

- Horticultural implements of the larger kind. 7.
 ----- smaller kind, with a cutting edge. 12.
 ----- without a cutting edge (metal). 13.
 Hose (tubular). 50.
 ----- suspenders (for wear). 38.
 Hosiery being wearing apparel. 38.
 ----- for curative purposes. 11.
 Hot-air engines for agricultural purposes. 7.
 ----- not for agricultural purposes. 6.
 Hot closets, being building contrivances. 18.
 ----- plates for cooking. 18.
 ----- water apparatus. 18.
 Houses (iron). 18.
 Hubs (metal) not being geared hubs. 13.
 ----- (wood). 50.
 Huckaback towellings. 27.
 Hurdles (metal). 13.
 Hydrants, not being machinery. 13.
 Hydraulic packing. 50.
 ----- rams for raising water. 6.
 ----- scrubber for cleaning ships' bottoms when afloat. 21.
 Hydrochloric acid. 1.
 Hydrogen, Compressed. 1.
 Hydrometers. 8.
 Hypodermic injections (medicinal) for human use. 3.
 ----- injectors. 11.

 Ice. 42.
 ----- houses, Portable. 50.
 ----- making machines. 6.
 ----- pails (glass). 15.
 ----- (wood). 50.
 ----- safes. 50.
 ----- skates. 12.
 Illuminating gas. 1.
 ----- oils and greases. 47.
 ----- power of oil and gas, Chemical preparations for increasing. 1.
 Illustrated books, papers and cards. 39.
 Imitation jewellery. 14.
 Implements, agricultural and horticultural, of the larger kind. 7.
 ----- smaller kind, with a cutting edge. 12.
 ----- without a cutting edge (metal). 13.
 ----- Drainage (of the larger kind). 7.

 Incandescent electric lamps (ordinary). 13.
 ----- (philosophical). 8.
 ----- gas and lamp burners and fittings (metal). 13.
 ----- mantles (not of metal). 50.
 Incrustations in steam boilers, Composition for the prevention and removal of. 1.
 Incubators. 50.
 Index cabinets (furniture). 41.
 ----- cards and sheets. 39.
 India-rubber bands (stationery) and stamps. 39.
 ----- for erasing. 39.
 ----- goods, not included in other classes. 40.
 ----- (raw, waste, or reclaimed) for use in manufactures. 4.
 ----- shoes and clothing. 38.
 ----- solution. 40.
 ----- surgical appliances. 11.
 Indicators, Pressure, Speed and Distance. 8.
 Indigo dye. 4.
 Induction coils for medical purposes. 11.
 ----- not for medical purposes. 8.
 Infants' and invalids' food. 42.
 Inflators, Tyre. 6.
 Infusers, Tea (metal). 13.
 Infusions used in pharmacy. 3.
 Infusorial earth. 4.
 Ingots, Metal in. 5.
 Inhalers (medicated). 3.
 ----- (not medicated). 11.
 Injections, Hypodermic (medicinal), for human use. 3.
 Injectors, Hypodermic. 11.
 Ink, Burnishing, for boots and shoes. 50.
 ----- (writing, copying, printing, duplicating), inkstands, ink ribbons, ink powders, ink pads, ink and pencil erasers. 39.
 ----- extractor for fabric and paper. 47.
 Inner tubes for tyres. 40.
 Inoculation of soil, Bacterial products for. 2.
 Insect destroying preparations. 2.
 ----- repelling preparations for personal use. 3.
 Insulating compositions for preventing the radiation of heat. 1.
 ----- preparations (electrical) of asbestos, mica, resin, oils or bitumen. 50.
 Insulators, Electric (porcelain and earthenware). 16.
 ----- (india-rubber). 40.
 Internal combustion engines. 6.
 Invalids' furniture. 41.
 Ipecacuanha wine. 3.

- Irish friezes, being woollen piece goods. 31.
 Iron (angle, galvanized, pig, cast, rough, bar, rail, bolt, rod, sheet, or hoop). 5.
 Ironmongery, Coath. 13.
 Isinglass (for food). 42.
 Italian paste. 42.
 Ivory. 4.
 — fancy smallwares not included in other classes. 50.
- Jackets (wearing apparel). 38.
 —, Swimming. 21.
 Jacks, Lifting. 6.
 —, Roasting. 6.
 Jacquards (parts of machinery). 6.
 Jam. 42.
 Japanese lanterns (no part being of metal). 49.
 Japans. 1.
 Jars (glass). 15.
 — (pottery ware). 16.
 Jellies for food. 42.
 Jerseys. 38.
 Jet or imitation jet, Fancy smallwares of. 50.
 Jets (metal). 13.
 Jewellers' rouge. 50.
 Jewels and imitation jewels. 14.
 — for wire drawing, and for horological, telegraphic and other instruments. 50.
 Jews' harps. 9.
 Joints, Union (metal). 13.
 Jointing, Steam (in the nature of a packing). 50.
 Jugs (glass). 15.
 — (pottery ware). 16.
 Juices, Fruit (alcoholic). 43.
 — (non-alcoholic). 42.
 Jujubes (medicated). 3.
 Junction boxes (earthenware). 16.
 Jute bags and sacks. 50.
 — carpets and mats. 36.
 — piece goods (except carpets, mats and wall coverings). 29.
 — raw or partly prepared). 4.
 — small wares, not included in other classes. 29.
 — wall coverings. 11.
 — yarns. 29.
- Kainit. 2.
 Kamptulicon. 36.
 Kali, Lemon (in powder). 42.
 Kapok, raw or partly prepared for use in manufacture. 4.
- Keys (metal). 13.
 — (wood). 50.
 Kennels (structures of iron). 18.
 Kerosine oil for illuminating and heating. 47.
 Ketchup. 42.
 Kettles. 13.
 —, Bronchitis. 11.
 Keys, key rings and blanks. 13.
 Kid gloves. 38.
 — reviver. 50.
 Kieselguhr. 4.
 Kilns. 18.
 Kinematograph apparatus. 8.
 Kit tools (with a cutting edge). 12.
 — (without a cutting edge). 13.
 Kitchen ranges. 18.
 Kites made of paper. 49.
 Kitool. 4.
 Knapsacks. 50.
 Knee caps for curative purposes. 11.
 Knife-boards, knife polishing powder. 50.
 — cleaning and sharpening machines. 6.
 Knitting machines. 6.
 — pins of bone or wood. 50.
 — (metal). 13.
 Knives (table, pocket, and hand). 12.
 — of precious metal. 14.
 —, Paper. 39.
 — (parts of agricultural machinery). 7.
 — (parts of machinery). 6.
 — (surgical). 11.
 Knobs (metal). 13.
 — (porcelain). 16.
 Knockers, Door. 13.
 Knotter plates. 6.
- Labelling adhesives. 39.
 — machines. 6.
 Labels (leather). 37.
 — (metal). 13.
 — (paper). 39.
 — (pottery ware). 16.
 — (wood). 50.
 Lace and laces as smallwares, according to the class of the material or the predominating material.
 Laces (leather). 37.
 Lacquered leather. 37.
 Lacquers. 1.
 Lactometers. 8.
 Ladder tapes for blinds, as smallwares according to the class of the material.
 Ladders (wood or rope). 50.
 Ladles (metal). 13.
 — (precious metal). 14.
 Lager beer. 43.
 Lametta. 5.

- Lamp black (a pigment). 1.
 — burners (metal). 13.
 — chimneys (glass). 15.
 — (mica). 50.
 — shades (celluloid). 50.
 — (glass). 15.
 — (paper). 39.
 — (silk). 32.
 — stoves and blow lamps. 18.
 — wicks. 47.
 Lamps (ordinary). 13.
 — (philosophical). 8.
 —, Electric (ordinary). 13.
 — (philosophical). 8.
 Lancets. 11.
 Land rollers. 7.
 Lantern slides. 8.
 Lanterns, metal or partly metal. 13.
 —, Optical. 8.
 — (paper), no part being of metal.
 19.
 Lard, for food. 42.
 — used for lubricating purposes. 17.
 — in manufactures. 1.
 Lardine, a food substance. 42.
 Lastings (wool, worsted, or hair). 31.
 Lasts (wood). 50.
 Latches (metal). 13.
 Lathes. 6.
 Laths (metal). 13.
 — (wood). 50.
 Launches. 21.
 Laundry purposes, Preparations for. 47.
 Lavatories. 18.
 Lavatory basins (china, stoneware, and
 earthenware). 16.
 — fittings (metal). 13.
 Lavender water. 18.
 Lawn mowers. 7.
 — tennis sets. 49.
 — shoes. 38.
 Lead, Black (for polishing). 50.
 — pencils. 39.
 — (pig, rolled, or sheet). 5.
 —, Red, Orange and White. 1.
 — wool packing. 50.
 Leaf, Gold. 5.
 — turning apparatus. 8.
 Leakage indicators, Electrical. 8.
 Leather. 37.
 —, Artificial. 37.
 —, Cement, Stains and Inks for.
 50.
 — cloth. 36.
 — dressing. 50.
 Leaven. 42.
 Leeches. 11.
 Legee twist. 30.
 Leggings. 38.
 Leg guards (cricketing). 49.
 Lemon juice and syrup. 42.
 — kali (in powder). 42.
 Lemonade (an aerated beverage). 44.
 Lenses. 8.
 Lentils. 42.
 Letter balances. 39.
 — clips and files. 39.
 — filing cabinets. 41.
 Letters (metal). 13.
 — (wood). 50.
 Levels, Spirit. 8.
 —, Workmen's (wood). 50.
 Levers (metal). 13.
 — (wood). 50.
 Life belts and buoys. 21.
 Life-saving garments for use on water.
 21.
 Lifting jacks. 6.
 Lifts. 6.
 Lighters, Fire. 50.
 Lighting apparatus for surgical use. 11.
 — installations. 18.
 Lights, Night. 47.
 — of glass, with metal frames. 13.
 — without metal frames.
 15.
 Limbs, Artificial. 11.
 Lime. 17.
 —, Chloride of (for disinfecting pur-
 poses). 2.
 — cylinders. 4.
 — juice (aerated). 44.
 — cordial and syrup (free from
 spirit). 42.
 — for medicinal purposes. 3.
 Limestone. 4.
 Limewash disinfectant. 2.
 Linchpins. 13.
 Linen bindings, braids, and other linen
 small wares not included in other
 classes. 28.
 — buttons. 50.
 — cords for trimming. 28.
 — fire hose. 50.
 — piece goods. 27.
 — stretchers (bone, wood, or ivory).
 50.
 —, Tracing. 39.
 — yarn and thread. 26.
 Liners of clay. 16.
 Lines, Fishing. 49.
 — for sounding and measuring. 8.
 — Sash, Blind, Picture and Clothes
 (not of metal). 50.
 Liniments for human use. 3.
 Lining felt for walls. 50.
 Linings (cut or traced) for dressmaking.
 50.
 — in the piece (cotton). 24.
 — (linen or hemp). 27.
 — (wool, worsted or
 hair). 34.
 —, Furnace. 16.
 Links, Sleeve (metal). 13.
 — (precious metal). 14.
 Linsced-oil cake. 42.
 — oils (used in manufactures). 4.
 Lint. 11.

- Lintels (iron). 13.
 Liqueur colourings and essences (alcoholic). 43.
 Liqueurs. 43.
 Licorice confectionery. 42.
 ——— prepared for use in pharmacy. 3.
 Liquors prepared for use in medicine and pharmacy. 3.
 Lithia water. 44.
 Lithographic stones, Preparations for cleaning. 47.
 Lithographs. 39.
 Litter, Peat Moss. 50.
 Liver pads (not medicated). 11.
 Liveries. 38.
 Locks. 13.
 ———, Rifle and pistol. 19.
 Locomotives. 6.
 Logs and log lines. 8.
 Logwood, Extract of (a vegetable dye). 4.
 Looking glasses (furniture). 11.
 Looms for weaving. 6.
 Lorries. 22.
 Lotions for toilet use. 48.
 ——— (medicated). 3.
 ——— (veterinary). 2.
 Lozenges (medicated). 3.
 ——— (not medicated). 12.
 Lubricating preparations. 47.
 Lubricators. 13.
 ———, parts of agricultural and horticultural machinery. 7.
 ———, parts of machinery. 6.
 Luggage carriers for attachment to cycles (metal). 13.
 ——— labels and straps (leather). 37.
 Lumps, Furnace. 16.
 Lung protectors. 11.
 Lustres (glass), no part of metal. 15.
 Lymph for vaccination. 11.
- Maccaroni. 42.
 Mace. 42.
 Machine guns. 19.
 ——— irons (plane, moulding and grooving). 6.
 ——— tools. 6.
 Machinery, Agricultural and horticultural, and parts of such machinery. 7.
 ——— of all kinds, and parts of machinery (except agricultural and horticultural machines and their parts included in class 7). 6.
 Magnesia, prepared for use in medicine and pharmacy. 3.
 ——— water. 44.
 Magnetic apparatus for medical purposes. 11.
- Magneto-electric machines. 6.
 ——— for surgical or curative purposes. 11.
 Magnifying glasses. 8.
 Majolica ware. 16.
 Mallets. 50.
 Malt. 42.
 ——— extract, an ingredient in food. 42.
 ——— liquors (fermented). 43.
 Mandolines. 9.
 Mandrels (parts of machinery). 6.
 Manganese bronze. 5.
 Mangles and mangling machines. 6.
 Manhole covers (metal). 13.
 Manifold copying paper. 39.
 Manila ropes. 50.
 Mantle cloth (woollen or worsted). 31.
 Mantles. 38.
 ——— for incandescent lighting (not of metal). 50.
 Manumotive vehicles. 22.
 Manure. 2.
 ——— pumps. 7.
 Maps. 39.
 Marble, Imitation. 17.
 ——— rough or partly worked. 1.
 Marbles, Playing. 39.
 Margarine. 42.
 Marine engines. 6.
 ——— glasses. 8.
 ——— or ships' chronometers. 10.
 Markers, Billiard, Whist and Bezique. 49.
 ———, Ear (metal). 13.
 Marking gauges. 8.
 ——— ink. 39.
 ——— presses or stamps for linen. 39.
 Marline spikes. 13.
 Marmalade. 42.
 Marquees. 50.
 Marrow. 42.
 Massage instruments. 11.
 Match-boxes (metal). 13.
 ——— striking compositions or surfaces. 50.
 Matches. 17.
 Matchets. 12.
 Mathematical instruments. 8.
 Mats, Door (india-rubber). 40.
 ——— (textile). 36.
 ——— (wire). 13.
 Mattocks. 13.
 Mattresses. 41.
 Mauds. 35.
 Mayonnaise. 42.
 Meal. 42.
 Measures, not being workmen's ordinary measures. 8.
 ———, Workmen's (metal). 13.
 ——— (wood). 50.
 Measuring instruments and apparatus. 8.
 ——— tapes (for workmen's use). 50.

