertainment.

Proviso as to cases where provisions of this Act, a consent has been given.

be deemed and taken to be the proprietor thereof : Provided nevertheless, that nothing in this Act contained shall prejudice, alter, or affect the right or authority of any person to represent or cause to be represented, at any place or places of dramatic entertainment whatsoever, any such production as aforesaid, in all cases in which the author thereof or his assignee shall, previously to the passing of this Act, have given his consent to or authorized such representation, but that such sole liberty of the author or his assignee shall be subject to such right or authority.

Penalty on persons performing pieces contrary to this Act.

II. And be it further enacted, That if any person shall, during the continuance of such sole liberty as aforesaid, contrary to the intent of this Act, or right of the author or his assignee, represent, or cause to be represented, without the consent in writing of the author or other proprietor first had and obtained, at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof, every such offender shall be liable for each and every such representation to the payment of an amount not less than forty shillings, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages, to the author or other proprietor of such production so represented contrary to the true intent and meaning of this Act, to be recovered, together with double costs of suit, by such author or other proprietors, in any Court having jurisdiction in such cases in that part of the said United Kingdom or of the British Dominions in which the offence shall be committed ; and in every such proceeding where the sole liberty of such author or his assignee as aforesaid shall be subject to such right or authority as aforesaid, it shall be sufficient for the plaintiff to state that he has such sole liberty, without stating the same to be subject to such right or authority, or otherwise mentioning the same.

Limitation of actions.

III. Provided nevertheless, and be it further enacted, That all actions or proceedings for any offence or injury that shall be committed against this Act, shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of no effect.

Explanation of words.

IV. And be it further enacted, That whenever authors, persons, offenders, or others are spoken of in this Act in the singular number, or in the masculine gender, the same shall extend to any number of persons and to either sex.

5 & 6 WILL. IV. c. 65.

An Act for preventing the Publication of Lectures without Consent.
[9th September, 1835.]

I. WHEREAS printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects, without the consent of the authors of such lectures, or the persons delivering the same in public, to the great detriment of such authors and lecturers: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of September, one thousand eight hundred and thirty-five, the author of any lecture and lectures, or the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in shorthand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish, and expose to sale, or cause to be sold, published, or exposed to sale, any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts thereof, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary to the true intent and meaning of this Act, the one moiety thereof to his Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same, to be recovered in any of his Majesty's courts of record in Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

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

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

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

Penalty on printers or publishers of newspapers publishing

lectures
without
leave.

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

Act not to
prohibit the
publishing
of lectures
after expi-
ration of
the copy-
right.

8 Anne,
c. 19.

54 G. 3,
c. 156.

Act not to
extend to
lectures
delivered
in unli-
censed
places, &c.

aforesaid forfeitures and penalties in respect of such printing and publishing.

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

IV. Provided always, That nothing in this Act shall extend to prohibit any person from printing, copying, and publishing, any lecture or lectures which have or shall have been printed and published with leave of the authors thereof or their assignees, and whereof the time hath or shall have expired within which the sole right to print and publish the same is given by an Act passed in the eighth year of the reign of Queen Anne, intituled "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned," and by another Act passed in the fifty-fourth year of the reign of King George the Third, intituled "An Act to Amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed Books to the Authors of such Books, or their Assigns," or to any lectures which have been printed or published before the passing of this Act (8 Anne, c. 19 & 54 Geo. III. c. 156, repealed by 5 & 6 Vict. c. 45).

V. Provided further, That nothing in this Act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to two justices living within five miles from the place where such lecture or lectures shall be delivered, two days at the least before delivering the same, or to any lecture or lectures delivered in any University or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this Act had not been passed.

6 & 7 WILL. IV. c. 59.

An Act to Extend the Protection of Copyright in Prints and Engravings to Ireland. [13th August, 1836.]

The following is the effect of the sections.

1. Provisions of 17 Geo. III. c. 57 extended to Ireland.
2. Any person who engraves any print published in any part of Great Britain or Ireland, without the consent of the

proprietor had and obtained, in writing, signed, &c., in the presence of and attested by two or more witnesses, liable to a separate action on the case for damages.

1 & 2 VIOT. c. 59.

International Copyright Act (1838).

(Repealed by 7 Vict. c. 12.)

2 VIOT. c. 13.

An Act for Extending the Copyright of Designs for, Calico Printing to Designs for Printing other Woven Fabrics. [1839.]

(Repealed, 5 & 6 Vict. c. 100.)

2 VICT. c. 17.

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

[1839.]

(Repealed, 5 & 6 Vict. c. 100.)

5 & 6 VICT. c. 45.

An Act to amend the Law of Copyright.

[1st July, 1842.]

I. WHEREAS it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world : Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from the passing of this Act an Act passed in the eighth year of the reign of her Majesty Queen Anne, intituled "an Act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies during the times

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

41 G. 3,
c. 107.

54 G. 3,
c. 156.

*Interpre-
tation of
Act.*

therein mentioned ;" and also an Act passed in the forty-first year of the reign of his Majesty King George III., intituled "an Act for the further encouragement of learning in the United Kingdom of Great Britain and Ireland, by securing the copies and copyright of printed books to the authors of such books, or their assigns, for the time therein mentioned ;" and also an Act passed in the fifty-fourth year of the reign of his Majesty King George III., intituled "an Act to amend the several Acts for the encouragement of learning, by securing the copies and copyright of printed books to the authors of such books, or their assigns, be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceedings at law or in equity pending at the time of passing this Act, or for enforcing any cause of action or suit, or any right or contract, then subsisting.

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

*Endurance
of term of
copyright
in any
book here-*

III. And be it enacted, that the copyright in every book which shall after the passing of this Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time

of his death, and shall be the property of such author and his assigns: Provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

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

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

Judicial Committee of the Privy Council may licence the republication of books which the proprietor refuses to republish after death of the author.

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

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

Manner of delivering at the British Museum.

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

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

VIII. And be it enacted, that a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this Act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers who shall from time to time be appointed by the said company for the purposes of this Act, or under the hand of any other person thereto authorised by the persons or bodies politic and corporate, proprietors and managers of the libraries following (*videlicet*), the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of the College of the Holy and

Undivided Trinity of Queen Elizabeth near Dublin, be delivered, upon the paper on which the largest number of copies of such book or edition shall be printed for sale, in the like condition as the copies prepared for sale, by the publisher thereof respectively, within one month after demand made thereof in writing as aforesaid, to the said officer of the said Company of Stationers for the time being, which copies the said officer shall and he is hereby required to receive at the hall of the said company, for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said officer is hereby required to give a receipt in writing for the same, and within one month after any such book shall be so delivered to him as aforesaid to deliver the same for the use of such library.

the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.

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

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

X. And be it enacted, that if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same, pursuant to this Act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding five pounds, to be recovered by the librarian or other officer (properly authorised) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the United Kingdom, in which action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

Penalty for default in delivering copies for the use of the libraries.