- Meat, Extract of. 42.
 —, Fresh and preserved. 42.
 — safes (chiefly of wood). 50.
 — screens and safes (metal). 13.
 Medical batteries. 11.
 Medicated articles for human use, as
 wool, paper, soap, &c. in class. 3.
 — beverages. 3.
 Medicines for horses, cattle, or birds. 2.
 — man. 3.
 Mediums, Artists'. 1.
 —, Bronzing. 1.
 Memorandum books. 39.
 Memorial brasses. 13.
 — stones (finished). 17.
 — wreaths of cut-flowers. 46.
 Menu cards. 39.
 Merino piece goods. 34.
 — yarns. 33.
 Mesh pins (metal). 13.
 — (wood). 50.
 Metallic cement for filling holes in cast-
 ings. 1.
 — oxides. 1.
 Metals of all kinds used in manufactures
 (unwrought and partly wrought). 5.
 Meteorological instruments. 8.
 Meters. 8.
 Methylated spirit for burning. 47.
 Metronomes. 8.
 Mica insulators, lamp chimneys and
 covers. 50.
 — (raw or partly prepared for use in
 manufacture). 4.
 Microscopes. 8.
 Milk. 42.
 — cans. 13.
 —, Condensed. 42.
 — fermented (for use as food). 42.
 — separators. 7.
 Millboard. 39.
 Millinery. 38.
 — stands (wholly or chiefly of
 wood). 50.
 Milling cutters (parts of machines). 6.
 — machines. 6.
 Mills, Coffee; Pottery. 6.
 Mincing machines. 6.
 Mineral dyes. 1.
 — oils for lighting, heating, and
 lubricating. 47.
 — not included in other
 classes. 4.
 — substances used in manufactures
 (raw or partly prepared), not included
 in other classes. 4.
 — waters, natural and artificial. 44.
 Mimows, Artificial. 49.
 Mirrors (dental). 11.
 — (furniture). 41.
 — (pocket). 50.
 Mitres (metal). 13.
 Modelling, Prepared clay for. 17.
 Models (educational). 8.
 Mohair cloth. 34.
 — smallwares (not included in other
 classes), including laces, braids and
 bindings. 35.
 Molasses. 42.
 Moleskins (cotton pile). 24.
 — (japanned). 36.
 — (woollen). 34.
 Moneyboxes (metal). 13.
 Monumental masonry (finished). 17.
 Mops. 50.
 Mordants. 1.
 Mortar mills. 6.
 Mortars (earthenware or china). 16.
 — (glass). 15.
 — (metal). 13.
 Mortising machines. 6.
 Mosaic (glass). 15.
 Mosquito nets. 11.
 — destroying pastilles. 2.
 — repelling preparations (for
 human use). 3.
 — (veterinary). 2.
 Moss destroying preparations. 2.
 Moth repelling and destroying prepara-
 tions. 2.
 Mother-of-pearl ornaments. 50.
 Motor car bodies (wood). 50.
 — engines. 6.
 — frames (metal). 13.
 — carriages. 22.
 — chassis. 22.
 — cycles. 22.
 — spirit. 17.
 Motors, Traction. 6.
 Moulding irons (machine). 6.
 — wax composition, Dentists'.
 11.
 Mouldings, Picture frame and cornice
 (wood or composition). 50.
 Moulds, Bullet. 19.
 —, Gold-beaters'. 50.
 — (metal), not for bullets. 13.
 Moustache protectors (linen). 28.
 — wash. 48.
 Mouth protectors. 11.
 — wash (medicated, for human use).
 3.
 — (not medicated). 48.
 Movements, Watch and Clock. 10.
 Mowing machines. 7.
 Mudguards for cycles and other vehicles
 (celluloid or wood). 50.
 — (metal). 13.
 Muffs. 33.
 Mullions (concrete). 17.
 Mungo piece goods. 34.
 — yarns. 33.
 Mushroom spawn. 46.
 Music cases. 39.

- Music sheets, Perforated, for mechanical players. 9.
 — turning apparatus. 8.
 Musical boxes, instruments, and strings. 9.
 — publications. 39.
 Muslin (cotton). 24.
 — (wool). 34.
 Mustard as an ingredient in food. 42.
 — oil, leaves and plasters (for human use). 3.
 — prepared for use in medicine and pharmacy. 3.
 — — — — — veterinary use. 2.
 Mutes for violins (precious metal). 14.
 Muzzles (leather). 37.
 — (wire). 13.
 Myrobalans. 4.

 Nail brushes. 50.
 — rods. 5.
 Nails. 13.
 Name plates (metal). 13.
 Naphtha for illuminating and heating. 47.
 Napkin rings (bone, ivory, celluloid, papier mâché, wood). 50.
 — (metal). 13.
 — (precious metal). 14.
 Napkins (cotton), in the piece. 24.
 — not in the piece. 25.
 — (linen), in the piece. 27.
 — not in the piece. 28.
 Nautical instruments. 8.
 — thimbles. 13.
 Necklets of precious metal. 14.
 Neckties. 38.
 Needles. 13.
 — for talking machines. 8.
 Nets, Fishing. 49.
 —, Hair, as smallwares according to the class of the material.
 —, Mosquito. 11.
 —, Tennis. 49.
 Netting pins and meshes of wood, bone, or ivory. 50.
 —, Silk (in the piece). 31.
 —, Wire. 13.
 Neutralizers for fermented liquors. 42.
 Newspapers. 39.
 Nickel silver. 5.
 — wares. 14.
 Nicotine preparations for horticultural purposes. 2.
 Night lights. 47.
 Nippers with a cutting edge. 12.
 — without a cutting edge. 13.
 Nipple shields. 11.
 Nit destroying preparations (medicated) for children's heads. 3.
 Nitrate of soda for agricultural purposes. 2.
 Nose bags (textile). 50.
 Note books and paper. 39.
 Numerals (metal). 13.
 Nursing aprons. 38.
 Nut-crackers (metal). 13.
 Nutmegs. 42.
 Nut-oil for food. 42.
 Nuts and bolts. 13.

 Oakum. 4.
 Oars. 21.
 Oat bruising machines (agricultural). 7.
 Oat cakes and meal. 42.
 Ochre. 1.
 Office desks. 41.
 Oil cake. 42.
 — cans. 13.
 — cloth. 36.
 — enriching substances for illuminating purposes. 1.
 — feeders (metal) not parts of machinery. 13.
 — paintings. 39.
 — separating machines. 6.
 — skin garments. 38.
 — stones. 50.
 — tanks (metal). 13.
 Oiled silk for curative purposes. 11.
 Oils, Anti-corrosive. 1.
 — for heating, lighting, and lubricating. 17.
 — tanning and currying. 4.
 — use as food. 42.
 — prepared for toilet purposes. 48.
 — use in medicine and pharmacy. 3.
 — — — — — veterinary purposes. 2.
 —, Preservative, for leather articles. 50.
 — — — — — for wood and stone work. 1.
 — used in manufactures, not included in other classes. 4.
 Ointment for human use. 3.
 —, Veterinary. 2.
 Oleographs. 59.
 Olive oil for use as food. 42.
 Olives. 42.
 Omnibuses. 22.
 Openers, Can. 12.
 Opera glasses. 8.
 Opium. 3.
 Opodeldocs. 3.
 Optical instruments. 8.
 — lanterns and slides. 8.
 Orange lead. 1.
 — quinine wine. 3.
 — wine. 43.
 Orchestrions. 9.

- Ores. 1.
 Organs. 9.
 Ormolu wares. 14.
 Ornaments (bronze). 14.
 ———— (china) not being jewellery.
 16.
 ———— (ivory, wood, bone, horn,
 vegetable ivory, mother-of-pearl, jet,
 and imitation jet), not being jewellery.
 50.
 ———— (paper). 39.
 ———— (precious metal). 11.
 Orsedew. 5.
 Ostrich feathers (made up). 50.
 ———— (not made up). 4.
 Ovens. 18.
 Overcoats, overalls and overshoes. 38.
 Overlays, Printers' (paper or card-board).
 39.
 Oxidation of metal surfaces, Preparations
 for preventing. 1.
 Oxides, Metallic. 1.
 Oxygen. 1.
 Ozokerite. 4.
 Oysters. 42.
- Packing, Steam and Hydraulic. 50.
 Packs, Wool (canvas). 50.
 Pads (not medicated), Ague, Catamenial,
 Liver, Teething and Vaccination. 11.
 ———— (stamp inking). 39.
 Pails (glass). 15.
 ———— (metal). 13.
 ———— (wood). 50.
 Paint driers. 1.
 ———— mills. 6.
 ———— removing compositions. 17.
 Paints. 1.
 Paintings, Oil and Water-colour. 39.
 Palette knives with a cutting edge. 12.
 ———— without a cutting edge.
 13.
 Palettes. 39.
 Palisading (metal). 13.
 Palliasses. 41.
 Palmetto fibre. 4.
 Palms, Sailmakers'. 13.
 Pannellings (wood or composition). 50.
 Pans (glass). 15.
 ———— (metal). 13.
 ———— (potteryware). 16.
 Paper bed-coverlets. 41.
 ————, Chemical test. 39.
 ———— collars. 38.
 ————, Emery, Sand, Corundum, and
 Glass. 50.
 ———— (except paper hangings). 39.
 ———— fasteners and files. 39.
 ———— for destroying insects. 2.
 ————, Filter. 39.
 ————, Fumigating. 2.
- Paper hangings. 11.
 ———— knives, being stationery. 39.
 ———— (perforated) for musical instru-
 ments. 9.
 ———— prepared for medical and pharma-
 ceutical purposes. 3.
 ————, Toilet (medicated). 3.
 ———— (not medicated). 39.
 ———— weights. 39.
 Paraffin oil (for illuminating, heating
 and lubricating purposes). 47.
 ———— wax for use in manufactures. 4.
 Parasol frames, ribs and stretchers
 (metal). 13.
 Parasols. 50.
 Parcel carriers for attachment to cycles
 (metal). 13.
 Parchment. 39.
 Paring machines. 6.
 Parquetry of wood. 50.
 Paste, being an article of stationery. 39.
 ———— for destroying insects. 2.
 ———— food. 42.
 ———— lubricating. 47.
 ———— toilet use. 48.
 ————, Printers'. 39.
 ————, Razor; Friction; Polishing. 50.
 Pasteboard. 39.
 ———— roofing material. 50.
 Pastilles (medicated). 3.
 ———— for destroying insects. 2.
 ———— toilet purposes. 48.
 Pastry and pastry powder. 42.
 Patching material (india-rubber). 40.
 Pattern cards. 39.
 ———— linings (textile) for dresses. 50.
 Patterns for embroidery (textile) as
 smallwares according to the class of
 the material.
 ————, Paper. 39.
 Pavement lights of glass, with metallic
 frames. 13.
 ————, without me-
 tallic frames. 15.
 Paving blocks (metal). 13.
 ———— (wood). 50.
 ———— material (manufactures from
 mineral and other substances). 17.
 ———— (raw or partly prepared
 mineral substances). 4.
 ———— setts (stone). 4.
 Pearls, natural and artificial. 14.
 Peas (for food). 42.
 Peat fire-lighters and fuel. 50.
 ———— moss litter. 50.
 Pedals for cycles. 13.
 Pedometers. 8.
 Peel plates (metal). 13.
 Pelisses. 38.
 Pencil cases (not of precious metal). 39.
 ———— (precious metal). 14.
 ———— protectors. 39.
 ———— sharpeners. 12.
 ———— sharpening machines. 6.

- Pencils. 39.
 Penholders (not of precious metal). 39.
 ——— (precious metal). 14.
 Penknives. 12.
 Pens (not of precious metal). 39.
 ——— (precious metal). 14.
 Pepper. 42.
 Pepsine preparations (medicinal) for human use. 3.
 Peptone preparations (medicinal) for human use. 3.
 Perambulator covers. 50.
 Perambulators. 22.
 Percolators, Coffee (metal). 13.
 Percussion caps. 20.
 Perforated music sheets for mechanical players. 9.
 Perforating presses, being articles of stationery. 39.
 Perfumed soap. 48.
 Perfumery. 48.
 Perry. 43.
 Pessaries. 11.
 ——— (medicated). 3.
 Pestles (metal). 13.
 Petrifying liquids. 1.
 Petrol for motor engines. 47.
 Petroleum for illuminating, heating, or lubricating purposes. 47.
 ——— jelly for use in medicine and pharmacy. 3.
 Pewter. 5.
 ———, Wares of. 13.
 Phonograph records. 8.
 Phonographs. 8.
 Phosphor-bronze. 5.
 Phosphorus for use in manufactures, photography or philosophical research. 1.
 ——— prepared for use in medicine and pharmacy. 3.
 Photographic cameras. 8.
 ——— chemicals, plates, and films. 1.
 ——— paper. 39.
 Photographs. 39.
 Photometers. 8.
 Pianoforte actions. 9.
 Pianofortes. 9.
 Piano players. 9.
 — wire. 5.
 Piassava fibre. 4.
 Pickaxes. 13.
 Pickers, being parts of looms. 6.
 Picking bands (leather). 37.
 Pickles. 42.
 Picks. 13.
 Picture frames and mouldings (wood or composition). 50.
 ——— lines (metal). 13.
 ——— (not of metal). 50.
 ——— reviver for oil paintings. 50.
 ——— rods and hooks (metal). 13.
 Pictures. 39.
 Pieces, Fowling. 19.
 ———, Trunnion (ordnance). 19.
 Pig houses. 18.
 — medicines. 2.
 — rings and pliers. 13.
 Pigments. 1.
 Pigs' bristles. 4.
 Pillars, Gas (metal). 13.
 Pillowcases (cotton). 25.
 ——— (linen). 28.
 Pillows, Feather. 41.
 ——— (india-rubber and gutta-percha). 10.
 ———, Soporific (not medicated) for use in cases of insomnia. 11.
 Pills for man. 3.
 ——— veterinary purposes. 2.
 Pimento. 42.
 Pinafores. 38.
 Pincers with a cutting edge. 12.
 ——— without a cutting edge. 13.
 Pins, Cotter and Linch. 13.
 ——— (bone, ivory, or wood). 50.
 ——— (metal). 13.
 ——— (precious metal). 14.
 Pipeclay. 50.
 Pipe cleaners (wire). 13.
 — clips (metal). 13.
 — cutters. 12.
 — organs. 9.
 Pipes (glass). 15.
 ——— (metal). 13.
 ———, Pitch. 8.
 ——— (potteryware). 16.
 ———, Tobacco. 50.
 Pistols and parts thereof. 19.
 Pitch. 4.
 ——— pipes. 8.
 Plaids (woollen) in the piece. 34.
 ——— (not in the piece). 35.
 Plaits, Hair and Straw. 50.
 Planes and plane irons. 12.
 Planing machines. 6.
 Planks (wood). 50.
 Plans. 39.
 Plants for horticultural purposes. 46.
 Plaster. 17.
 ——— of Paris. 17.
 Plasters for human use (surgical and medical). 3.
 Plate. 14.
 — glass. 15.
 — powder. 50.
 — racks (wood). 50.
 Plates, Axle (Grinders'). 13.
 ———, Black. 5.
 ———, Boiler and Armour. 5.
 ———, Canada. 5.
 ———, Dental. 11.
 ———, Dry (chemically prepared, for use in photography). 1.
 ———, Engravers' steel and copper. 13.
 ———, Hot, for cooking. 18.
 ———, Knotter and strainer. 6.