XI. And be it enacted, that a book of registry, wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the hall of the Stationers' Company, by the officer appointed by the said company for the purposes of this Act, and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his

Book of registry to be kept at Stationers' Hall

hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of five shillings ; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *prima facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *prima facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

*Making
false entry
in the book
of registry
a misde-
meanor.*

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

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

XIII. And be it enacted, that after the passing of this Act it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of five shillings to the officer of the said company ; and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum ; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

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

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

the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

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

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

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

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

in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

No person except the proprietor, &c., shall import into the British dominions for sale or hire any book first composed, &c., within the United Kingdom, and re-printed elsewhere under penalty of forfeiture thereof, and also of 10l. and double the value.

Books may be seized by officers of customs or excise.

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

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

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

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

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

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

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

XX. And whereas an Act was passed in the third year of the reign of his late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty, of representing dramatic pieces given by that Act to the full time by this Act provided for the continuance of copyright: And whereas it is expedient to extend to musical compositions the benefits of that Act and also of this Act; be it therefore enacted, that the provisions of the said Act of his late Majesty, and of this Act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composi-

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

of representing dramatic pieces and musical compositions.

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

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

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

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

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

Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action.

XXIII. And be it enacted, that all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover.

No proprietor of copyright

XXIV. And be it enacted, that no proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit, at law or in equity, or any

summary proceeding, in respect of any infringement of such copy-right, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made, in the book of registry of the Stationers' Company, of such book, pursuant to this Act: *commencing after this Act shall sue or proceed for any infringement before making entry in the book of registry. Provision for dramatic pieces.* Provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the Act passed in the third year of the reign of His late Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or of this Act, although no entry shall be made in the book of registry aforesaid.

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

XXVI. And be it enacted, that if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations, for any offence that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect; provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which under the authority of this Act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned. *General issue. Limitation of actions; not to extend to actions, &c., in respect of the delivery of books.*

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

*Saving all
subsisting
rights,
contracts,
and en-
gagements.*

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

*Extent of
the Act.*

XXIX. And be it enacted, that this Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions.

*Act may be
amended
this ses-
sion.*

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

SCHEDULE TO WHICH THE PRECEDING ACT REFERS.

No. 1.

FORM OF MINUTE OF CONSENT, TO BE ENTERED AT STATIONERS' HALL.

We, the undersigned, A. B. of _____ the author of a certain book intituled Y. Z. [or the personal representative of the author, as the case may be], and C. D. of _____ do hereby certify that we have consented and agreed to accept the benefits of the Act passed in the fifth year of the reign of Her Majesty Queen Victoria, Cap. _____, for the extension of the term of copyright therein provided by the said Act, and hereby declare that such extended term of copyright therein is the property of the said A. B. or C. D.

Dated this _____ day of _____ 18 ____.

Witness

(Signed) A. B.
C. D.

To the registering officer appointed by the Stationers' Company.

No. 2.

FORM OF REQUIRING ENTRY OF PROPRIETORSHIP.

I, A. B. of _____ do hereby certify, that I am the proprietor of the copyright of a book, intituled Y. Z., and I hereby require you to make entry in the register book of the Stationers'

Company of my proprietorship of such copyright, according to the particulars underwritten.

Title of Book.	Name of Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y. Z.		A. B.	

Dated this day of 18 .
Witness, C. D. (Signed) A. B.

No. 3.

ORIGINAL ENTRY OF PROPRIETORSHIP OF COPYRIGHT OF A BOOK.

Time of making the Entry.	Title of Book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	Y. Z.	A. B.	C. D.	

No. 4.

FORM OF CONCURRENCE OF THE PARTY ASSIGNING IN ANY BOOK PREVIOUSLY REGISTERED.

I, A. B. of being the assigner of the copyright of the book hereunder described, do hereby require you to make entry of the assignment of the copyright therein.

APPENDIX B.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
Y. Z.	A. B.	C. D.

Dated this day of 18 .
(Signed) A. B.

No. 5.

**FORM OF ENTRY OF ASSIGNMENT OF COPYRIGHT IN ANY BOOK
PREVIOUSLY REGISTERED.**

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	[Set out the Title of the Book, and refer to the Page of the Registry Book in which the original Entry of the Copyright thereof is made.]	A. B.	C. D.

5 & 6 VICT. c. 47.

An Act to amend the laws relating to the Customs. [1842.]

(See 7 & 8 Vict. c. 73.)

5 & 6 VICT. c. 100.

An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.

[10th August, 1842.]

(Repealed, 46 & 47 Vict. c. 57.)

6 & 7 VICT. c. 53.

An Act to amend the laws relating to the copyright of designs.

[22nd August, 1843.]

(Repealed, 46 & 47 Vict. c. 57.)

6 & 7 VICT. c. 68.

An Act for the regulation of theatres. [22nd August, 1843.]

An Act still partly in force but without the scope of this work.

(See Statute Law Revision Act, 1874 (No. 2)).

7 & 8 VICT. c. 12.

An Act to amend the law relating to international copyright.

(Effect only.) [10th May, 1844.]

I. Recites 1 & 2 Vict. c. 59, the International Copyright Act ; 5 & 6 Vict. c. 45, the Copyright Amendment Act ; 3 & 4 Will. IV. c. 15, the Dramatic Literary Property Act ; 8 Geo. II. c. 13, 17 Geo. III. c. 38, 17 Geo. III. c. 57, and 6 & 7 Will. IV. c. 59, the Engraving Copyright Acts ; 38 Geo. III. c. 71 (repealed by 24 & 25 Vict. c. 101), and 54 Geo. III. c. 56, the Sculpture Copyright Acts. Repeal of 1 & 2 Vict. c. 59, *supra*.

II. Her Majesty, by order in council, may direct that authors, &c., of works first published in foreign countries shall have copyright therein within Her Majesty's dominions, for any term not exceeding that for which authors, &c., of like works first published in the United Kingdom would be entitled to copyright.

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

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

V. Her Majesty may, by order in council, direct that authors and composers of dramatic pieces and musical compositions first publicly represented and performed in foreign countries shall have exclusive rights of representation in the British dominions. Enactments relating to similar pieces first represented in this country shall apply to such pieces, if registered.

VI. Particulars to be observed as to registry and to delivery of copies—as to books and printed dramatic pieces and musical com-

positions—as to dramatic pieces and musical compositions in manuscript—as to prints—as to sculpture, &c.

VII. In case of books published anonymously it shall be sufficient to register the name, &c., of the publisher.

VIII. The provisions of the Copyright Amendment Act, 5 & 6 Vict. c. 45, as regards entries in the register book of the Company of Stationers, &c., to apply to books, &c., registered under the Act.

IX. As to expunging or varying entry grounded in wrongful first publication.

X. Copies of books wherein copyright is subsisting under the Act printed in foreign countries, other than those wherein the book was first published, shall not be imported, except with consent of registered proprietors, and shall be subject to laws of customs as to prohibited goods.

Liability of persons selling such copies, or any copies unlawfully printed (action for damages).

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

XII. As to depositing copies of second or subsequent editions.

XIII. Different periods may be specified for continuance of privilege for different countries and classes of works and times for entries, &c., may be different.

XIV. No order to take effect unless it states that reciprocal protection is secured for parties interested in works first published in British dominions.