- Plates, Name (metal). 13.
 ———, Stencil. 39.
 Plates and dishes (china and earthenware). 16.
 ——— (metal). 13.
 ——— (precious metal). 14.
 Plating apparatus, Electro-. 8.
 Platinum. 5.
 ——— articles. 14.
 Platters, Bread (wood). 50.
 Player pianos. 9.
 Players, Piano. 9.
 Playing cards. 39.
 Pliers with a cutting edge. 12.
 ——— without a cutting edge. 13.
 Plough irons, for planing and grooving. 12.
 ——— breasts. 7.
 Ploughs and parts of ploughs (agricultural). 7.
 ——— for woodworkers and bookbinders. 12.
 ———, Steam. 7.
 Plugs (ivory, bone or wood). 50.
 ———, Sparking. 13.
 Plumb bobs. 8.
 ——— levels, Workmen's (wood). 50.
 Plumbago crucibles. 50.
 ——— for lubricating. 47.
 ——— polishing. 50.
 ———, Founders'. 4.
 Plumbers' knives, with a cutting edge. 12.
 ——— without a cutting edge. 13.
 Pneumatic alarms and bells (as systems in buildings). 18.
 ——— apparatus for carrying cash and goods. 18.
 ——— machinery. 6.
 ——— tyres (india-rubber). 40.
 Pocket books. 39.
 Pockets, Dress, of textile material, as smallwares, according to the class of the material.
 Points, Black-lead, for pencil cases. 39.
 ———, Railway. 6.
 Poison, Insect and Vermin. 2.
 Poleaxes. 12.
 Poles, Lawn Tennis. 49.
 ——— (wood). 50.
 Polishing cloths (cotton). 25.
 ——— (emery, glass). 50.
 ——— (linen). 28.
 ——— (silk). 32.
 ——— preparations and materials. 50.
 Pomade for medical purposes. 3.
 ——— toilet purposes. 48.
 Ponchos. 38.
 Poplins. 34.
 Porcelain. 16.
 Porous cells (earthenware). 16.
 Porter. 43.
 Portfolios. 39.
 Portland cement. 17.
 Portmanteaus (canvas or cane). 50.
 ——— (leather). 37.
 Portraits. 39.
 Postcards. 39.
 Postal tubes (paper or cardboard). 39.
 Posters. 39.
 Postiches. 50.
 Pot stretchers (wood). 50.
 Potash for use in manufactures. 1.
 ——— water. 44.
 Potassium, Iodide of, prepared for use in pharmacy. 3.
 Potato flour for use in manufactures. 4.
 ——— peeling machines. 6.
 Potatoes (for food). 42.
 Pots (earthenware and china). 16.
 ——— (metal). 13.
 Potted fish and meats. 42.
 Pottery mills. 6.
 Potting fibre. 2.
 Pouches, Cartridge or shot. 19.
 ——— other than cartridge or shot pouches, in the class of the material, as leather pouches in. 37.
 Poultry coops (wood). 50.
 ——— food and grit. 42.
 ——— houses. 18.
 ——— medicines. 2.
 Powder and shot measures and flasks. 19.
 ——— puffs. 48.
 Powders for destroying insects, vermin and weeds. 2.
 ——— veterinary purposes. 2.
 ———, Medicinal (for human use). 3.
 Power meters and indicators. 8.
 Precious metal and imitations thereof, Wares of. 14.
 ——— stones. 14.
 Prepayment gas meters. 8.
 Preservative dressings for leather goods. 50.
 ——— wood, stonework, brickwork and metal. 1.
 Preservatives for food (being ingredients in food). 42.
 ——— (not becoming ingredients in the food). 2.
 ——— plants. 2.
 Preserves for food. 42.
 Press studs (metal). 13.
 Presses, Copying. 39.
 ———, Hand (for marking linen and paper). 39.
 ——— Mechanical, for trousers. 6.
 ———, Perforating (articles of stationery). 39.
 Pressure gauges and indicators. 8.
 Preventing condensation on glass, Compositions for. 50.
 ——— corrosion on metals, Compositions for. 1.

- Preventing incrustation in steam boilers, Compositions for. 1.
 Printed publications. 39.
 Printers' blankets and paper (cotton). 25.
 ——— overlays and underlays (paper or cardboard). 39.
 ——— paste. 39.
 ——— roller composition. 50.
 ——— rollers (parts of machines). 6.
 ——— type-cleaning preparations. 17.
 Printing inks. 39.
 ——— presses. 6.
 ——— type, blocks and plates (metal). 13.
 ——— ——— ——— (wood). 50.
 Prints and engravings. 39.
 Prismatic glass for pavement lights. 15.
 Programmes (paper or card). 39.
 Projectiles (explosive). 20.
 ——— (non-explosive). 19.
 Propellers, Ships'. 6.
 Props (wood). 50.
 Protector glasses for gauges. 15.
 Protectors, Back, Mouth and Chest. 11.
 ———, Boot (india-rubber). 40.
 ——— (leather). 37.
 ——— (metal). 13.
 ———, Cuff (celluloid). 38.
 ———, Moustache (linen). 28.
 ———, Sight (for guns). 19.
 ———, Watch (celluloid). 50.
 ——— (metal). 13.
 Protractors. 8.
 Pruners, Tree. 12.
 Pruning hooks. 12.
 Publications, Printed. 39.
 Puddling machinery. 6.
 Puffs, Powder. 48.
 Pugmills. 6.
 Pulley blocks (metal). 13.
 ——— (wood). 50.
 Pulleys, Differential and Machine. 6.
 Pullna water. 44.
 Pulls, Drawer and Door (metal). 13.
 Pulp, Wood. 50.
 Pulping machines (agricultural). 7.
 Pulses (for food). 42.
 Pumice soap (being a form of common soap). 47.
 ——— (raw). 4.
 ——— blocks (prepared). 50.
 Pumping engines. 6.
 Pumps. 6.
 ———, Air (philosophical). 8.
 ——— (steam engine, and for supplying air). 6.
 ———, Garden and Manure. 7.
 ———, Running. 38.
 ———, Stomach and Breast. 11.
 Punches (metal), with a cutting edge. 12.
 ———, without a cutting edge. 13.
 Punching machines. 6.
 Puncture closing compositions. 50.
 ——— proof bands (leather) for tyres. 37.
 ——— repair outfits for tyres. 50.
 Punt guns. 19.
 Purses in the class of the material.
 Putty. 50.
 ——— knives without a cutting edge. 13.
 Pyrometers. 8.
 Pyroxylin, Yarn or Fabric made of. 50.
 Quarries (tiles). 16.
 Quarrying tools without a cutting edge. 13.
 Quassia extract for horticultural purposes. 2.
 Quicksilver. 5.
 Quill pens. 39.
 Quilts (textile) as small wares in the class of the material or predominating material of the covering.
 Quinine. 3.
 ——— wine. 3.
 Quoits. 49.
 Rackets. 49.
 Racks, Hay (metal). 13.
 ———, Plate and Clothes (wood). 50.
 Radiation of Heat, Compositions to prevent. 1.
 Radiators for heating. 18.
 Rag books. 39.
 ——— knives, not parts of machinery. 12.
 ———, parts of machinery. 6.
 ——— toys. 49.
 Railings (metal). 13.
 Rails for railways. 5.
 Railway carriages and trucks. 22.
 ——— couplings (sold separately). 13.
 ——— crossings, with rails in Class 5.
 ——— points and signals. 6.
 ——— wraps and rugs. 50.
 Rakes (garden). 13.
 ——— (horse). 7.
 Ramie braids and laces. 28.
 ——— piece goods. 27.
 ———, raw or partly prepared for use in manufactures. 4.
 ——— yarn and thread. 26.

Rammers (metal). 13.
 Ramps (metal). 13.
 Rams, Hydraulic. 6.
 Ranges, Cooking. 18.
 Rape cake and meal (for food). 42.
 — oil, for use in manufactures. 4.
 Raspberry vinegar. 42.
 Rasps. 12.
 Ratchet-braces. 13.
 Ratchets. 13.
 Rattans. 50.
 Razor paste and strops. 50.
 — stropping machines. 6.
 Razors. 12.
 Reading desks. 11.
 Reamers (hand tools). 12.
 — (machine tools). 6.
 Reaping hooks. 12.
 — machines. 7.
 Reclaimed india-rubber. 4.
 Reconstructed stone. 17.
 Recorders, Time. 8.
 Recording gauges. 8.
 Records for piano players. 9.
 — talking machines. 8.
 Rectum tubes. 11.
 Red lead. 1.
 — ochre. 1.
 Reed musical instruments. 9.
 Reeds (parts of looms). 6.
 Reels, Fishing. 49.
 Refills for pencil cases. 39.
 Reflectors (glass). 15.
 — (metal). 13.
 Refractory clay for furnaces. 16.
 Refrigerating chambers. 18.
 — chests. 50.
 — machines. 6.
 Register stoves. 18.
 — tills, Cash. 6.
 Regulating apparatus for gas. 8.
 Reins, Driving (cotton). 25.
 — (leather). 37.
 Remedies for animals. 2.
 — man. 3.
 Removing ink and stains from fabrics.
 Preparations for. 47.
 — paint and varnish, Prepara-
 tions for. 47.
 Rennet. 42.
 Renovating preparations for clothes and
 silk hats. 47.
 Repair bands and patching material
 (india-rubber) for tyres. 40.
 — outfits for tyres. 50.
 Repairing composition for tyres (not
 being india-rubber solution). 50.
 Resin. 4.
 — oil for use in manufactures. 4.
 Resistances, Electrical. 8.
 Respirators. 11.
 Retorts (earthenware). 16.
 — (plumbago). 50.

Reviver, Kid; Leather; Floor-cloth;
 Picture. 50.
 Revolvers. 19.
 Rheostats. 8.
 Rheumatism, Rings, Bracelets and
 Anklets for the cure of (not of
 precious metal). 11.
 ————— (of pre-
 cious metal). 14.
 Ribbons for typewriting machines. 39.
 — (cotton). 25.
 — (silk and silk velvet). 32.
 — (wool, worsted, or mohair). 35.
 Ribs, Umbrella (cane). 50.
 — (metal). 13.
 Rice. 42.
 — bowls (metal). 13.
 Rick covers. 50.
 Riddles (wire). 13.
 — (wood). 50.
 Rifles. 19.
 Rimers (hand tools). 12.
 — (machine tools). 6.
 Rims or fellies (metal). 13.
 — (wood). 50.
 Ringflyers. 6.
 Rings, Curtain (metal). 13.
 — (wood). 50.
 — Finger, for the cure of rheumatism
 (not of precious metal). 11.
 ————— (precious metal). 14.
 — (metal). 13.
 — Napkin (bone, ivory, celluloid,
 papier mâché, wood). 50.
 — (metal). 13.
 — (precious metal). 11.
 Rippers, Slaters'. 12.
 Rivet iron. 5.
 Rivets. 13.
 Riveting machines. 6.
 Road making, Granite for. 1.
 —, Manufactures from
 mineral and other substances for. 17.
 Roasting jacks. 6.
 — machines, Coffee. 6.
 Rock drills. 6.
 Rod iron and steel. 5.
 Rods, Fishing. 49.
 —, Gauge. 8.
 —, Stair and Picture (metal). 13.
 Roller bandages. 11.
 — composition, Printers'. 50.
 — skates. 49.
 — skins. 37.
 Rollers for sashes and chains (metal).
 13.
 —, Land and Garden. 7.
 —, Printers' (parts of machinery).
 6.
 Rolling pins (wood). 50.

- Roofing felts. 50.
 — material (pasteboard). 50.
 Root-cutting machines. 7.
 Roots for food. 42.
 — use in medicine and pharmacy. 3.
 Rope (jute or hemp). 50.
 — (leather). 37.
 — (wire or metal). 13.
 — for driving machinery (cotton). 25.
 ————— (wool or hair). 35.
 — ladders. 50.
 — ways, Overhead (engineering contrivances). 18.
 Rosettes, Paper. 39.
 ———, Silk. 32.
 Rosettes, Wood. 50.
 Rotten stone. 50.
 Rouge for polishing. 50.
 ——— toilet purposes. 18.
 Roughing cogs. 13.
 Rowing exercisers. 19.
 Rowlocks. 21.
 Rubbers, Corn and Flesh. 11.
 ———, Sharpening. 50.
 Ruby cloth and paper for polishing. 50.
 — fabric for photography, in the piece (cotton). 24.
 ————— (silk). 31.
 — paper for photography. 39.
 Rugs for personal use. 50.
 — in the nature of carpets. 36.
 Rulers. 39.
 Rules, Slide (for calculating). 8.
 ———, Workmen's (metal). 13.
 ————— (wood). 50.
 Rum. 43.
 —, Bay. 48.
 Running pumps. 38.
 Rust on metal. Compounds to prevent. 1.
 Rye meal. 42.
- Safes, Ice. 50.
 ———, Meat (wire). 13.
 ————— (wood predominating). 50.
 — (metal) for money and valuables. 13.
 Saffron prepared for use in medicine and pharmacy. 3.
 Sago (for food). 42.
 Sailcloth (flax and hemp). 27.
 Sailmakers' palms (metal). 13.
 Salad cream and oil. 42.
 Saline, Medicinal, for human use. 3.
 Salinometers. 8.
 Salt for food. 42.
 —, Sea (for bathing). 3.
 Salts, Bath (medicated). 3.
 ——— (perfumed toilet). 48.
 — prepared for use in medicine and pharmacy. 3.
 —, Smelling. 3.
 — used for agricultural, horticultural, veterinary and sanitary purposes. 2.
 — in manufactures, photography, or philosophical research. 1.
 Salve (medicated) for human use. 3.
 Sand paper and cloth. 50.
 —, Silver. 50.
 Sandallings, Elastic (india-rubber). 49.
 Sanitary paper (medicated). 3.
 ——— (not medicated). 39.
 ——— towels. 11.
 Sardines. 42.
 Sarsaparilla. 3.
 Sash cord (not of metal). 50.
 — fasteners, pulleys and weights (metal). 13.
 — iron. 5.
 Sashes for wear. 38.
 Satchels (textile). 50.
 Sateens (cotton piece goods). 24.
 Sates, Cold. 13.
 Satins (silk piece goods). 31.
 Sauce. 42.
 Saucepans (metal). 13.
 Sausage machines. 6.
 ——— skins. 37.
 Sausages. 42.
 Saw benches and tables. 6.
 — blades. 12.
 — sets. 13.
 Sawdust. 50.
 ——— flooring compositions. 50.
 Sawing machines. 6.
 Saws. 12.
 — (surgical). 11.
 Saxes, Slaters'. 12.
 Scale, Fluid for the prevention and removal of boiler. 1.
 Scales. 6.
 Scantling (wool). 50.
 Scarves. 38.
 Scents. 48.
 Schiedam. 43.
 School desks. 8.