XV. Orders to be published in *Gazette*, and to have effect as if included in Act.

XVI. Orders to be laid before Parliament.

XVII. Orders may be revoked.

XVIII. Translations (repealed so far as it may be inconsistent with the provisions of 15 & 16 Vict. c. 12).

XIX. Authors, &c., of works first published in foreign countries not entitled to copyright except under the Act.

XX. Interpretation clause.—“Book”—“Articles of Sculpture”—“Printing”—“Reprinting”—“Her Majesty”—“Order of Her Majesty in Council”—“Order in Council”—“Order”—“Officer of the Company of Stationers.”

7 & 8 VICT. c. 73.

An Act to reduce under certain circumstances the duties payable upon books and engravings. [1844.]

(Repealed, 9 & 10 Vict. c. 58.)

8 & 9 VICT. c. 93.

An Act to regulate the Trade of British Possessions abroad.

[1845.]

(Repealed, 16 & 17 Vict. c. 107, s. 358.)

9 & 10 VICT. c. 58.

An Act to amend an Act of the 7th and 8th years of Her present Majesty, for reducing, under certain circumstances, the Duties payable upon Books and Engravings.

[1846.]

(Repealed, 24 & 25 Vict. c. 101.)

10 & 11 VICT. c. 95.

An Act to amend the law relating to the Protection in the Colonies of works entitled to Copyright in the U. K. [22nd July, 1847.]

I. Recites 5 & 6 Vict. c. 45; 8 & 9 Vict. c. 93 (repealed, 16 & 17 Vict. c. 107, s. 358). Her Majesty may suspend in certain cases the prohibition against the admission of pirated books into the colonies.

II. Orders in council to be published in the *Gazette*. Orders in Council and the Colonial Acts or ordinances to be laid before Parliament.

III. Repealed, Statute Law Revision Act, 1875.

13 & 14 VICT. c. 104.

An Act to extend and amend the Acts relating to the Copyright of Designs. [14th August, 1850.]

(Repealed, 46 & 47 Vict. c. 57.)

14 & 15 VICT. c. 8.

An Act to extend the provisions of the "Designs Act, 1850," and to give protection from Piracy to persons exhibiting new inventions in the Exhibition of the Works of Industry of all Nations in 1851.

[1851.]

(Lapsed.)

15 & 16 VICT. c. 12.

An Act to enable Her Majesty to carry into effect a Convention with France on the subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings. [28th May, 1852.]

I. Reciting 7 & 8 Vict. c. 12.

Translations.

II. Partial repeal of 7 & 8 Vict. c. 12, s. 18. Her Majesty may, by order in council, direct that the authors of books published in foreign countries may for a limited time prevent unauthorised translations.

III. Thereupon the law of copyright shall extend to prevent such translations.

IV. Her Majesty may, by order in council, direct that the authors of dramatic works represented in foreign countries may for a limited time prevent unauthorised translations.

V. Thereupon the law for protecting the representation of such pieces shall extend to prevent unauthorised translations.

VI. Adaptations, &c., of dramatic pieces to the English stage allowed.

VII. All articles in newspapers, &c., relating to politics may be republished or translated; unless the author has notified his intention to reserve the right.

VIII. No author to be entitled to benefit of the Act without complying with the requisitions therein specified.

IX. Pirated copies prohibited to be imported except with consent of proprietor. Provisions of 5 & 6 Vict. c. 45, as to forfeiture, &c. of pirated works, &c., to extend to works prohibited to be imported under the Act.

X. Foregoing provisions and those of 7 & 8 Vict. c. 12 to be read as one Act.

XI. French translations to be protected as before mentioned without further order in council.

Reduction of Duties.

XII. Recital of 9 & 10 Vict. c. 58 (repealed, 24 & 25 Vict. c. 101). Rates of duty not to be raised, during continuance of treaty, and if further reduction is made for other countries it may be extended to France.

XIII. Removal of doubts as to construction of schedule to 9 & 10 Vict. c. 58 (repealed, *supra*).

Lithographs, &c.

XIV. And whereas by the four several Acts of Parliament following (that is to say): 8 Geo. II. c. 13; 7 Geo. III. c. 38; 17 Geo. III. c. 57; 7 Will. IV. c. 50, provision is made for securing to every person who invents, or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design, or invention, causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and to every person who engraves, etches, or works in mezzotinto or chiaro oscuro, or causes to be engraved, etched, or worked any print taken from any picture, drawing, model, or sculpture, notwithstanding such print has not been graven or drawn from his own original design, certain copyrights therein defined: and whereas doubts are entertained whether the provisions of the said Acts extend to lithographs and certain other impressions, and it is expedient to remove such doubts:

It is hereby declared, that the provisions of the said Acts are intended to include prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely; and the said Acts shall be construed accordingly.

16 & 17 VICT. c. 107.

An Act to amend and consolidate the laws relating to the Customs of the United Kingdom and of the Isle of Man, and certain laws relating to the Trade and Navigation and the British Possessions.

[20th August, 1853].

(See 39 & 40 Vict. c. 36.)

18 & 19 VICT. c. 96.

An Act to consolidate certain Acts, and otherwise amend the laws of the Customs, and an Act to regulate the office of the receipt of Her Majesty's Exchequer at Westminster.

[1855.]

(See 39 & 40 Vict. c. 36.)

21 & 22 VICT. c. 70.

An Act to amend the Act of the 5th and 6th years of Her present Majesty, to consolidate and amend the laws relating to the Copyright of Designs for ornamenting articles of manufacture.

[2nd August, 1858.]

(Repealed, 46 & 47 Vict. c. 57.)

24 & 25 VICT. c. 73.

An Act to amend the Law relating to the Copyright of Designs.

[6th August, 1861.]

(Repealed, 46 & 47 Vict. c. 57.)

25 & 26 VICT. c. 68.

An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the production and sale of such Works.

[29th July, 1862.]

Copyright in works hereafter made to vest in the author for his life and for seven years after his death.

I. The author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph, which shall be or shall have been made either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of this Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph, and the negative thereof, by any means, and of any size, for the term of the natural life of such author, and seven years after his death; provided that when any painting or drawing, or the negative of any photograph, shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof, unless it be expressly reserved to him by agreement in writing, signed, at or before the time of such sale or disposition, by the vendee or assignee of such painting or drawing, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing, or of

such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed, nor shall the vendee or assignee thereof be entitled to any such copyright, unless, at or before the time of such sale or disposition, an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorised, shall have been made to that effect.

II. Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

III. All copyright under this Act shall be deemed personal or moveable estate, and shall be assignable at law, and every assignment thereof, and every license to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

IV. There shall be kept at the hall of the Stationers' Company by the officer appointed by the said company for the purposes of the Act passed in the sixth year of her present Majesty, intituled, "An Act to amend the Law of Copyright," a book or books, entitled "The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs," wherein shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment of any such copyright; and such memorandum shall contain a statement of the date of such agreement or assignment, and of the names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof, and of the name and place of abode of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work, and no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration, and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration.

V. The several enactments in the said Act of the sixth year of her present Majesty contained, with relation to keeping the register book thereby required, and the inspection thereof, the searches therein and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the application to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries,

Copyright not to prevent the representation of the same subjects in other works.

Assignments, licenses, &c., to be in writing.

Register of proprietors of copyright in paintings, drawings, and photographs to be kept at Stationers' Hall, as in 5 & 6 Vict. c. 45.

Certain enactments of 5 & 6 Vict. c. 45, to apply to the books to be kept under this Act.

shall apply to the book or books to be kept by virtue of this Act, and to the entries and assignments of copyright and proprietorship therein under this Act, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Act of the sixth year of her present Majesty may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be one shilling only.

*Penalties
on in-
fringement
of copy-
right.*

VI. If the author of any painting, drawing, or photograph in which there shall be subsisting copyright, after having sold or disposed of such copyright, or if any other person, not being the proprietor for the time being of copyright in any painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or, knowing that any such repetition, copy, or other imitation has been unlawfully made, shall import into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of the said work, or of the design thereof, made without such consent as aforesaid, such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding ten pounds ; and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

*Penalties
on fraudu-
lent pro-
ductions
and sales.*

VII. No person shall do or cause to be done any or either of the following acts ; that is to say,

First, no person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram :

Secondly, no person shall fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work :

Thirdly, no person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been made or executed

by the author or maker of the original work from which such copy or imitation shall have been taken :

Fourthly, where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty, during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish, or offer for sale, such work or any copies of such work so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker :

Every offender under this section shall, upon conviction, forfeit to *Penalties.* the person aggrieved a sum not exceeding ten pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale ; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid : Provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed.

VIII. All pecuniary penalties which shall be incurred, and all *Recovery of* such unlawful copies, imitations, and all other effects and things *pecuniary* as shall have been forfeited by offenders, pursuant to this Act, *penalties.* and pursuant to any Act for the protection of copyright engravings, may be recovered by the person hereinbefore and in any such Act as aforesaid empowered to recover the same respectively, and hereinafter called the complainant or the complainer, as follows :—

In England and Ireland, either by action against the party *In Eng-* offending, or by summary proceeding before any two *land and* justices having jurisdiction where the party offending *Ireland.* resides :

In Scotland, by action before the Court of Session in ordinary *In Scot-* form, or by summary action before the sheriff of the *land.* county where the offence may be committed or the offender resides

IX. In any action in any of her Majesty's superior courts of *Superior* record at Westminster and in Dublin, for the infringement of any *Courts of*

Record in which any action is pending may make an order for an injunction, inspection, or account.

Importation of pirated works prohibited.

Application in such cases of Customs Acts.

Giving of right to bring action for damages.

such copyright as aforesaid, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting, then for a judge of such Court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such Court or judge may seem fit.

X. All repetitions, copies, or imitations of paintings, drawings, or photographs, wherein or in the design whereof there shall be subsisting copyright under this Act, and all repetitions, copies, and imitations of the design of any such painting or drawing, or of the negative of any such photograph, which, contrary to the provisions of this Act, shall have been made in any foreign state, or in any part of the British dominions, are hereby absolutely prohibited to be imported into any part of the United Kingdom, except by or with the consent of the proprietor of the copyright thereof, or his agent, authorised in writing; and if the proprietor of any such copyright, or his agent, shall declare that any goods imported are repetitions, copies, or imitations of any such painting, drawing, or photograph, or of the negative of any such photograph, and so prohibited as aforesaid, then such goods may be detained by the officers of her Majesty's customs.

XI. If the author of any painting, drawing, or photograph, in which there shall be subsisting copyright, after having sold or otherwise disposed of such copyright, or if any other person, not being the proprietor for the time being of such copyright, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied, for sale, hire, exhibition or distribution, any such work or the design thereof, or the negative of any such photograph, or shall import or cause to be imported into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be sold, published, let to hire, exhibited or distributed, or offered for sale, hire, exhibition or distribution, any repetition, copy, or imitation of such work, or the design thereof, or the negative of any such photograph, made without such consent as aforesaid, then every such proprietor in addition to the remedies hereby given for the recovery of any such penalties, and forfeiture of any such things as aforesaid, may recover damages by and in a special action on the case, to be brought against the person so offending, and may in such action recover and enforce the delivery to him of all unlawful repetitions, copies and imitations, and negatives of photographs, or may recover damages for the retention or conversion thereof: Provided that nothing herein contained, nor any proceeding, conviction, or judg-

ment, for any act hereby forbidden, shall affect any remedy which any person aggrieved by such Act may be entitled to either at law or in equity.

XII. This Act shall be considered as including the provisions of the Act passed in the session of Parliament held in the seventh and eighth years of her present Majesty, intituled "An Act to Amend the Law relating to International Copyright, in the same manner as if such provisions were part of this Act.

Provisions of 7 & 8 Vict. c. 12, to be considered as included in this Act.

25 & 26 VICT. c. 88.

An Act to amend the Law relating to the fraudulent marking of Merchandise.
[7th August, 1862.]

I. In the construction of this Act the word "person" shall include any person, whether a subject of her Majesty or not, and any body corporate or body of the like nature, whether constituted according to the law of this country or of any of her Majesty's colonies or dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether the members thereof be subjects of her Majesty or not, or some of such persons subjects of her Majesty and some of them not, and whether such body corporate, body of the like nature, company, association, or society be established or carry on business within her Majesty's dominions or elsewhere, or partly within her Majesty's dominions and partly elsewhere; the word "mark" shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description; and the expression "trade mark" shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid lawfully used by any person to denote any chattel, or (in Scotland) any article of trade, manufacture, or merchandise, to be an article or thing of the manufacture, workmanship, production, or merchandise of such person, or to be an article or thing of any peculiar or particular description made or sold by such person, and shall also include any name, signature, word, letter, number, figure, mark, or sign which in pursuance of any statute or statutes for the time being in force relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provisions of such statutes or any of them; the word "misdemeanor" shall include crime and offence in Scotland; and the word "court" shall include any sheriff or sheriff substitute in Scotland.

Construction of words.

Forging a trade mark or falsely applying any trade mark with intent to defraud, a misdemeanor.

II. Every person who, with intent to defraud, or to enable another to defraud any person, shall forge or counterfeit, or cause or procure to be forged or counterfeited, any trade mark, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any chattel or article not being the manufacture, workmanship, production, or merchandise of any person denoted or intended to be denoted by such trade mark, or denoted or intended to be denoted by such forged or counterfeited trade mark, or not being the manufacture, workmanship, production, or merchandise of any person whose trade mark shall be so forged or counterfeited, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any chattel or article, not being the particular or peculiar description of manufacture, workmanship, production, or merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark, shall be guilty of a misdemeanor, and every person so committing a misdemeanor shall also forfeit to her Majesty every chattel and article belonging to such person to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade mark or forged or counterfeited trade mark as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been so applied, and every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid shall be forfeited to her Majesty; and the court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such court shall think fit.

Applying a forged trade mark to any vessel, case, wrapper, &c., in or with which any article is sold or intended to be sold, a misdemeanor.