- Scissors, 12.
 ——— (surgical). 11.
 Scoops (metal). 13.
 Scorifiers (refractory earth). 16.
 Scoring books, cards and sheets. 39.
 Scouring cloths (cotton). 25.
 ——— liquids for fabrics. 47.
 Scrap-books. 39.
 Scrapers, Door (metal). 13.
 ———, Tongue. 11.
 ——— with a cutting edge. 12.
 ——— without a cutting edge (metal).
 13.
 Screens, Fire (metal). 13.
 ——— (furniture). 41.
 ——— for motor cars (wood and glass).
 50.
 ——— (wire). 13.
 Screw-drivers. 13.
 ——— cutting tackle (not being parts
 of machines). 12.
 ——— jacks. 6.
 ——— machines. 6.
 Screws (metal). 13.
 Scrubbers, Hydraulic (for cleaning ships'
 bottoms when afloat). 21.
 Scuttles, Coal (metal). 13.
 Scythe snaths (wood). 50.
 ——— stones and strickles. 50.
 Seythes. 12.
 Sea salt for bathing. 3.
 — water for bathing and other pur-
 poses. 50.
 Sealing wax. 39.
 Searchlight apparatus. 8.
 Seats, Garden (metal). 13.
 — (wood). 50.
 Seed dressing. 2.
 ——— machines. 7.
 ——— drills. 7.
 Seeds for agricultural and horticultural
 purposes. 46.
 — used as food. 42.
 ——— in manufactures. 4.
 ——— medicine and pharmacy.
 3.
 Seidlitz powders. 3.
 Seltzer water. 44.
 Seltzogenes. 8.
 Semolina. 42.
 Sensitive compositions, Photographic. 1.
 ——— paper for detecting sewer gas.
 39.
 ———, Light-. 39.
 ——— plates and films, Light-. 1.
 Separating machines (agricultural). 7.
 ——— (other than agri-
 cultural and horticultural machines).
 6.
 Separators, Cream. 7.
 Serges (cotton). 24.
 ——— (woollen). 34.
 Serum for inoculation. 11.
 Serviettes, Paper, 39.
 ——— not in the piece (cotton). 25.
 ——— (linen). 28.
 Set-off liquid for printing and litho-
 graphy. 39.
 Setsquares for workmen's use (metal). 13.
 ——— (wood).
 50.
 Setts, Granite paving. 4.
 Sewing machine needles. 13.
 ——— machines and parts of sewing
 machines. 6.
 ——— needles. 13.
 ——— silk. 30.
 ——— thread (cotton). 23.
 ——— (linen). 26.
 Sextants. 8.
 Shackles (metal). 13.
 Shades for lamps (asbestos, mica, or
 celluloid). 50.
 ——— (glass). 15.
 ——— (metal). 13.
 Shafts (parts of machines). 6.
 ——— (wood). 50.
 Shaping machines. 6.
 Sharpening machines. 6.
 ——— sticks (metal). 13.
 ——— stones and powder. 50.
 Shave hooks, Plumbers' (without a cut-
 ting edge). 13.
 Shaving brushes. 50.
 ——— paste and soap. 48.
 Shawls in the piece (cotton). 24.
 ——— (linen). 27.
 ——— (silk). 31.
 ——— (wool or worsted).
 34.
 ——— not in the piece (cotton). 25.
 ——— (linen). 28.
 ——— (silk). 32.
 ——— (wool or worsted).
 35.
 Sheaf binders. 7.
 Shear steel. 5.
 Shearing machines (for sheep). 7.
 ——— (not for agricultural
 purposes). 6.
 Shears. 12.
 Sheathing and roofing felt. 50.
 ——— metal. 5.
 Sheep, Medicines and Dressings for. 2.
 ——— shearing and washing machines.
 7.
 ——— shears. 12.
 ——— skins. 37.
 ——— washes. 2.
 Sheet-metal. 5.
 Sheeting (india-rubber). 40.
 Sheetings (cotton) in the piece. 24.
 ——— (linen and hemp) in the piece.
 27.
 Sheets (cotton) not in the piece. 25.
 ——— (linen) not in the piece. 28.
 Sheffield and other plated goods. 14.

- Shellac. 4.
 Shell gravel for birds. 42.
 Shells (explosive). 20.
 Shelves, Fret (metal). 13.
 — (wood) 50.
 Sherbet. 42.
 Sherry. 43.
 Shields for blasting (metal). 13.
 —, Nipple. 11.
 Ships' berths (metallic). 41.
 —, Compositions for the bottoms of. 1.
 — logs. 8.
 Shirt fronts. 38.
 — studs (ivory, bone, or mother of pearl). 50.
 — (metal). 13.
 — (precious metal). 14.
 Shirtings (cotton). 24.
 — (linen). 27.
 — (woollen). 34.
 Shirts. 38.
 Shives and spiles (wood). 50.
 Shoddy piece goods. 34.
 Shoe and boot leather. 37.
 — linings (linen) in the piece. 27.
 — protectors (metal). 13.
 — socks. 38.
 — varnish and polish; stretchers (wood); heels (wood). 50.
 — horns (bone, ivory, wood). 50.
 — (metal). 13.
 — thread (linen). 26.
 Shoes. 38.
 Shop counters. 41.
 — fittings (wood). 50.
 Shot. 19.
 — belts and pouches. 19.
 Shoulder straps for wear. 38.
 Shovels (metal). 13.
 — (wood). 50.
 Show cards. 39.
 — cases (wood). 50.
 Shamac. 4.
 Shutters (revolving). 18.
 — (wood). 50.
 Shuttlecocks. 49.
 Shuttles of bone, ivory, and wood. 50.
 — metal. 13.
 — (parts of machines). 6.
 Sickles. 12.
 Side-cars. 22.
 — plates for ploughs. 7.
 Sieves (wire). 13.
 — (wood). 50.
 Sifters, Cinder (being machines). 6.
 — (metal) for household use. 13.
 Sights and sight protectors for guns. 19.
 Signal boxes, Railway. 18.
 Signalling apparatus, Flashlight. 8.
 — machinery, Fog. 6.
 Signals, Fog (explosive). 20.
 —, Railway. 6.
 Signs, Mechanical, for advertising purposes. 6.
 — (metal). 13.
 Silica furnace fittings. 16.
 —, Fused. 15.
 Silicate cotton prepared for covering steam boilers. 1.
 — (raw). 4.
 Silk braids, bindings, galloons, ribbons, webbing, and other silk smallwares (not included in other classes). 32.
 —, Oiled, for curative purposes. 11.
 — piece goods. 31.
 — (raw and partly prepared). 4.
 — (spun, thrown, sewing, or knitting: twist, yarn, and thread). 30.
 Sills of concrete. 17.
 Silver and silver alloys. 5.
 —, Wares of. 14.
 —, German (in sheets, bars, ingots and wire). 5.
 — leaf and wire. 5.
 —, Nitrate of. 1.
 — sand. 50.
 — thread. 14.
 Silvered glass. 15.
 Silvering solution. 50.
 Silversmiths' soap. 50.
 Singeing lamps. 13.
 Singers, Horse. 13.
 Sinks (earthenware or fire-clay). 16.
 — (metal). 13.
 — (slate and stone). 50.
 Sirens, Steam. 6.
 Size. 1.
 Sizing machines. 6.
 Skates. 12.
 —, Roller. 49.
 Sketch books. 39.
 Ski. 49.
 Skin emollients, being toilet articles. 48.
 — preparations, Medicated (for human use). 3.
 Skins, Wrought and unwrought. 37.
 Skirt flounces (textile) as small wares according to the class of the material.
 Skirts. 38.
 Skylights (metal). 13.
 Slag wool prepared as a covering for steam boilers. 1.
 — (raw). 4.
 Slate, Artificial. 17.
 — pencils. 39.
 Slaters' rippers, saxes, and horses. 12.
 Slates (roofing). 17.
 — (writing). 39.
 Sleep-inducing pillows (not medicated). 11.
 Sleeve links (metal). 13.
 — (precious metal). 14.
 Slide rests (parts of machinery). 6.
 — rules. 8.

- Slides for optical lanterns and microscopes. 8.
 Slippers for wear. 38.
 Slotting machines. 6.
 Slug exterminators. 2.
 Small-arms. 19.
 Small wares, Fancy, not included in other classes (textile) according to the material or the predominating material.
 ----- (wood, ivory, celluloid, mother of pearl, bone and jet). 50.
 Smelling bottles mounted in precious metals. 14.
 ----- salts. 3.
 Smoke stoppers (glass). 15.
 ----- (metal). 13.
 ----- (mica). 50.
 ----- (porcelain). 16.
 Snaths, Scythe (wood). 50.
 Snow boots. 38.
 Snuff. 45.
 ----- Medicinal (containing no tobacco). 3.
 Soap, Common. 47.
 -----, Extract of (common). 47.
 ----- (perfumed). 48.
 ----- for veterinary and horticultural purposes. 2.
 -----, Medicated, for human use. 3.
 -----, Perfumed. 48.
 -----, Polishing. 50.
 -----, Shaving. 48.
 -----, Silversmiths'. 50.
 Soapstone (prepared). 50.
 ----- (raw). 4.
 Socks for boots. 38.
 ----- curative purposes (medicated). 3.
 ----- (not medicated). 11.
 ----- wear. 38.
 Soda and its preparations (for use in manufactures). 1.
 ----- water. 44.
 ----- machines. 6.
 Sofas (furniture). 41.
 Solder. 5.
 Soldering fluxes. 1.
 ----- stoves and lamps. 18.
 Sole plates for ploughs. 7.
 Soles (leather). 37.
 Solitaires (metal). 13.
 ----- (precious metal). 14.
 Soluble oils for lubricating. 47.
 Solution, Fireproofing. 50.
 -----, India-rubber. 40.
 -----, Silvering. 50.
 -----, Waterproofing (for fabrics). 50.
 Soot used in manufactures, not included in other classes. 4.
 Soothers, Baby. 11.
 Sound boxes for talking machines. 8.
 Sounding machines and apparatus. 8.
 Soups. 42.
 Spades. 13.
 Spangles (precious metal). 14.
 Spanners. 13.
 Sparking plugs. 13.
 Spars for ships. 21.
 Spats. 38.
 Spawn, Mushroom. 46.
 Spectacle frames (metal). 13.
 ----- (precious metal). 11.
 Spectacles. 8.
 Specula (surgical). 11.
 Speed gears for cycles and cars. 6.
 ----- indicators and gauges. 8.
 Spelter. 5.
 Spherometers. 8.
 Spice extracts (alcoholic). 43.
 Spices. 42.
 Spikes (metal). 13.
 Spills (wood). 50.
 Spinning oils. 4.
 Spiral wire for power transmission. 13.
 Spirit levels. 8.
 ----- stands (wood). 50.
 Spirits (beverages). 43.
 ----- (medicinal, for human use). 3.
 -----, Motor; Lighting; Heating. 47.
 ----- (perfumed). 48.
 ----- used in manufactures. 4.
 Spittoons (metal). 13.
 ----- (porcelain or earthenware). 16.
 Splints. 11.
 Spokeshaves. 12.
 Spokes (metal). 13.
 ----- (wood). 50.
 Sponges. 4.
 Sponge substitutes (india-rubber). 10.
 Spoons (earthenware). 16.
 ----- (metal). 13.
 ----- (precious metal). 11.
 Spouting (metal). 13.
 Spraying apparatus (medical and surgical). 11.
 ----- machines. 6.
 ----- (agricultural and horticultural). 7.
 Spreaders (wood). 50.
 Spring balances. 6.
 ----- mattresses. 41.
 ----- steel. 5.
 Springs (bell, door, railway waggon and carriage, buffing or buffer). 13.
 ----- for watches and clocks. 10.
 ----- (machine). 6.
 Sprinkler systems for fire extinction. 18.
 Sprinklers (metal). 13.
 Spuds. 13.
 Spurs (iron or steel). 13.
 Squares, Workmen's (metal). 13.
 ----- (wood). 50.
 Squeegees (india-rubber). 40.

Stained glass. 15.
 Stains for leather. 50.
 — from fabrics, Preparations for removing 47.
 —, Wood. 1.
 Stair cases. 18.
 — rods and treads (metal). 13.
 Stakes (metal). 13.
 Stamps, Hand (for marking linen and paper). 39.
 Standard gauges. 8.
 Standards, Gas (metal). 13.
 Stands for casks, sewing machines, and similar articles (metal). 13.
 ————— (wood). 50.
 —, Umbrella. 41.
 Staples (metal). 13.
 Starch for laundry purposes. 47.
 ————— use as food. 42.
 ————— in manufactures. 4.
 Stationery. 39.
 ————— cases. 39.
 Statuary (porcelain). 16.
 Stay busks (metal). 13.
 Stays. 38.
 Steam boilers, Composition for preventing and removing scale in. 1.
 ————— radiation of heat from. 1.
 ————— for agricultural purposes. 7.
 ————— not for agricultural purposes. 6.
 ————— engines for agricultural purposes. 7.
 ————— not for agricultural purposes. 6.
 ————— gauges. 8.
 ————— hammers. 6.
 ————— heating apparatus. 18.
 ————— packing. 50.
 ————— traps (parts of machines). 6.
 Stearine. 4.
 Steatite (raw). 4.
 Steel. 5.
 — balls. 13.
 — pens. 39.
 — toys. 13.
 — wire ropes. 13.
 Steels, Bodice; Butchers'. 13.
 Steelyards. 6.
 Steering engines. 6.
 ————— gear. 21.
 —————, Steam. 6.
 Stencil plates and paper. 39.
 Stereoscopes. 8.
 Stereotype machines. 6.
 ————— metal. 5.
 ————— paper. 39.
 Sterilizing compounds (not being ingredients in food). 2.
 ————— utensils (metal). 13.
 Stethoscopes. 11.

Stiffeners, Dress (celluloid, whalebone, featherbone). 50.
 ————— (metal). 13.
 Stiffening material not in the piece (cotton). 25.
 Stills (experimental). 8.
 Stirrups. 13.
 Stockings. 38.
 ————— (surgical). 11.
 Stocking suspenders. 38.
 Stocks and dies. 12.
 ————— (being parts of guns). 19.
 Stomach pads (not medicated) and pumps. 11.
 Stone, Artificial. 17.
 — breaking machines. 6.
 —, Rotten. 50.
 —, rough or partly worked. 4.
 Stones, Sharpening. 50.
 —, Whitening. 50.
 Stoneware. 16.
 Stoppers for bottles (composition). 50.
 ————— (glass). 15.
 ————— (india-rubber or vulcanite). 40.
 Stopping defects in metal castings, Cement for. 1.
 ————— for teeth, not of precious metal. 11.
 —————, of precious metal. 14.
 ————— tyres. 50.
 Stops for organs. 9.
 Stout. 43.
 Stove boilers. 18.
 — ornaments (grass). 50.
 ————— (paper). 39.
 — polish. 50.
 — ranges. 18.
 Stoves. 18.
 Strainer plates (parts of machinery). 6.
 Strainers (wire). 13.
 Strap paste. 50.
 Straps (leather). 37.
 Straw boards and straw paper. 39.
 — elevators. 7.
 — envelopes (for bottles). 50.
 — hat varnish. 1.
 — hats and bouquets. 38.
 — plait. 50.
 — pulp, Yarns and piece goods (textile) made from. 50.
 Straws for sherry-cobblers. 50.
 Stretchers, Boot (wood). 50.
 —————, Linen (bone, wood, or ivory). 50.
 —————, Mechanical, for trousers. 6.
 ————— (metal) for umbrellas. 13.
 —————, Pot (wood). 50.
 Strickles, Scythe. 50.
 String. 50.
 Strings for musical instruments. 9.
 Strip iron. 5.
 Strong rooms. 18.

- Stropping machines. 6.
 Strops, Razor. 50.
 Strychnine. 3.
 Studs, Bale (metal). 13.
 ———, Shirt (ivory, bone, jet, or mother of pearl). 50.
 ——— (metal). 13.
 ——— (precious metal). 14.
 Stuffed animals, birds and reptiles. 50.
 Stuffing (cotton). 25.
 ——— (woollen, worsted, or hair). 35.
 Stuffs and cloths of wool, worsted, or hair. 34.
 Submerged structures, Composition for coating. 1.
 Succotash. 42.
 Sugar. 42.
 ———, Black (prepared for medicinal purposes). 3.
 ——— candy. 42.
 ——— cane bills. 12.
 ——— fibre. 4.
 ——— for brewing. 42.
 Sulphur, Precipitated (for use in manufactures). 1.
 Sumac. 4.
 Sun-dials. 8.
 ——— shades. 50.
 Superheaters (parts of machinery). 6.
 Supporters, Abdominal. 11.
 Supports, Collar (celluloid). 50.
 ——— (metal). 13.
 Suppositories (medicated). 3.
 Surgical dressings (medicated). 3.
 ——— instruments, apparatus, and contrivances. 11.
 ———, Preparations for sterilizing. 2.
 ——— tissue (not medicated). 11.
 Surveying instruments. 8.
 Suspenders for wear. 38.
 Suspensory bandages. 11.
 Swages. 13.
 Sweepers, Carpet (mechanical). 6.
 Sweetmeats. 42.
 Swimming belts. 21.
 Swings. 49.
 Switchboards, Fitted electrical. 8.
 Switches, Electrical ordinary (metal). 13.
 ———, Time. 8.
 ———, Railway. 6.
 Swivels. 13.
 Sword bayonets. 19.
 ——— blades. 12.
 Swords. 19.
 Syphon bottles for aerated waters (earthenware). 16.
 ——— (glass). 15.
 ——— flushing cisterns. 18.
 Syrens, Steam. 6.
 Syringes (metal). 13.
 ——— (surgical). 11.
 Syrups (alcoholic). 43.
 ——— (medicinal). 3.
 ——— (not alcoholic and not medicinal). 42.
 Table cloths and covers in the piece (cotton). 24.
 ——— (linen). 27.
 ——— (wool, worsted, or hair). 34.
 ——— not in the piece (cotton). 25.
 ——— (linen). 24.
 ——— (wool, worsted, or hair). 35.
 Tables (furniture). 41.
 ———, Garden (metal). 13.
 ——— (wood). 50.
 ———, Saw. 6.
 Tablets (confectionery). 42.
 ——— (medicated) for human use. 3.
 ——— (metal). 13.
 ———, Memorial (marble). 17.
 ———, Writing. 39.
 Tackle, Fishing, except fishing hooks. 49.
 Tacks. 13.
 Taggers, Black. 5.
 Tags for papers. 39.
 Tailors' Chalk. 50.
 ——— figures and busts (wood or papier mâché). 50.
 Tale (raw or partly prepared). 4.
 Talking machines, and records, diaphragms, needles, and trumpets for same. 8.
 Tallow (edible). 42.
 ——— for use in manufactures. 4.
 ——— used for heating, illuminating, or lubricating. 47.
 Tambourines. 9.
 Tanks, Flushing. 18.
 ——— (metal). 13.
 Tanning substances of vegetable origin. 4.
 Tape (cotton). 25.
 ——— (linen). 28.
 Tapes, Measuring (for surveying). 8.
 ——— (for workmen's use). 50.
 Tapers (wax). 47.
 Tapioca (for food). 42.
 ——— flour for use in manufactures. 4.
 Taps and cocks (metal). 13.
 ——— (porcelain or earthenware). 16.
 ———, Screw-cutting. 12.
 ——— (wood). 50.
 Tar. 4.

- Targets for archery. 49.
 ——— guns. 19.
 Tarnishing, Preparations to prevent (for use on metallic surfaces). 1.
 Tarpaulins. 50.
 Tassels (precious metal). 14.
 ——— (not of precious metal) as small-wares according to the class of the material or predominating material.
 Tasters, Cheese. 12.
 Tatting cotton. 23.
 ——— shuttles (bone, ivory, wood). 50.
 Tea. 42.
 ——— (nerated). 44.
 ——— caddies (wood). 50.
 ——— cloths not in the piece (cotton). 25.
 ——— ——— ——— (linen). 28.
 ——— pots (metal). 13.
 ——— ——— (precious metal). 14.
 ——— strainers and infusers (metal). 13.
 Teaching instruments and apparatus. 8.
 Tee-iron. 5.
 Teeth, Artificial. 11.
 ———, Preparations for cleaning the. 48.
 ———, Stopping for (not of precious metal). 11.
 ——— ——— ——— (of precious metal). 14.
 Teething pads for infants. 11.
 ——— powders. 3.
 Telegraph wire. 5.
 Telegraphic instruments. 8.
 Telephonic instruments. 8.
 Telescopes. 8.
 Tempering compositions for metals. 1.
 Temples, Loom, being parts of weaving machines. 6.
 Tennis poles and sets. 49.
 ——— shoes. 38.
 Tents. 50.
 Terminals, Electrical (metal). 13.
 Terne plates. 5.
 Terra-cotta. 16.
 Terrestrial globes. 8.
 Test paper (chemical). 39.
 Testing instruments. 8.
 Thermometers (clinical). 11.
 ——— ——— ——— (not clinical). 8.
 Thimbles for sewing (metal). 13.
 ——— ——— ——— (precious metal). 14.
 ——— ——— ———, Ship. 13.
 Thread (collodionized fibre). 50.
 ——— (cotton). 23.
 ——— (flax, hemp, tow, and ramie or china grass). 26.
 ——— (gold and silver). 14.
 ——— (india-rubber). 40.
 ——— (jute). 29.
 ——— ——— (silk). 30.
 Threshing machines. 7.
 Thrown silk. 30.
 Thumb stalls for curative purposes. 11.
 Tickets (cardboard or paper). 39.
 Ticks (cotton piece goods). 24.
 Ties for wear. 38.
 Tiles (earthenware). 16.
 ——— (glass). 15.
 ——— (iron). 13.
 Tills, Cash register. 6.
 Timber. 50.
 Time pieces. 10.
 ——— registering apparatus. 8.
 ——— switches, Electrical. 8.
 ——— tables, Printed. 39.
 Tinctures (for toilet purposes). 48.
 ——— ——— (medicinal). 3.
 Tin. 5.
 ——— foil, tin plates. 5.
 Tins. 13.
 Tinned meats, fish, fruits, and vegetables. 42.
 Tips, Heel (india-rubber). 40.
 ——— ——— and toe (metal). 13.
 Tissues, Surgical. 11.
 Titanium. 5.
 Tobacco. 45.
 ——— cutting machines. 6.
 ——— pipes. 50.
 ——— pouches (india-rubber). 40.
 ——— ——— (leather). 37.
 Toe caps for boots (celluloid). 50.
 ——— clips for cyclists (metal). 13.
 ——— tips (metal). 13.
 Toilet covers (cotton). 25.
 ——— paper (medicated). 3.
 ——— ——— (not medicated). 39.
 ——— powder and cream. 48.
 ——— sets (porcelain or earthenware). 16.
 ——— soap (perfumed). 48.
 ——— vinegar. 48.
 Tombac. 5.
 Tombstones (wrought). 17.
 Tongues (metal). 13.
 Tongues (for food). 42.
 Tongue scrapers. 11.
 Tonic medicines for animals. 2.
 ——— ——— ——— ——— human use. 3.
 Tools, Handles for (wood, ivory, bone). 50.
 ———, Machine. 6.
 ——— (metal), without a cutting edge. 13.
 ——— ——— with a cutting edge. 12.
 Tooth brushes. 50.
 ——— picks, not of metal. 50.
 ——— powder, paste and wash. 48.
 Tops (toys). 49.
 ——— (woollen). 4.
 Tow. 4.
 ——— hessians. 27.
 ———, Threads of. 26.
 Towels (cotton) in the piece. 24.
 ——— ——— ——— not in the piece. 25.
 ——— ——— (linen) in the piece. 27.
 ——— ——— ——— not in the piece. 28.
 ———, Sanitary. 11.

- Towels (silk) for engineers' use. 32.
 Toys and games. 49.
 —, Steel. 13.
 Traces (leather). 37.
 — (metal). 13.
 Tracing cloth and paper. 39.
 Traction engines and motors. 6.
 Trailers. 22.
 Trainers, Home. 49.
 Tramcars. 22.
 Transfer papers. 39.
 — picture albums. 39.
 Transformations, Hair. 50.
 Transparencies, Gelatine, for window decoration. 50.
 Traps for animals (wire or wire and wood). 13.
 — drains (earthenware). 16.
 — (metal). 13.
 —, Steam. 6.
 Traversing jacks. 6.
 Trays, Damping, for copying letters. 39.
 — (metal). 13.
 — (wood). 50.
 Treacle. 42.
 Tree pruners. 12.
 Trees, Boot (wood). 50.
 — for planting. 46.
 Trestles (wood). 50.
 Tricars. 22.
 Tricycles. 22.
 Trimmings, Bead (glass). 15.
 — (cotton). 25.
 — (feather), made up. 50.
 — (ivory, jet, pebble, mother-of-pearl). 50.
 — (linen). 28.
 — (silk). 32.
 — (woollen and worsted). 35.
 Tripe. 42.
 Tripods (metal). 13.
 — (precious metal). 14.
 Tripoli composition. 50.
 Trolley heads for cars (parts of machinery). 6.
 Trolleys (carriages). 22.
 Troughs (metal). 13.
 Trouser clips (metal). 13.
 — stretchers, Mechanical. 6.
 Trousers. 38.
 Trowels (metal). 13.
 Trucks. 22.
 Truffles. 42.
 Trumpets. 9.
 — (parts of talking machines). 8.
 Trunks, Travelling (cane, canvas, mill-board, or wood). 50.
 — (leather). 37.
 — (metal). 13.
 Trunnion pieces (ordnance). 19.
 Trusses. 11.
 Tube expanders (metal). 13.
 — wells. 18.
 Tubes, Air (india-rubber) for tyres. 40.
 —, Cigar and Cigarette (not of precious metal). 50.
 —, Copper. 13.
 — (earthenware or fire-clay). 16.
 — for making cigarettes (paper). 39.
 — medical purposes. 11.
 —, Glass. 15.
 — (metal), not parts of machines. 13.
 —, parts of machines. 6.
 —, Postal (cardboard). 39.
 Tubing (india-rubber). 40.
 Tubs. 50.
 Tulle (silk). 31.
 Tumbler action for blinds (metal). 13.
 Tungsten. 5.
 Tuning forks. 8.
 Turbines. 6.
 Turns (metal). 13.
 Turnerscrews. 13.
 Turnstile indicators. 8.
 Turnstiles. 6.
 Turpentine. 4.
 Tuyeres (pottery ware). 16.
 Tweeds. 34.
 Tweezers. 13.
 Twill (cotton). 24.
 — (woollen or worsted). 34.
 Twine. 50.
 Twist (cotton). 23.
 — (leather). 37.
 — (linen). 26.
 — (silk). 30.
 Type cleaning preparations. 47.
 — metal. 5.
 — (metal). 13.
 — (wood). 50.
 — setting machines. 6.
 — writers. 39.
 Typewriting ribbons. 39.
 Tyre covers (linen). 28.
 — inflators. 6.
 — steel. 5.
 Tyres, Cement for fixing. 50.
 — (india-rubber). 40.
 —, Dressing for. 50.
 —, Stopping composition for. 50.
 — (metal) for machinery. 6.
 — waggons and carriages. 13.
 Ulsters. 38.
 Umbrella furniture (metal). 13.
 — ribs (cane). 50.
 — (metal). 13.
 — rings (india-rubber). 40.
 — stands. 41.
 Umbrellas. 50.

Underclothing. 38.
 Underlays, Printers' (paper or card-board). 39.
 Unguents for medical purposes (for human use). 3.
 Uniforms. 38.
 Union joints (metal). 13.
 ——— piece goods (cotton predominating). 24.
 ——— (linen predominating). 27.
 ——— (silk predominating). 31.
 ——— (wool, worsted, or hair predominating). 34.
 ——— smallwares, not included in other classes (cotton predominating). 25.
 ——— (linen predominating). 28.
 ——— (silk predominating). 32.
 ——— (wool, worsted, or hair predominating). 25.
 Upholstery. 41.
 Uppers, Boot. 37.
 Urinal basins (pottery ware). 16.
 Urinals (structures). 18.
 ——— for travellers and invalids. 11.
 Utensils, Domestic, Culinary, Garden, and Stable (metal). 13.
 ——— (wood). 50.

Vaccination pads. 11.
 Vaccine. 11.
 Vacuum brakes. 6.
 ——— gauges. 8.
 Valves (india-rubber). 40.
 ——— (leather). 37.
 ——— (metal), not parts of machines. 13.
 ———, parts of agricultural machines. 7.
 ———, machines other than agricultural machines. 6.
 ——— (vulcanized fibre). 50.
 Van covers. 50.
 Vans. 22.
 Vanes (metal). 13.
 Vanning machines. 6.
 Vaporizers for curative purposes. 11.
 Varnish, Boot. 50.
 ——— for polishing purposes. 50.
 ——— other than polishing and boot varnish. 1.
 ——— removing compositions. 47.
 Vases (porcelain or earthenware). 16.
 ——— (wood). 50.
 Vegetable substances, raw or partly prepared, used in manufactures and not included in other classes. 4.

Vegetables for food. 42.
 Vehicles. 22.
 Veils for wear. 38.
 Velocipedes. 22.
 Velvet in the piece (silk). 31.
 ——— (wool, worsted, or mohair predominating). 34.
 ——— ribbons (cotton). 25.
 ——— (silk and cotton, silk predominating). 32.
 ——— (wool, worsted, or mohair predominating). 35.
 Velvetens and velvets in the piece (cotton). 24.
 Venetian blinds (metal). 13.
 ——— (wood). 50.
 Ventilating apparatus. 18.
 ——— fans (machinery). 6.
 Ventilators (metal). 13.
 Verandahs. 18.
 Vermicelli. 42.
 Vermin-destroying preparations. 2.
 ——— traps (metal). 13.
 Verniers. 8.
 Vesicant or blistering preparations for veterinary purposes. 2.
 Vestas. 47.
 Vests. 38.
 Vesuvians. 47.
 Veterinary preparations (medicinal). 2.
 Vice benches. 6.
 Vices, not parts of machines. 13.
 Vichy water. 44.
 View finders for cameras. 8.
 Vinegar. 42.
 ——— (medicated). 3.
 ———, Toilet. 48.
 Violet powder. 48.
 Violin bows. 9.
 ——— bridges and chin rests (wood). 50.
 ——— mutes (precious metal). 14.
 Violins. 9.
 Voice lozenges (not medicated). 42.
 Volcanic ash for use in manufactures. 4.
 Voltmeters. 8.
 Vulcanite goods not included in other classes. 40.
 Vulcanized fibre boxes, valves and washers. 50.
 ——— paper. 39.

Wadding and stuffing (cotton). 25.
 ——— (woollen or worsted). 35.
 Wads, Gun. 19.
 Wafer capsules for administering medicines. 50.
 Wafers (stationery). 39.
 Waggon and carriage metal-work. 13.
 ——— covers. 50.
 Waggons. 22.