III. Every person who, with intent to defraud, or to enable another to defraud any person, shall apply or cause or procure to be applied any trade mark or any forged or counterfeited trade mark to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, on, or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale, or intended for any purpose of trade or manufacture, or shall inclose or place any chattel or article, or cause or procure any chattel or article, to be inclosed or placed in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall apply or attach or cause or procure to be applied or attached to any chattel or article any case, cover, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall

enclose, place, or attach any chattel or article, or cause or procure any chattel or article to be enclosed, placed, or attached, in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing having thereon any trade mark of any other person, shall be guilty of a misdemeanor, and every person so committing a misdemeanor shall also forfeit to her Majesty every such chattel and article, and also every such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid in the possession or power of such person; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing made to be used in like manner as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been applied, and also every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeit trade mark as aforesaid, shall be forfeited to her Majesty; and the court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such court shall think fit.

IV. Every person who, after the thirty-first day of December one thousand eight hundred and sixty-three, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, which he shall know to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that whether any such trade mark or forged or counterfeited trade mark as aforesaid, together with which any such chattel or article shall be sold, uttered, or exposed for sale or other purpose as aforesaid, shall be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall be so sold or uttered or exposed for sale or other purpose as aforesaid, shall for every such offence forfeit and pay to her Majesty a sum of money equal to the value of the chattel or article so sold, uttered, offered, or exposed for sale or other purpose as aforesaid, and a further sum not exceeding five pounds and not less than ten shillings.

Selling articles with forged or false trade marks after 31st December, 1863, penalty equal to value of article sold, and a sum not exceeding 5l. nor less than 10s.

V. Every addition to and every alteration of and also every imitation of any trade mark which shall be made, applied, or used with intent to defraud or to enable any other person to defraud, or which shall cause a trade mark with such alteration or addition, or

Additions to and alterations of trade marks

made with intent to defraud to be deemed forgery.

shall cause such imitation of a trade mark to resemble any genuine trade mark so or in such manner as to be calculated or likely to deceive, shall be, and be deemed to be a false, forged, and counterfeited trade mark within the meaning of this Act; and every act of making, applying, or otherwise using any such addition to or alteration of a trade mark or any such imitation of a trade mark as aforesaid done by any person with intent to defraud, or to enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act.

Any person who, after 31st December, 1863, shall have sold an article having a false trade mark to be bound to give information where he procured it.

VI. Where any person who, at any time after the thirty-first day of December, one thousand eight hundred and sixty-three, shall have sold, uttered, or exposed for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that whether any such trade mark, or such forged or counterfeited trade mark as aforesaid, be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall have been sold or exposed for sale, such person shall be bound, upon demand in writing delivered to him or left for him at his last known dwelling house or at the place of sale or exposure for sale by or on the behalf of any person whose trade mark shall have been so forged or counterfeited or used without lawful authority or excuse as aforesaid, to give to the person requiring the same or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom he shall have purchased or obtained such chattel or article, and of the time when he obtained the same; and it shall be lawful for any justice of the peace, on information on oath of such demand and refusal, to summon before him the party refusing, and on being satisfied that such demand ought to be complied with to order such information to be given within a certain time to be appointed by him; and any such party who shall refuse or neglect to comply with such order shall for every such offence forfeit and pay to her Majesty the sum of five pounds, and such refusal or neglect shall be *prima facie* evidence that the person so refusing or neglecting had full knowledge that the trade mark, together with which such chattel or article was sold, uttered, or exposed for sale or other purpose as aforesaid, at the time of such selling, uttering, or exposing was a forged, counterfeited, and false trade mark, or was the trade mark of a person which had been used without lawful authority or excuse, as the case may be.

Power to justices to summon parties refusing to give information.

Penalty for refusal, 5l.

VII. Every person who, with intent to defraud, or to enable another to defraud, shall put or cause or procure to be put upon any chattel or article, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which any chattel or article shall be intended to be or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture, or upon any case, frame, or other thing, in or by means of which any chattel or article shall be intended to be or shall be exposed for sale, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or any part thereof, or of the place or country in which such chattel or article shall have been made, manufactured, or produced, or shall put or cause or procure to be put upon any such chattel or article, cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing as aforesaid, any word, letter, figure, signature, or mark for the purpose of falsely indicating such chattel or article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege or copyright, shall for every such offence forfeit and pay to her Majesty a sum of money equal to the value of the chattel or article so sold or uttered or exposed for sale, and a further sum not exceeding five pounds and not less than ten shillings.

Marking any false indication of quantity, &c., upon an article with intent to defraud, penalty a sum equal to the value of the article and the further sum not exceeding 5l. and not less than 10s.

VIII. Every person who, after the thirty-first day of December, one thousand eight hundred and sixty-three, shall sell, utter, or expose for sale or for any purpose of trade or manufacture, or shall cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article upon which shall have been, to his knowledge, put, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such chattel or article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall have been so put, or upon any case, frame, or other thing used or employed to expose or exhibit such chattel or article for sale shall have been so put, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article or any part thereof, or the place or country in which such chattel or article shall have been made, manufactured, or produced, shall for every such offence forfeit and pay to her Majesty a sum not exceeding five pounds and not less than five shillings.

Selling or exposing for sale after the 31st December, 1863, articles with false statement of quantities, &c., penalty not more than 5l. or less than 5s.

IX. Provided always, that the provisions of this Act shall not be construed so as to make it any offence for any person to apply to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing with which such chattel or article shall be sold or intended to be sold,

Provided that it shall not be an offence to apply

names or words known to be used for indicating particular classes of manufactures.

any name, word, or expression generally used for indicating such chattel or article to be of some particular class or description of manufacture only, or so as to make it any offence for any person to sell, utter, or offer or expose for sale any chattel or article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing sold therewith, any such generally used name, word, or expression as aforesaid shall have been applied.

Description of trade marks and forged trade marks in indictments, &c.

X. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark shall be intended to be mentioned it shall be sufficient to mention or state the same to be a trade mark without further or otherwise describing such trade mark, or setting forth any copy or fac-simile thereof; and in every indictment, pleading, proceeding, and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark without further or otherwise describing such forged or counterfeit trade mark, or setting forth any copy or fac-simile thereof.

Conviction not to affect any right or civil remedy.

XI. The provisions in this Act contained of or concerning any Act or any proceeding, judgment, or conviction for any act hereby declared to be a misdemeanor or offence, shall not nor shall any of them take away, diminish, or prejudicially affect any suit, process, proceeding, right, or remedy which any person aggrieved by such act may be entitled to at law, in equity, or otherwise, and shall not nor shall any of them exempt or excuse any person from answering or making discovery upon examination as a witness or upon interrogatories or otherwise in any suit or other civil proceeding: provided always, that no evidence, statement, or discovery which any person shall be compelled to give or make shall be admissible in evidence against such person in support of any indictment for a misdemeanor at common law or otherwise, or of any proceeding under the provisions of this Act.

Intent to defraud, &c., any particular person need not be alleged in an indictment, &c., or proved.

XII. In every indictment, information, conviction, pleading, and proceeding against any person for any misdemeanor or other offence against the provisions of this Act in which it shall be necessary to allege or mention an intent to defraud, or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made a misdemeanor or other offence did such act with intent to defraud, or with intent to enable some other person to defraud, without alleging or mentioning an intent to defraud any particular person; and on the trial of any such indictment or information for any such misdemeanor, and on the hearing of any information or charge of or for any such other offence as aforesaid, and on the trial of any action against any person to recover a penalty for any such other offence as aforesaid, it shall not be necessary to prove an intent to defraud

any particular person, or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove with respect to every such misdemeanor and offence that the person accused did the act charged with intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

XIII. Every person who shall aid, abet, counsel, or procure the commission of any offence which is by this Act made a misdemeanor shall also be guilty of a misdemeanor.