- Waistbands (ready for wear). 38.
 Waistcoats. 38.
 Walking-sticks (wood). 50.
 Wall coverings, in the nature of paper hangings. 41.
 — linings (water-proofed felt). 50.
 — tiles (earthenware). 16.
 — (glass). 15.
 — (metal). 13.
 Warmers, Foot (metal). 13.
 Warming apparatus for buildings. 18.
 Washcloths (cotton). 25.
 Washers (metal). 13.
 — (vulcanized fibre). 50.
 Washes for toilet purposes. 48.
 — veterinary purposes. 2.
 —, Medicated, for human use. 3.
 —, Printers' type. 47.
 —, Sheep. 2.
 Washing boards and tubs (wood). 50.
 — coppers, Portable. 18.
 — machines for fabrics. 6.
 — powders and preparations for laundry use. 47.
 Wash-leather. 37.
 Waste paper. 39.
 — silk yarn. 30.
 Watch cases (metal). 13.
 — (precious metal). 14.
 — protectors (celluloid). 50.
 — (metal). 13.
 Watches and parts thereof (except cases sold separately). 10.
 Water beds (india-rubber or gutta-percha). 40.
 —, Distilled, for table use. 42.
 —, prepared for use in medicine and pharmacy. 3.
 — gauges and meters. 8.
 — purifying apparatus. 18.
 — softening preparations. 1.
 — for toilet use. 48.
 Waters (mineral and aerated). 44.
 — (perfumed) for toilet purposes. 48.
 Watercloset basins and pedestals (earthenware). 16.
 — paper (medicated). 3.
 — (not medicated). 39.
 Waterclosets. 18.
 Watercolour paintings. 39.
 — colours. 1.
 Waterproof clothing. 38.
 — felts for roofing and similar purposes. 50.
 Waterproofed fabrics in the piece (cotton). 24.
 — (linen or hemp). 27.
 — (silk). 31.
 — (wool, worsted, or hair). 34.
 Waterproofed packing paper. 39.
 Waterproofing compounds for textile and leather goods. 50.
 Wavers, Hair (metal). 13.
 Wax for use in manufactures. 4.
 —, Cobblers'. 50.
 —, Dental. 11.
 —, Depilatory (a toilet article). 48.
 — for illuminating and laundry purposes. 47.
 — paper. 39.
 — polishes. 50.
 —, Sealing and bottling. 39.
 Wearing apparel. 38.
 Webbing (cotton). 25.
 — (india-rubber). 40.
 — (linen). 28.
 — (silk). 32.
 — (woollen or worsted). 35.
 Webs, Elastic (india-rubber). 40.
 — (not of india-rubber), in the class of the material.
 Wedges (metal). 13.
 Weed killer (chemical). 2.
 Weighing machines. 6.
 Weights, Clock and Sash (metal). 13.
 — for scales. 8.
 —, Paper. 39.
 Wells, Tube. 18.
 Whalebone. 4.
 — dress stiffeners. 50.
 Wheat (for food). 42.
 — dressing. 2.
 Wheel barrows (metal). 13.
 — (wood). 50.
 — hubs, rims, and spokes (wood). 50.
 Wheels, being parts of agricultural machinery. 7.
 — machinery other than agricultural machinery. 6.
 —, Grinding. 50.
 — (metal), not being parts of machinery. 13.
 — (wood). 50.
 Whipcord. 50.
 Whip sticks. 50.
 Whips. 37.
 Whiskey. 43.
 Whist counters. 49.
 Whistles (metal). 13.
 — (precious metal). 14.
 — (wood, ivory, bone). 50.
 —, Steam and exhaust (parts of machinery). 6.
 White lead. 1.
 —, Zinc. 1.
 Whitening preparations for canvas and leather goods. 50.
 Whiting. 17.
 Whitewashes. 17.
 Wicks, Lamp. 47.
 Wigs. 50.
 Winches, Steam. 6.

Wind gauges. 8.
 — screens for motor cars (wood and glass). 50.
 Winding gear. 6.
 Windlasses, Steam. 6.
 Windmills. 6.
 Window cleaning compositions. 50.
 — fittings (metal). 13.
 — frames (metal). 13.
 — (wood). 50.
 — hollands (linen) in the piece. 27.
 Windows, Composition to prevent condensation on. 50.
 Wine. 43.
 — bins, Cabinet. 41.
 — (metal). 13.
 —, Ipecacuanha. 3.
 — (medicated). 3.
 Winnowing machines. 7.
 Wire. 5.
 —, Barbed, for fencing. 13.
 — covered with silk, cotton, &c., in the class of the covering material.
 — drawing, Jewels for. 50.
 — gauze. 13.
 — netting and fencing. 13.
 — ropes. 13.
 —, Telegraph. 5.
 — woven mattresses. 41.
 Wiring machines. 6.
 Wood preservative. 1.
 — pulp. 50.
 — spirit for use in manufactures. 4.
 — stains. 1.
 — working machinery. 6.
 — yarn or twist. 50.
 Wool, Berlin. 33.
 —, Cotton (medicated). 3.
 — (not medicated and not prepared for surgical or curative use). 25.
 — (prepared for surgical or curative use). 11.
 — (raw or partly prepared). 4.
 Woollen bindings and other woollen smallwares not included in other classes. 35.
 — cloths in the piece. 34.
 — yarns and thread. 33.
 Woolpacks (canvas). 50.
 Worm powder (for veterinary purposes). 2.

— tablets and powder (for human use). 3.
 Worsted braids and other worsted smallwares, not included in other classes. 35.
 — stuffs in the piece. 34.
 — yarns and threads. 33.
 Wraps, Railway. 50.
 Wrappers for frozen meat, not in the piece (cotton). 25.
 — (stationery). 39.
 Wrapping machines. 6.
 Wreaths of cut flowers. 46.
 Wrenches. 13.
 Wringing machines. 6.
 Writing cases, fluids, paper and slates. 39.

 X-ray operators' gloves. 11.
 — tubes for surgical or curative use. 11.

 Yachts. 21.
 Yarns, Collodion. 50.
 —, Cotton. 23.
 —, Jute. 29.
 —, Linen, Hemp, Flax and China grass (ramie). 26.
 —, Silk. 30.
 — Worsted, Merino, Woollen, Hair and Shoddy). 33.
 Yeast. 42.
 Yellow metal. 5.
 — ochre. 1.

 Zephyrs (cotton piece goods). 24.
 Zinc. 5.
 — nails. 13.
 — white. 1.
 Zithers. 9.

**INSTRUCTIONS TO PERSONS WHO WISH TO
REGISTER TRADE MARKS.
1909.**

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LIST OF CONTENTS.

	PAGE
1. General.....	504
2. Who may Apply for Registration of a Trade Mark	504
3. What may be Registered as a Trade Mark	505
4. Manner of Applying for Registration of a Trade Mark	505
5. Trade Mark Forms and Fees	505
6. Documents, &c. required on Application for Registration.....	508
7. Word Marks	509
8. Search	509
9. Series of Trade Marks	510
10. Old Marks	510
11. Procedure on Receipt of Application	510
12. Non-completion of Registration of a Trade Mark	510
13. Duration of Registration and Payment of Renewal Fees	511
14. Classification of Goods	511
15. Advertisement in the Trade Marks Journal	511
16. Restrictions on Registration.....	512
17. Oppositions	513
18. Cutlers' Company	513
19. Manchester Branch	514
20. Certificates	514
21. Inspection of Register and Copies of Entries	514
22. Registration of Subsequent Proprietors of Registered Trade Marks	515
23. Miscellaneous Matters relating to Trade Marks, &c.	515
24. International and Colonial Arrangements.....	516
25. Application for the Registration of Trade Marks in the British Colonies and Foreign States	516
26. Sale of Official Publications	516
27. Patent Office Library.....	517

—◆—
1. GENERAL.

It is advisable in the first instance for a person who desires to register a trade mark to buy a copy of the Trade Marks Rules, 1906, and of the Trade Marks Act of 1905 now governing the registration of trade marks. For information as to obtaining copies of the rules and Act, *see* paragraph 26.

2. WHO MAY APPLY FOR REGISTRATION OF A TRADE MARK.

Any person claiming to be the proprietor of a trade mark, whether a British subject or not, may make an application for the registration of a trade mark in the United Kingdom.

The term "person" includes firm, partnership, and body corporate.

Any person who has made a previous application for registration of a trade mark, which is registrable under the Trade Marks Act, 1905, either in any of the Foreign States or in any of the British Possessions (*see* paragraph 24) with which certain arrangements for mutual pro-

tection of trade marks have been made, may obtain priority of date in the United Kingdom, provided that the application is made within four months from the date of the application in such Foreign State or British Possession.

3. WHAT MAY BE REGISTERED AS A TRADE MARK.

(This paragraph is a reprint of Section 9 of the Trade Marks Act, 1905.)

4. MANNER OF APPLYING FOR REGISTRATION OF A TRADE MARK.

All applications and communications must be made in the English language.

Applications relating to marks not being cotton marks or Sheffield marks must be left at the Patent Office by hand or sent by post addressed to the Registrar, The Patent Office, Trade Marks Branch, 25, Southampton Buildings, London, W.C.

In the case of cotton marks, applications should be addressed to the Keeper of Cotton Marks, Manchester Branch of the Trade Marks Registry, 48, Royal Exchange, Manchester. (See paragraph 19.)

In the case of Sheffield marks, applications should be addressed to the Law Clerk to the Cutlers' Company, The Cutlers' Hall, Sheffield. (See paragraph 18.)

Fees must be paid by means of the appropriate stamped forms, which can be obtained as directed in paragraph 5. Stamped forms cannot be sent by post from the Patent Office.

5. TRADE MARK FORMS AND FEES.

The following is a list of the forms under the Trade Marks Act, 1905, and of the principal fees :—

Number of Form.	Title of Form.	Fee.		
		£	s.	d.
TM No. 1	Form of authorisation of agent	—		
TM No. 2	Application for registration of trade mark	0	10	0
TM No. 3	Additional representation of trade mark	No stamp.		
TM No. 4	Request for statement of grounds of decision under sect. 12 (3)	0	10	0
TM No. 5	Application for registration of special trade mark under sect. 9 (5)	0	10	0
TM No. 6	Application for registration of special trade mark under sect. 62	0	10	0
TM No. 7	Notice of opposition to application for registration	1	0	0
TM No. 8	Counter-statement to opposition to application for registration	0	10	0
TM No. 9	Application for hearing in cases of opposition	1	0	0
TM No. 10	Application to the Board of Trade for hearing under Rule 38	1	0	0

APPENDIX A.

Number of Form.	Title of Form.	Fee.		
		£	s.	d.
TM No. 11	Fee for registration of a trade mark	1	0	0
TM No. 12	Renewal of registration before notice has been given by registrar	1	0	0
TM No. 13	Renewal of registration after notice has been given by registrar	1	0	0
TM No. 14	Additional fee to accompany renewal fee within one month after advertisement of non-payment of renewal fee	0	10	0
TM No. 15	Restoration of trade mark where removed for non-payment of fee	1	0	0
TM No. 16	Joint request by registered proprietor and assignee to register assignee as subsequent proprietor.....	1	0	0
TM No. 17	Form of declaration (only to be furnished when requested by registrar) by assignee in support of Form TM No. 16	—		
TM No. 18	Request to enter name of subsequent proprietor upon register	1	0	0
TM No. 19	Form of declaration (only to be furnished when requested by registrar) in support of statement of case accompanying Form TM No. 18	—		
TM No. 20	Application for alteration of address on register	0	5	0
TM No. 21	Application to permit an apportionment of trade marks	5	0	0
TM No. 22	Request for correction of clerical error or amendment of application	0	5	0
TM No. 23	Request to enter change of name of registered proprietor	0	5	0
TM No. 24	Application to cancel entry on register	0	5	0
TM No. 25	Request to strike out goods from those for which a mark is registered	0	5	0
TM No. 26	Request to enter disclaimer or memorandum	0	5	0
TM No. 27	Application to add to or alter a trade mark	1	0	0
TM No. 28	Request for search under Rule 95	0	10	0
TM No. 29	Appeal from registrar to Board of Trade	1	0	0
TM No. 30	Notice of Order of Court for alteration of register	0	10	0
TM No. 31	Request for general certificate	1	0	0
TM No. 32	Request for certificate of refusal to register	1	0	0
TM No. 33	Request for certificate of registration for use in obtaining registration abroad.....	0	5	0
TM No. 34	Request for certificate of registration for use in legal proceedings	1	0	0
	For office copies every 100 words, but never less than one shilling	0	0	4
	For certifying office copies MS. or printed matter	0	10	0
	An additional stamp duty of one shilling is also charged under the Stamp Act upon certified copies of certain documents.			

The stamped forms can be obtained, *on personal attendance only*, at the Inland Revenue Office (Room No. 32), in the Patent Office, 25, Southampton Buildings, Chancery Lane, London, W.C., or, at a few days' notice and upon pre-payment of the value of the stamp, at any money order office in the United Kingdom.

If it should not be convenient to apply in either of the ways above specified, the stamped forms can be ordered by post from the Controller of Stamps (Room No. 5), Inland Revenue Office, Somerset House, London, W.C. In this case a bankers' draft or a money or postal order payable to the Commissioners of Inland Revenue and crossed Bank of England, to cover the value of the stamp and the cost of transmitting the form in a registered envelope by post, must be forwarded to Somerset House with the application for the form. Cheques will not be accepted.

Forms bearing the numbers TM No. 2, TM No. 3, and TM No. 11 are kept in stock at the following post offices in London :—

The London Chief Office.

Lombard Street Branch Office, E.C.

Eastern District Office, 206, Whitechapel Road, E.

South-Eastern District Office, 239, Borough High Street, S.E.

Charing Cross Branch Office, W.C.

North-Western District Office, 28, Eversholt Street, Camden Town, N.W.

Post Office, 44, Parliament Street, S.W., and

The chief post office of the undermentioned cities and towns :—

IN ENGLAND AND WALES.

Accrington.	Darwen.	Lincoln.	Scarborough.
Altrincham.	Derby.	Liverpool.	Sheffield.
Ashton-under-Lyne.	Devizes.	Macclesfield.	Southampton.
Bacup.	Dewsbury.	Manchester.	Stafford.
Barnsley.	Doncaster.	Middlesbrough.	Stalybridge.
Bath.	Dorchester.	Newcastle.	Stockport.
Belford.	Driffield.	Newport (Mon.).	Stockton-on-Tees.
Birkenhead.	Droitwich.	Northallerton.	Stoke-on-Trent.
Birmingham.	Dudley.	Northampton.	Stourbridge.
Blackburn.	Durham.	Norwich.	Stroud.
Bolton.	Exeter.	Nottingham.	Sunderland.
Bournemouth.	Gloucester.	Nuneaton.	Swansea.
Bradford.	Goole.	Oldbury.	Tamworth.
Brighton.	Greenwich.	Oldham.	Truro.
Bristol.	Halifax.	Plymouth.	Tunstall.
Burnley.	Hanley.	Pontypridd.	Wakefield.
Burslem.	Hartlepool.	Portsmouth.	Walsall.
Bury.	Huddersfield.	Preston.	Warrington.
Cambridge.	Hull.	Reading.	West Bromwich.
Cardiff.	Ipswich.	Redditch.	Widnes.
Carlisle.	Keighley.	Rochdale.	Wigan.
Chatham.	Kidderminster.	Rotherham.	Wolverhampton.
Cheltenham.	Leamington.	Rugby.	Woolwich.
Chester.	Leeds.	St. Helen's.	Worcester.
Coventry.	Leicester.	Salford.	York.
Croydon.	Lichfield.		

IN SCOTLAND.		IN IRELAND.	
Aberdeen.	Greenock.	Belfast.	Limerick.
Dundee.	Inverness.	Dublin.	Waterford.
Edinburgh.	Leith.	Galway.	Wexford.
Glasgow.	Perth.		

6. DOCUMENTS, &c. REQUIRED ON APPLICATION FOR REGISTRATION OF A TRADE MARK.

An application for the registration of a trade mark, under Section 9 (*see* paragraph 3), must be made on an application form (Form TM No. 2) bearing an impressed stamp of 10s. (*see* paragraph 5), but in the case of a special application under the provisions of Section 9 (5), when an order of the Board of Trade or the Court is necessary, Form TM No. 5 must be used.

(The applicant should, before filling up the form, carefully read the marginal notes.)

Four additional representations of the trade mark, each mounted on Form TM No. 3, should accompany every application on TM No. 2 or TM No. 5. (*See* paragraph 5.)

A *separate* application form is required for *each* class in cases where the same trade mark is claimed in more than one class of goods.

If the mark be the property of a firm or partnership, the Form TM No. 2 should be signed by some one or more members of such firm or partnership, who should add, after his or their signature, "A member of the firm" or "Members of the firm" (as the case may be); if a body corporate, by a director or by the secretary or other principal officer, who should add, after his signature and designation, "For the Company."

Applications may be made by agents in the names of and on behalf of the owners of trade marks. The agent must be duly authorised in writing, in the Form TM No. 1, by the owner or owners; the authority to an agent should be signed by the owner or owners; in the case of a firm, partnership, or body corporate, the authority should be signed in the same manner as indicated in the paragraph next above.

Each application made by an agent should have, after the signature of the agent, the description "agent."

When an applicant, or his authorised agent, for the registration of a trade mark resides out of the United Kingdom at the time of making the application, an address for service in the United Kingdom must be given in the application.

When the mark consists of or includes words printed in other than Roman characters, there should be given upon the forms a translation and a transliteration of such words, signed by the applicant or his agent.

In the case of marks claimed in the cotton classes and Class 34, the applicant should state by what name the particular mark claimed would be referred to in the invoices of his house.

The representations of the mark on the Form TM No. 3 must agree *in every respect* with each other, and with that on the Form TM No. 2.

Representations of a mark of a large size may be folded. In that case they must, however, be backed with linen, tracing cloth, or other

suitable material, and firmly affixed to the forms. Representations must in no case be executed *in pencil*. They should be not only of a durable nature, but of such a kind as will admit of their being preserved and bound together in volumes as records of the property of the owners. Photographs are not, as a rule, therefore, acceptable.

7. WORD MARKS.

In most of the classes, except the cotton classes, word marks are very popular. Speaking broadly, the Act debars from registration three kinds of words: (1) Geographical names; (2) surnames; (3) descriptive words; and it is frequently difficult to decide whether any given word falls under any of these heads. Cases often happen in which a person thinks he has invented a word, and yet on investigation it is found that such a word already exists, and falls under one of the heads above mentioned.

Again, though a given word may, after argument, be decided not to fall under one of the forbidden heads, yet the matter is so much on the border-line that much discussion can be raised before a final decision is reached.

It is very greatly to the advantage of a person adopting a new word mark—it being immaterial to him what word he adopts—to choose a word open to little or no discussion, and which clearly falls within paragraphs 3 or 4 of the ninth section of the Act. The registrar will give what assistance he can on this subject, and it is suggested that an applicant desirous of adopting a new word mark should, before doing so, submit by letter a word, such as he thinks will suit his purpose, for the registrar's consideration. The registrar will of course only express an opinion as to how far a word submitted is within the section, and will make no search for the purpose of ascertaining whether any other person has a similar registered mark, unless a search fee is paid.

8. SEARCH.

A person wishing to adopt a trade mark may make application to the registrar in writing upon a Form TM No. 28, to cause a search to be made to ascertain whether any marks are on record at the date of such search which may resemble the proposed mark, and the applicant will be informed of the result of such search. The request on Form TM No. 28 should be accompanied by two representations of the proposed mark, each mounted on a half-sheet of foolscap.

A person may, however, search amongst the classified representations of trade marks at the Trade Marks Branch of the Patent Office, if he so desire. The index includes a general collection of marks, a divisional index of devices, and an alphabetically arranged index of words appearing as parts of trade marks or alone. It must not be assumed, however, that all words contained in this index are protected by registration.

The fee payable by a person making a search is 1s. for every quarter of an hour.

Complete searches amongst classified collections of marks in the *cotton classes* (Classes 23, 24 and 25) can only be made at the Manchester Branch Office, 48, Royal Exchange, Manchester. (See paragraph 19.)

9. SERIES OF TRADE MARKS.

By sect. 26 of the Act, when a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods for which they are respectively used or proposed to be used; or
- (b) statements of number, price, quality, or names of places; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- (d) colour;

seeks to register such trade marks, they may be registered as a series in one registration.

When an application is made for a series, a representation of each of the marks of the series must be affixed to Form TM No. 2, and also to each of the Forms TM No. 3.

10. OLD MARKS.

In order that an application for an “old mark” may be treated as such, there must have been continuous user, since before the date mentioned in paragraph 3, in the United Kingdom and in connexion with the goods stated in the application. An applicant for such a mark should state how, *i.e.*, whether as a label, by branding or embossing or in any other manner, the mark has been so used. The registrar may require a declaration verifying the statements made in such an application.

11. PROCEDURE ON RECEIPT OF APPLICATION.

As soon as may be, following the receipt of an application and after due consideration and search, the registrar will communicate the result to the applicant in writing.

12. NON-COMPLETION OF REGISTRATION OF A TRADE MARK.

When registration is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the application may, after notice duly given, be treated as abandoned, unless it be completed within the time specified in such notice.

13. DURATION OF REGISTRATION AND PAYMENT OF RENEWAL FEES.

Registration of a trade mark is for a period of fourteen years from the date of the original application, but may be renewed from time to time on payment of the prescribed fee.

Each renewal is for fourteen years.

The fee for renewal should be paid in due time by lodging the proper form as directed by the rules.

If the renewal fee is not paid in due time, extra cost is incurred, and, possibly, the registration may entirely lapse.

14. CLASSIFICATION OF GOODS.

A guide (*a*) to the classification of goods under the Trade Marks Rules can be obtained on application at the Patent Office, Trade Marks Branch, and should be asked for if the applicant feels any difficulty in determining to which of the classes set out in the third schedule to the Rules the goods for which he uses his mark belong.

(*a*) See p. 463, *ante*.

15. ADVERTISEMENT IN THE "TRADE MARKS JOURNAL."

A trade mark cannot in any case be entered upon the register until after the expiration of one month from the date of its advertisement in the *Journal*.

A wood-block or electrotype must be furnished for each mark (even though the mark consists only of a word or words) in each class claimed, except in the case of the cotton classes, for which no blocks are required, unless the mark be claimed in Class 23 in respect of goods other than cotton yarn.

No block or electrotype should be forwarded until a formal demand for it is sent by the registrar.

In the case of a "series" of trade marks differing only in respect of the particulars mentioned in sect. 26 of the Act, a wood-block or electrotype must, if the registrar so require, be furnished for each mark in the series.

The wood-blocks or electrotypes furnished must correspond *exactly* with the representations, must afford *perfectly distinct* impressions of the marks, and must be upon a scale sufficiently large to reproduce the marks faithfully. Worn or mutilated blocks or electrotypes cannot be accepted. It is found in practice that zincotypes or process blocks do not, as a rule, yield impressions distinct enough for the purposes of this *Journal*, and a great number of such blocks have to be returned as unsuitable. It is generally found that the most suitable blocks are wood-blocks or electrotypes.

In the case of word marks the words on the block should be in plain block type.

The largest space available for the insertion of any single block or electrotype is five and a half inches broad by seven and a half inches deep.

When a block or electrotype *exceeds two inches in breadth or depth, or in breadth and depth*, a charge for additional space is made, at the rate of two shillings for every inch or part of an inch over two inches

in breadth, and for every inch or part of an inch over two inches in depth.

The official number given by the registrar to a mark should *not* be cut on the face of the block or electrotype, but should be *marked upon the side* in such a manner as to secure identification.

All blocks or electrotypes should be sent to the Patent Office, Trade Marks Branch, together with the paper marked "Form R. Adv. 3," and with the representation of the mark sent for the guidance of the applicant in preparing the block or electrotype.

After the advertisement of a trade mark the block or electrotype supplied for such advertisement cannot in any case be returned to applicants, even for temporary use.

16. RESTRICTIONS ON REGISTRATION.

Ornamental or coloured groundwork, such as tartans or checks, cannot be claimed as part of a mark unless such groundwork be included within the mark by some border or lines.

Applications for the registration of trade marks consisting of or embodying the emblem of a red cross, the words "Red Cross," or "Geneva Cross" will be refused.

Applications may be refused in cases where the following appear upon the representations of trade marks forming part of an application:—

- (a) The words "Patent," "Patented," "By Royal Letters Patent," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is Forgery," or words to like effect.
- (b) Representations of their Majesties or of any member of the Royal Family.

The following also may not appear on trade marks, the registration of which is applied for, unless the marks have been used since before 13th August, 1875:—

- (a) The Royal arms or Royal crests, or arms or crests so nearly resembling them as to lead to mistake.
- (b) British Royal crowns.
- (c) British national flags.
- (d) The word "Royal" or any other words, letters or devices calculated to lead persons to think that the applicant has Royal patronage or authorisation.

In cases where the following appear on a mark, the registrar may call for such justification as he may deem necessary for their use:—

Representation of the arms of a foreign state or place.

In cases where the following appear on a mark, the registrar may require to be furnished with consents from such officials, persons, or their legal representatives as he may consider necessary:—

- (a) Representations of the arms or emblems of any city, borough, town, place, society, body corporate, or institution.
- (b) Names or representations of living persons or persons recently dead.

Where there appears on the face of a trade mark the name or a description of the goods to which the mark is applied, the registrar may refuse to register such mark in respect of any goods other than the goods so named or described. Where the name or description of any goods appears on a trade mark, which name or description in use varies, the applicant should state in his application that the name or description varies.

17. OPPOSITIONS.

Notice of opposition to the registration of a trade mark (*see* Rules, Form TM No. 7) must be filed within one month from the date of advertisement of the mark in the *Journal*, accompanied by an unstamped duplicate.

The applicant's counter-statement, Form TM No. 8, accompanied by an unstamped duplicate, must be filed within one month from the date of receipt by him of the duplicate notice of opposition.

The opponent's evidence, in support of the opposition, must be filed within one month from the date of receipt by him of the duplicate counter-statement, and copy of such evidence must be forthwith sent to the applicant.

The applicant's evidence must be filed within one month from the receipt of the copies of the opponent's evidence, and a copy of such evidence must be forthwith sent to the opponent.

The opponent's evidence in reply must be filed within fourteen days from the receipt of the copies of the applicant's evidence, and a copy of such evidence must be forthwith sent to the applicant.

On the completion of the evidence, a hearing is appointed by the registrar. Each party attending the hearing must lodge the hearing fee form Form TM No. 9, with £1 stamp).

18. CUTLERS' COMPANY.

By section 63 of the Act, application for the registration of trade marks used on metal goods shall, if made by a person carrying on business in Hallamshire or within six miles thereof, be made to the Cutlers' Company of Sheffield. (*See* Rules 7 to 112.)

Applications made to the Cutlers' Company in pursuance of section 63 of the Act should be made on Form TM No. 2, the address in the left-hand corner to be "To the Cutlers' Company, Sheffield," instead of "To the Registrar," and should be left at, or sent by post to, the Cutlers' Hall, Sheffield.

Each application should be accompanied by an unstamped copy on an application Form TM No. 2. (*See* rule 107.)

Requests to enter old corporate marks on the Sheffield register, under section 63 (2), should be made on Form Sheffield No. 1.

Applications sent by post should be addressed—

The Law Clerk to the Cutlers' Company,
The Cutlers' Hall,
Sheffield.

19. MANCHESTER BRANCH.

By section 64 of the Act, application for the registration of cotton marks should be made to the Manchester Branch on Form Cotton No. 1. Each application should be accompanied by an unstamped duplicate of the form, and also by four additional representations on Form Cotton No. 2.

These forms can be obtained at the Chief Post Office, Manchester, and on personal application at the Inland Revenue Office (Room No. 32), in the Patent Office, 25, Southampton Buildings, Chancery Lane, London, W.C.

Applications sent by post should be addressed—

The Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
48, Royal Exchange, Manchester.

Searches can be made at the Manchester Branch on payment of 1s. for each quarter of an hour for marks in the cotton classes.

20. CERTIFICATES.

The registrar's certificate in relation to a trade mark is of four kinds, viz. :—

- (i.) Of registration for use in legal proceedings.
- (ii.) Of registration for use in obtaining registration abroad.
- (iii.) Of any application made and of proceedings thereon.
- (iv.) Of refusal to register a mark in use since before 13th August, 1875, and not registrable.

A person desirous of obtaining any of the above certificates should forward Form TM No. 34, Form TM No. 33, Form TM No. 31, or Form TM No. 32 (*see* paragraph 5), as the case may be, to the registrar, giving the registrar's official number of the mark and the class, and stating whether the certificate is required for use in legal proceedings, or for use in applying for the registration of the mark abroad, or for what other purpose.

In every case where a certificate is required in respect of a cotton mark, or in respect of any trade mark of which the representations or specimens forming part of the application for registration are *coloured*, or in respect of an application made, or in respect of an application refused, two unmounted copies of the mark should be supplied, agreeing *in every respect* with the representations forming part of the application for registration. Special attention should be paid to this requirement, as otherwise considerable delay may be caused before the certificate can be issued.

21. INSPECTION OF REGISTER AND COPIES OF ENTRIES.

The fee payable by a person inspecting the register in connection with any particular trade mark is 1s. for every quarter of an hour.

Copies of any entry in the register can be supplied at the rate of 4d. for every 100 words, with a minimum charge of 1s.

22. REGISTRATION OF SUBSEQUENT PROPRIETORS OF REGISTERED TRADE MARKS.

The request to be made by a subsequent proprietor on application for the registration in his name of a registered trade mark must be made on Form TM No. 16 or Form TM No. 18 (*see* paragraph 5), as the case may be. In the case of a firm or partnership, the declaration may be made by one member of the firm or partnership. In the case of a body corporate, the declaration should be made by a director or by the secretary or a principal officer of such body corporate.

If the registrar considers it necessary, he may require a declaration on Form TM No. 17 or Form TM No. 19 to be furnished in support of the request.

Where a person becomes entitled to the goodwill of a business, he should forthwith ascertain what registered marks have been in use in that business, and at the earliest possible moment get those marks transferred into his name on the register. The mere possession of the certificates of registration is quite insufficient.

23. MISCELLANEOUS MATTERS RELATING TO TRADE MARKS AND THE PATENT OFFICE.

(a.) *Advice on Trade Mark Matters, &c.*—The Patent Office does not undertake to give legal advice or opinions on questions of infringement or on any subject connected with trade mark law which, like other laws, is left to the interpretation of professional men.