Persons who aid in the commission of a misdemeanor to be also guilty.

XIV. Every person who shall be convicted or found guilty of any offence which is by this Act made a misdemeanor shall be liable, at the discretion of the court and as the court shall award, to suffer such punishment by imprisonment for not more than two years, with or without hard labour, or by fine, or both by imprisonment with or without hard labour and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied.

Punishment for misdemeanor under this Act.

XV. In every case in which any person shall have committed or done any offence or act whereby he shall have forfeited or become liable to pay to her Majesty any of the penalties or sums of money mentioned in the provisions of this Act, every such penalty or sum of money shall or may be recovered in England, Wales, or Ireland in an action of debt, which any person may as plaintiff for and on behalf of her Majesty commence and prosecute to judgment in any court of record, and the amount of every such penalty or sum of money to be recovered in any such action shall or may be determined by the jury (if any) sworn to try any issue in such action, and if there shall be no such jury then by the court or some other jury, as the court shall think fit, or instead of any such action being commenced such penalty or sum of money shall or may in England or Wales be recovered by a summary proceeding before two justices of the peace having jurisdiction in the county or place where the party offending shall reside or have any place of business, or in the county or place in which the offence shall have been committed; and shall or may in Ireland be recovered in like manner by civil bill in the civil bill court of the county or place in which the offence was committed, or in which the offender shall reside or have any place of business; and shall or may in Scotland be recovered by action before the Court of Session in ordinary form or by summary action before the sheriff of the county where the offence shall have been committed or the offender may reside or have any place of business. . . .

Recovery of penalties.

XVI. In every case in which any such penalty or sum of money forfeited to her Majesty as hereinbefore mentioned shall be sought to be recovered by a summary proceeding before two justices of the peace, the offence or act by the committing or doing of which such penalty or sum of money shall have been so forfeited shall be and

Summary proceedings before justices to be within 11 & 12 Vict. c. 43.

be deemed to be an offence and act within the meaning of a statute passed in the twelfth year of the reign of her present Majesty ; and the information, conviction of the offender, and other proceedings for the recovery of the penalty or sum so forfeited shall be had according to the provisions of the said Act.

XVII. (*Effect.*) *In actions penalties to be accounted for in like manner as other moneys payable to the Crown, and plaintiffs to recover full costs of suit.*

Limitations of actions, &c.

XVIII. No person shall commence any action or proceeding for the recovery of any penalty, or procuring the conviction of any offender in manner hereinbefore provided, after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

After 31st December, 1863, vendor of an article with a trade mark to be deemed to contract that the mark is genuine.

XIX. In every case in which at any time after the thirty-first day of December, one thousand eight hundred and sixty-three, any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article with any trade mark thereon, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that every trade mark upon such chattel or article, or upon any such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

After 31st December, 1863, vendor of an article with description upon it of its quantity to be deemed to contract that the description was true.

XX. In every case in which at any time after the thirty-first day of December, one thousand eight hundred and sixty-three any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article upon which, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such chattel or article shall be sold or contracted to be sold, any description, statement or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or the place or country in which such chattel or article shall have been made, manufactured, or produced, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description, statement, or other indication was in any material respect false or untrue, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

XXI. In every case in any suit at law or in equity against any person for forging or counterfeiting any trade mark, or for fraudulently applying any trade mark to any chattel or article, or for selling, exposing for sale, or uttering any chattel or article with any trade mark falsely or wrongfully applied thereto, or with any forged or counterfeit trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff shall obtain a judgment or decree against the defendant, the court shall have power to direct every such chattel and article to be destroyed or otherwise disposed of; and in every such suit in a court of law the court shall or may upon giving judgment for the plaintiff award a writ of injunction or injunctions to the defendant, commanding him to forbear from committing and not by himself or otherwise to repeat or commit any offence or wrongful act of the like nature as that of which he shall or may have been convicted by such judgment, and any disobedience of any such writ of injunction or injunctions shall be punished as a contempt of court; and in every such suit at law or in equity it shall be lawful for the court or a judge thereof to make such order as such court or judge shall think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such forged or counterfeit trade mark, or any such trade mark as aforesaid, shall be alleged to be used or applied as aforesaid, and of every or any chattel, article, and thing in the possession or power of the defendant alleged to have thereon or in any way attached thereto any forged or counterfeit trade mark, or any trade mark falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any forged or counterfeit trade mark, or trade mark alleged to be forged or counterfeit, or for falsely or wrongfully applying any trade mark; and any person who shall refuse or neglect to obey any such order shall be guilty of a contempt of court.

XXII. In every case in which any person shall do or cause to be done any of the wrongful acts following; (that is to say,) shall forge or counterfeit any trade mark; or for the purpose of sale, or for the purpose of any manufacture or trade, shall apply any forged or counterfeit trade mark to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing in or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture; or shall inclose or place any chattel or article in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark

In suits at law or in equity against persons for using forged trade marks, Court may order article to be destroyed, and may award injunction, &c.

Persons aggrieved by forgeries may recover damages against the guilty parties.

shall have been applied ; or shall apply or attach to any chattel or article any case, cover, reel, wrapper, band, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied ; or shall inclose, place, or attach any chattel or article in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, reel, wrapper, band, ticket, label, or other thing having thereon any trade mark of any other person ; every person aggrieved by any such wrongful act shall be entitled to maintain an action or suit for damages in respect thereof against the person who shall be guilty of having done such act or causing or procuring the same to be done, and for preventing the repetition or continuance of the wrongful act, and the committal of any similar act.

Defendant obtaining a verdict to have full indemnity for costs.

XXIII. In every action which any person shall, under the provisions of this Act, commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if the defendant shall obtain judgment, he shall be entitled to recover his costs of suit, which shall include a full indemnity for all the costs, charges, and expenses by him expended or incurred in, about, or for the purposes of the action, unless the court or a judge thereof shall direct that costs of the ordinary amount only shall be allowed.

A plaintiff suing for a penalty may be compelled to give security for costs.

XXIV. In any action which any person shall, under the provisions of this Act, commence as plaintiff for or on behalf of Her Majesty for recovering any penalty or sum of money, if it shall be shown to the satisfaction of the court, or a judge thereof, that the person suing as plaintiff for or on behalf of Her Majesty has no ground for alleging that he has been aggrieved by the committing of the alleged offence in respect of which the penalty or sum of money is alleged to have become payable, and also that the person so suing as plaintiff is not resident within the jurisdiction of the court, or not a person of sufficient property to be able to pay any costs which the defendant may recover in the action, the court or judge shall or may order that the plaintiff shall give security by the bond or recognizance of himself and a surety, or by the deposit of a sum of money, or otherwise, as the court or judge shall think fit, for the payment to the defendant of any costs which he may be entitled to recover in the action.

Effect.

XXV. [Act not to affect the Corporation of Cutlers of Hallamshire, nor to repeal 59 G. 3, c. 7.]

Short title.

XXVI. The expression "The Merchandise Marks Act, 1862," shall be a sufficient description of this Act.

32 & 33 VICT. c. 24.

An Act to repeal certain Enactments relating to Newspapers, Pamphlets, and other Publications, and to Printers, Typesetters, and Reading Rooms.
[12th July, 1869.]

(An Act still partly in force, see 40 & 47 Vict. c. 39.)

38 VICT. c. 12.

An Act to amend the Law relating to International Copyright.
[13th May, 1875.]

WHEREAS by an Act passed in the fifteenth year of the reign of 15 Vict. her present Majesty, chapter twelve, intituled "An Act to enable c. 12. her Majesty to carry into effect a convention with France on the subject of copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to copyright in engravings," it is enacted, that "Her Majesty may, by Order in Council, direct that authors of dramatic pieces which are, after a future time, to be specified in such order, first publicly represented in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions thereafter mentioned or referred to, be empowered to prevent the representation in the British dominions of any translation of such dramatic pieces not authorised by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorised translations of such dramatic pieces are first published and publicly represented :"

And whereas by the same Act it is further enacted, "that, subject to any provisions or qualifications contained in such order, and to the provisions in the said Act contained or referred to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly represented in the British dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such order extends, which are not sanctioned by the authors thereof :"

And whereas by the sixth section of the said Act it is provided, that "nothing in the said Act contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country :"

And whereas it is expedient to alter or amend the last-mentioned provision under certain circumstances :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; viz.,

*Section 6
of recited
Act not to
apply to
dramatic
pieces in
certain
cases.*

1. In any case in which, by virtue of the enactments hereinbefore recited, any Order in Council has been or may hereafter be made for the purpose of extending protection to the translations of dramatic pieces first publicly represented in any foreign country, it shall be lawful for her Majesty by Order in Council to direct that the sixth section of the said Act shall not apply to the dramatic pieces to which protection is so extended ; and thereupon the said recited Act shall take effect with respect to such dramatic piece and to the translations thereof as if the said sixth section of the said Act were hereby repealed.

38 & 39 VICT. c. 53.

An Act to give effect to an Act of the Parliament of the Dominion of Canada respecting Copyright. [2nd August, 1875.]

(An Act still in force.)

38 & 39 VICT. c. 91.

An Act to establish a Register of Trade Marks.
[13th August, 1875.]

(Repealed 46 & 47 Vict. c. 57.)

38 & 39 VICT. c. 93.

An Act to amend the Copyright of Designs Act.
[13th August, 1875.]

(Repealed 46 & 47 Vict. c. 57.)

39 & 40 VICT. c. 33.

An Act for the Amendment of the Trade Marks Registration Act,
1875. [24th July, 1876.]

(Repealed 46 & 47 Vict. c. 57.)

30 & 40 VICT. c. 30.

An Act to Consolidate the Customs Laws.

[24th July, 1876.]

(An Act still partly in force, see 44 Vict. c. 12 (schedule)).

40 & 41 VICT. c. 37.

*An Act for extending the Time for the Registration of Trade Marks,
in so far as relates to Trade Marks used in Textile Industries.*

[6th August, 1877.]

(Repealed 46 & 47 Vict. c. 57.)

44 & 45 VICT. c. 60.

*An Act to amend the Law of Newspaper Libel, and to provide for the
Registration of Newspaper Proprietors.* [27th August, 1881.](An Act still in force, see *ante*, p. 82).

45 & 46 VICT. c. 40.

*An Act to amend the law of Copyright relating to Musical Com-
positions.* [10th August, 1882.]

I. On and after the passing of this Act the proprietor of the *Printed* copyright in any musical composition first published after the pass- *notice re-* ing of this Act, or his assignee, who shall be entitled to and be *straining* desirous of retaining in his own hands exclusively the right of *public per-* public representation or performance of the same, shall print or *formance.* cause to be printed upon the title-page of every published copy of such musical composition a notice to the effect that the right of public representation or performance is reserved.

II. In case, after the passing of this Act, the right of public *Provision* representation or performance of, and the copyright in, any *when right* musical composition shall be or become vested before publication *of perform-* of any copy thereof in different owners; then, if the owner of the *ance and* right of public representation or performance shall desire to retain *copyright* the same, he shall, before any such publication of any copy of such *are vested* musical composition, give to the owner of the copyright therein *in different* notice in writing requiring him to print upon every copy of such *owners.*

musical composition a notice to the effect that the right of public representation or performance is reserved ; but in case the right of public representation or performance of, and the copyright in, any musical composition shall, after publication of any copy thereof subsequently to the passing of this Act, first become vested in different owners, and such notice as aforesaid shall have been duly printed on all copies published after the passing of this Act previously to such vesting, then, if the owner of the right of performance and representation shall desire to retain the same, he shall, before the publication of any further copies of such musical composition, give notice in writing to the person in whom the copyright shall be then vested, requiring him to print such notice as aforesaid on every copy of such musical composition to be thereafter published.

Penalty on owner of copyright for non-compliance with notice from owner of right of performance.

III. If the owner for the time being of the copyright in any musical composition shall, after due notice being given to him or his predecessor in title at the time, and generally in accordance with the last preceding section, neglect or fail to print legibly and conspicuously upon every copy of such composition published by him or by his authority, or by any person lawfully entitled to publish the same, and claiming through or under him, a note or memorandum stating that the right of public representation or performance is reserved, then and in such case the owner of the copyright at the time of the happening of such neglect or default, shall forfeit and pay to the owner of the right of public representation or performance of such composition the sum of twenty pounds, to be recovered in any court of competent jurisdiction.

Costs.

3 & 4 Will. 4, c. 15.

IV. Notwithstanding the provisions of the Act passed in the third and fourth years of His Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or any other Act in which those provisions are incorporated, the costs of any action or proceedings for penalties or damages in respect of the unauthorised representation or performance of any musical composition published before the passing of this Act shall, in cases in which the plaintiff shall not recover more than forty shillings as penalty or damages, be in the discretion of the court or judge before whom such action or proceedings shall be tried.

Short title.

V. This Act may be cited as the Copyright (Musical Compositions) Act, 1882.

46 & 47 VICT. c. 57.

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks.

[26th August, 1883.]

PART I.

PRELIMINARY.

I. This Act may be cited as the Patents, Designs, and Trade *Short title.*
Marks Act, 1883.

III. This Act, except where it is otherwise expressed, shall com- *Commence-*
mence from and immediately after the thirty-first day of December, *ment of*
one thousand eight hundred and eighty-three. *Act.*

PART II.

RELATING EXCLUSIVELY TO PATENTS.

PART III.

DESIGNS.

Registration of Designs.

XLVII. (1.) The comptroller may, on application by or on *Applica-*
behalf of any person claiming to be the proprietor of any new or *tion for*
original design not previously published in the United Kingdom, *registra-*
register the design under this part of this Act. *tion of*
designs.

(2.) The application must be made in the form 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.

(3.) The application must contain a statement of the nature of the design, and the class or classes of goods in which the applicant desires that the design be registered.

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6.) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7.) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

*Drawings,
etc., to be
furnished
on appli-
cation.*

XLVIII. (1.) On application for registration of a design the applicant shall furnish the comptroller the prescribed number of copies of drawings, photographs, or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design ; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2.) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen which is not, in his opinion, suitable for the official records.

*Certificate
of registra-
tion.*

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

(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.

Copyright in registered Designs.

*Copyright
on regis-
tration.*

L. (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.

(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 design ; and if he fails to do so, the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

*Marking
registered
designs.*

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

*Inspection
of regis-
tered
designs.*

LII. (1.) During the existence of copyright in a design, the design shall not be open to inspection 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 persons on payment of the prescribed fee.

*Informa-
tion as to*

LIII. On the request of any person producing a 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.

LIV. 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.

Register of Designs.

LV. (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.

(2.) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorised to be entered therein.

Fees.

LVI. 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.

Industrial and International Exhibitions.

LVII. 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.

Legal Proceedings.

Penalty on piracy of registered design.

LVIII. 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 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 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.

Action for damages.

LIX. 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 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 that the proprietor had not given his consent to such application.

Definitions.

Definition of "design," "copyright."

LX. 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.

LXI. 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. *Definition of proprietor.*

PART IV.

TRADE MARKS.

Registration of Trade Marks.

LXII. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark. *Application for registration.*

(2.) The application must be made in the form 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.

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

(4.) The comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(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.

LXIII. Where registration of a trade mark has not been or shall *Limit of*

time for proceeding with application.

not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned.

Conditions of registration of trade mark.

LXIV. (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 any of them.

(3.) Provided that any special and distinctive word or words, letter, 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.

Connexion of trade mark with goods.

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

Registration of a series of marks.

LXVI. 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 may be registered in any colour.

LXVII. 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.

Advertisement of application.

LXVIII. 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.

Opposition to registration.

LXIX. (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.

(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 for the determination of the court.

LXX. A trade mark, when registered, shall be assigned and transmitted only in connexion 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.

Assignment and transmission of trade mark.

LXXI. 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 registration.

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

Restrictions on registration.

(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.

LXXIII. 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.

Further restriction on registration.

LXXIV. (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—

Saving for power to provide for entry on register of

(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—

common marks as additions to trade marks.

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 ;

(h.) 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.

Effect of Registration.

Registration equivalent to public use.

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

Right of first proprietor to exclusive use of trade mark.

LXXVI. The registration of a person as proprietor of a trade mark shall be *prima 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.

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

LXXVII. 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.

Register of Trade Marks.

Register of trade marks.

LXXVIII. 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 proscribed.

LXXIX. (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 proscribed 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.

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 proscribed 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 nonpayment of the proscribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the proscribed additional fee.

(5.) Where a trade mark has been removed from the register for nonpayment of the fee or otherwise, such trade mark shall nevertheless for the purpose of any application for registration during the five years next after the date of such removal, be deemed to be a trade mark which is already registered.

LXXX. [*Relating to fees.*]

LXXXI. [*Relates exclusively to Sheffield marks.*]

PART V.

GENERAL.

Patent Office and Proceedings thereat.

LXXXII. (1.) [*Relates exclusively to the constitution of the office ; 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 authorized by the Board of Trade.

*Officers
and clerks.*

LXXXIII. [*Relates to officers and clerks; 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 the salaries of those officers and clerks.*]

LXXXIV. [*Seal of patent office.*]

*Trust not
to be en-
tered in
registers.*

LXXXV. 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.

*Refusal
to grant
patent,
etc., in
certain
cases.*

LXXXVI. 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.

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

LXXXVII. 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. 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 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.

*Inspection
of and ex-
tracts from
registers.*

LXXXVIII. 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 person requiring the same on payment of the prescribed fee.

*Scaled
copies to be
received in
evidence.*

LXXXIX. 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.

XO. (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; 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. *Rectification of registers by Court.*

(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.

XCI. The comptroller may, on request in writing accompanied by the prescribed fee,— *Power for comptroller to correct clerical errors.*

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

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

(c.) Cancel the entry or part of the entry of a trade mark on the register: 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.

XCII. (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 particular within the meaning of this Act, and the court may refuse or grant leave on such terms as it may think fit. *Alteration of registered mark.*

(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.

(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.

XCIII. 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 *Falsification of entries in registers.*

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.

Exercise of discretionary power by comptroller.

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

Power of comptroller to take directions of law officers.

XCV. 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 comptroller to be evidence.

XCVI. 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 *prima 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.

Applications and notices by post.

XCVII. (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, 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.

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

Provision as to days for leaving documents at office.

XCVIII. 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.

Declaration by infant, lunatic, &c

XCIX. 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 incapable 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.

O. 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.

CI. [*Power for Board of Trade to make general rules for classifying goods and regulating business of patent office.*]

CII. [*Annual reports of comptroller.*]

International and Colonial Arrangements.

CIII. [*International arrangements for protection of inventions, designs, and trade marks.*]

CIV. [*Provision for Colonies and India.*]

Offences.

CV. (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.

CVI. 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 afore-

said, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Scotland; Ireland; &c.

CVII. *Relates exclusively to patents.*

Summary proceedings in Scotland.

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

CIX. *Relates exclusively to patents.*

OX. *Relates exclusively to patents.*

General saving for jurisdiction of courts.

CXI. (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 proceedings 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.

CXII. *Relates to procedure in the Isle of Man.*

Repeal; Transitional Provisions; Savings.

Repeal and saving for past operation of repealed enactments, &c.

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

- (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 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.

CXIV. (1.) *Relates to the register of patents.*

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

CXV. All general rules made by the Lord Chancellor or by any *Saving for* other authority under any enactment repealed by this Act, and in *existing* force at the commencement of this Act, may at any time after the *rules.* 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.

CXVI. Nothing in this Act shall take away abridge or preju- *Saving fo* dicially affect the prerogative of the Crown in relation to the *preroga-* granting of any letters patent or to the withholding of a grant *live.* thereof.

General Definitions.

CXVII. (1.) In and for the purposes of this Act, unless the *General* context otherwise requires, *definitions*

“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.

In the application of this Act to Ireland, “summary convic-

tion" 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.

Form D.—Form of Patent.

Form E.—Form of Application for Registration of Design.

Form F.—Form of Application for Registration of Trade Mark.

THE SECOND SCHEDULE.

FEEs ON INSTRUMENTS FOR OBTAINING PATENTS, AND RENEWAL.

THE THIRD SCHEDULE.

Enactments repealed.

As follows, so far as it is material to state them for the purposes of this work :—

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.
13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
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.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
33 Vict. c. 97. [1870.]	"Certificate of the registration of a design, £5."
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.

UNITED STATES.

The Acts relating to copyright and trade marks are as follows :—

Copyright.—The Act of July 8th, 1870, ss. 4048—4071, as contained in the Revised Statutes, 2nd ed., 1878, p. 957 ; 16 U. S. Statutes at Large, 108.

The Act of June 18th, 1874, as contained 18 U. S. Statutes at Large.

Revised Statutes s. 620, s. 600, which together with s. 4070 (*supra*), govern jurisdiction in copyright cases.

Trade Marks.—U. S. Revised Statutes, ss. 4037—4047.

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