(b.) *Agency.*—The registrar cannot recommend any particular agent for employment by applicants. A list of registered patent agents who, as a rule, also transact trade mark business, may be obtained from Wyman & Sons, Limited, Fetter Lane, London, E.C., or through any bookseller. Price (including postage), 1s. 1d.

(c.) *Application for Reduction of Fees.*—It is not within the power of the registrar to comply with any request for the reduction or remission of any of the fees required by the trade mark law.

(d.) *Use of the word "Registered."*—Any person who represents that a trade mark is registered which is not so is liable for every offence on summary conviction to a fine not exceeding five pounds.

A person is deemed, for the purposes of the Trade Marks Act, 1905, to represent that a trade mark is registered if he uses in connection with the trade mark the word "registered" or any words expressing or implying that registration has been obtained for the trade mark. (*See* section 67 of the Trade Marks Act, 1905.)

(e.) *Patent Medicines.*—Communications with respect to the preparation and supply of medicine stamps appropriated to a particular medicine, or as to the liability to stamp duty of so-called "patent medicines," should be addressed to the Secretary (Stamps and Taxes), Inland Revenue, Somerset House, London, W.C.

(f.) *Mere Trading Names.*—Mere trading names or names given to business premises cannot be registered at the Patent Office.

24. INTERNATIONAL AND COLONIAL ARRANGEMENTS.

An international convention for the protection of industrial property exists between the following states :—

Austria.	Japan.
Belgium.	Mexico.
Brazil.	Netherlands, with the Dutch East Indies, Surinam, and Curaçoa.
Cuba.	Norway.
Denmark, with the Farøe Islands.	Portugal, with the Azores and Madeira.
Franco, with Algeria and colonies.	Santo Domingo.
Germany.	Servia.
Great Britain, with Aus- tralia, Ceylon, New Zea- land, and Trinidad and Tobago.	Spain.
Hungary.	Sweden.
Italy.	Switzerland.
	Tunis.
	United States of America.

Copies of the text of the Convention (*a*), and of the additional Act modifying the Convention (*b*), may be purchased for 2*d.* and 1*d.*, respectively, from Wyman and Sons, Limited, Fetter Lane, London, E.C., or through any bookseller.

Under this Convention, an applicant for a trade mark in any one of the contracting states may obtain priority of date in any of the other states.

Similar arrangements, for the mutual protection of trade marks, have been made between Great Britain on the one side, and each of the following states and colonies on the other :—

Ecuador.	Paraguay.
Greece.	Roumania.
Honduras.	Uruguay.

The above list may of course be varied from time to time.

(*a*) See p. 565, *infra*.

(*b*) See p. 571, *infra*.

25. APPLICATIONS FOR THE REGISTRATION OF TRADE MARKS IN THE BRITISH COLONIES AND FOREIGN STATES.

Applications for the registration of trade marks in the colonies and foreign states must be made to the Government of the colony or foreign state in which protection is desired. A collection of colonial and foreign trade mark laws and rules may be seen in the free library of the Patent Office.

26. SALE OF OFFICIAL PUBLICATIONS.

Copies of the Act and of the Rules can be purchased at the Sale Branch of the Patent Office. The price of the Act and Rules together is 8*d.*, postage 2½*d.*; of the Act alone, 3*d.*, postage, 1*d.*; and of the

Rules alone, 5*d.*, postage, 1½*d.* Sums exceeding 5*d.* should be remitted by postal order or post office order.

Copies of the *Trade Marks Journal* may also be obtained from the Sale Branch of the Patent Office.

The price of the *Trade Marks Journal* is :—

	Per No.	
	s.	d.
Nos. 1 to 509 (years 1876 to 1887)	1	0
Nos. 510 to 561 (year 1888)	1	6
No 562 and following numbers from 1st January, 1889 ..	0	6

27. PATENT OFFICE LIBRARY.

The free public library of the Patent Office, 25, Southampton Buildings, Chancery Lane, London, W.C., is open daily, from 10 a.m. to 10 p.m., except on Sundays, Christmas Day, Good Friday, and Bank Holidays. On the day observed as His Majesty's birthday, Christmas Eve, Easter Eve, and Whitsun Eve, the library is closed at 4 p.m.

APPENDIX B.

THE PATENTS AND DESIGNS ACT, 1907.

7 EDW. VII. c. 29.

An Act to consolidate the enactments relating to Patents for Inventions and the Registration of Designs and certain enactments relating to Trade Marks.

[28th August 1907.]

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, as follows:—

PART I. (SECTS. 1—18.)

PATENTS.

PART II. (SECTS. 19—61.)

DESIGNS.

PART III. (SECTS. 62 - 99.)

GENERAL.

Patent Office and Proceedings thereat.

Patent Office,
5 Edw. 7,
c. 15.
See Pat.
Acts.
S. 82.

62.--(1) The Treasury may continue to provide for the purposes of this Act and the Trade Marks Act, 1905, an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office (*a*).

(2) The Patent Office shall be under the immediate control of the comptroller, who shall act under the superintendence and direction of the Board of Trade.

(3) Any act or thing directed to be done by or to the comptroller may be done by or to any officer authorised by the Board of Trade.

(4) Rules under this Act may provide for the establishment of branch offices for designs at Manchester or elsewhere, and for any document or thing required by this Act to be sent to or done at the Patent Office being sent to or done at any branch office which may be established.

(a) This section comes from sect. 82 of the P. D. & T. M. Act, 1883.

63.—(1) There shall continue to be a comptroller-general of patents, designs, and trade marks, and the Board of Trade may, subject to the approval of the Treasury, appoint the comptroller, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may remove any of those officers and clerks (a).

Officers and clerks.
See Pat. Acts.
S. 83.

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and those salaries and the other expenses of the execution of this Act and the Trade Marks Act, 1905, shall continue to be paid out of money provided by Parliament.

(a) This section comes from sect. 83 of the P. D. & T. M. Act, 1883.

64. Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence (a).

Seal of Patent Office.
See Pat. Acts.
S. 84.

(a) This section comes from sect. 84 of the P. D. & T. M. Act, 1883.

* * * * *

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

Annual reports of comptroller.
See Pat. Acts.
S. 102.

(a) This section comes from sect. 102 of the P. D. & T. M. Act, 1883. See T. M. Act, 1905, s. 57.

Also T.M.A. 1905, s. 57.

* * * * *

88. An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if it had been contained in this Act; but may be revoked or varied by a subsequent Order (a).

Provision as to Order in Council.
See Pat. Acts.
S. 104 (2).

(a) This section comes from sect. 104 (2) of the P. D. & T. M. Act, 1883.

Offences.

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

Offences.
See Pat. Acts.
Ss. 93, 105.

(2) If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered he shall be liable for every offence, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding five pounds (*b*).

(3) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," "registered," or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design (*c*).

(4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word "registered," or any word or words implying that there is a subsisting copyright in the design, shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds (*d*).

(5) If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds (*d*).

a) This sub-section comes from sect. 93 of the P. D. & T. M. Act, 1883.

b) This sub-section comes from sect. 105 (1) of the P. D. & T. M. Act, 1883. Note that the words in the old Act, which apparently distinguished the case where there had once been a patent, have now disappeared.

c) This sub-section comes from sect. 105 (2) of the P. D. & T. M. Act, 1883.

d) This sub-section is new.

90. (1) The grant of a patent under this Act shall not be deemed to authorise the patentee to use the Royal Arms or to place the Royal Arms on any patented article.

(2) If any person, without the authority of His Majesty, uses in connection with any business, trade, calling, or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal Arms, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds (*a*).

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing such arms to continue to use such trade mark (*b*).

a) This sub-section comes from sect. 106 of the P. D. & T. M. Act, 1883. Note that the authority of His Majesty is now alone mentioned.

b) This sub-section comes from sect. 68 of the T. M. Act, 1905.

Unauthorised
assumption of
Royal Arms.

See Pat.
Acts.

S. 106.

Also T.M.A.
1905, s. 68.

International and Colonial Arrangements.

91.—(1) If His Majesty is pleased to make any arrangement with the government of any foreign state for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any invention, design, or trade mark in that state shall be entitled to a patent for his invention or to registration of his design or trade mark under this Act or the Trade Marks Act, 1905, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign state (a).

Provided that—

- (a) The application is made, in the case of a patent within twelve months, and in the case of a design or trade mark within four months, from the application for protection in the foreign state; and
 - (b) Nothing in this section shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the actual date on which his complete specification is accepted, or his design or trade mark is registered, in this country.
- (2) The patent granted for the invention or the registration of a design or trade mark shall not be invalidated—
- (a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention; or
 - (b) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design; or
 - (c) in the case of a trade mark, by reason only of the use of the trade mark,

in the United Kingdom or the Isle of Man during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act or the Trade Marks Act, 1905: Provided that—

- (a) In the case of patents the application shall be accompanied by a complete specification, which, if it is not accepted within the twelve months from the application for protection in the foreign state, shall with the drawings (if any) be open to public inspection at the expiration of that period; and
- (b) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under the Trade Marks Act, 1905.

(4) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares them to be applicable, and so long only in the case

International and Colonial arrangements.

See Pat. Acts.

Ss. 103, 104.

Also T.M.A. 1905, s. 65.

of each state as the Order in Council continues in force with respect to that state.

(5) Where it is made to appear to His Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for His Majesty, by Order in Council, to apply the provisions of this section to that possession, with such variations or additions, if any, as may be stated in the Order (b).

(a) This section, down to sub-section (1), comes from sect. 103 of the P. D. & T. M. Act, 1883.

(b) This sub-section comes from sect. 101 (1) of the P. D. & T. M. Act, 1883.

* * * * *

Repeal, Savings, and Short Title.

Repeal and savings.

98. (1) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule—

- (a) As respects the enactments mentioned in Part I. of that Schedule, as from the commencement of this Act;
- (b) As respects the enactments mentioned in Part II. of that Schedule, as from the date when rules of the Supreme Court regulating the matters dealt with in those enactments come into operation;
- (c) As respects the enactments mentioned in Part III. of that schedule, as from the date when rules under this Act regulating the matters dealt with in those enactments come into operation;

and the enactments mentioned in Part II. and Part III. of that Schedule shall, until so repealed, have effect as if they formed part of this Act:

Provided that this repeal shall not affect any convention, Order in Council, rule, or table of fees having effect under any enactment so repealed, but any such convention, Order in Council, rule, or table of fees in force at the commencement of this Act shall continue in force, and may be repealed, altered or amended, as if it had been made under this Act.

(2) Except where otherwise expressly provided, this Act shall extend to all patents granted and all designs registered before the commencement of this Act, and to applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed (a).

(a) Note that this Act is made retrospective.

Short title and commencement.

99. This Act may be cited as the Patents and Designs Act, 1907, and shall, save as otherwise expressly provided, come into operation on the first day of January one thousand nine hundred and eight.

SCHEDULES.

FIRST SCHEDULE.

FEEs.

* * * * *

SECOND SCHEDULE.

ENACTMENTS REPEALED.

PART I.

Session and Chapter.	Short Title.	Extent of Repeal.
16 & 17 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	The whole Act, except sub-sections (5), (6), and (7) of section twenty-six, section twenty-nine, sub-sections (2) and (3) of section forty-seven, and section forty-eight.
15 & 16 Vict. c. 63.	The Patents, Designs, and Trade Marks (Amendment) Act, 1855.	The whole Act.
19 & 20 Vict. c. 37.	The Patents Act, 1886	The whole Act.
31 & 32 Vict. c. 50.	The Patents, Designs, and Trade Marks Act, 1888.	The whole Act.
1 Edw. 7, c. 18.	The Patents Act, 1901	The whole Act.
2 Edw. 7, c. 31.	The Patents Act, 1902	The whole Act.
7 Edw. 7, c. 28.	The Patents and Designs (Amendment) Act, 1907.	The whole Act.

PART II.

Session and Chapter.	Short Title.	Extent of Repeal.
16 & 17 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Sub-sections (5), (6), and (7) of section twenty-six, and section twenty-nine.

PART III.

Session and Chapter.	Short Title.	Extent of Repeal.
16 & 17 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Sub-sections (2) and (3) of section forty-seven and section forty-eight.

APPENDIX C.

FORMS AND PRECEDENTS.

Part I.

FORMS FOR USE IN REGISTRATION PROCEEDINGS.

1. GROUNDS OF OPPOSITION (*a*).

- (i.) The alleged trade mark to which the above-mentioned application relates is not a registrable trade mark within the Trade Marks Act, 1905.
- (ii.) The alleged [as in (i.) to -relates] does not consist of or contain any essential particular as defined by § 9 of the Trade Marks Act, 1905.
- (iii.) The alleged [as in (i.) to -relates] is a mere word in ordinary use in the English language descriptive of quality, and the applicant is not entitled to acquire an exclusive right therein by registration.
- (iv.) The alleged [as in (i.) to -relates] is not distinctive of the above-named applicant's goods, but is merely descriptive of the character and quality of the goods to which it is applied.
- (v.) The alleged [as in (i.) to -relates] consists of a name which has throughout the continuance of an expired patent been applied by the applicant as patentee, and by the trade and the public, to articles manufactured in accordance with the said patent. Upon the expiration of the said patent the trade became entitled to manufacture in accordance with the said patent, and to describe articles so manufactured by the name which was generally understood to be descriptive of them, and the applicant is not now entitled to exclude the trade from the use of the said name.

(a) See Form T. M. No. 7, p. 437, *supra*, for the formal parts of the notice of opposition. These forms are intended to be varied and combined as may be necessary, or they may suggest others more suitable to particular cases.

- (vi.) The alleged [as in (i.) to -relates] is identical with the opponent's trade mark No. , advertised in *Trade Marks Journal* No. , and registered with respect to the same goods or description of goods as those for which the applicant is now applying to register the same. If the applicant is allowed to register or use the said alleged trade mark, the trade and the public will be deceived and the opponent injured.
- (vii.) The alleged [as in (i.) to -relates] has such a resemblance to the opponent's [as in (vi.) to -register the same] as to be calculated to deceive. An action is now pending in the Chancery Division of the High Court of Justice in which the opponent is seeking to restrain the applicant from using the said alleged trade mark.
- (viii.) The trade mark [as in (i.) to -relates] is the trade mark of the opponent, and has been used by him in his business for years last past, and an application by the opponent for the registration of the same is now pending. The applicant is a discharged servant of the opponent, in fraud of whose rights the present application is made.
- (ix.) The trade mark [as in (i.) to -relates] was months since adopted by the opponent and used upon his [describe the goods], and the applicant was employed by the opponent to obtain the registration of the same on his behalf, and he is not now entitled to obtain the registration of the same in his own name.
- (x.) The trade mark [as in (i.) to -relates] has for many years past been the exclusive property in [France] of the opponent, and it has for the same period been exclusively used in the United Kingdom upon goods of the opponent imported into this country. [The opponent has not hitherto registered the said trade mark in the United Kingdom from ignorance of the requirements of British law, but he is now about to apply for the registration of the same.]
- (xi.) The alleged [as in (i.) to -relates] contains several material misstatements with respect to the nature and composition of the article to which it is applied by the applicant, and the said alleged trade mark is therefore calculated to deceive, and ought not to be registered.
- (xii.) By articles of partnership, dated , under which the opponent and the applicant carried on business until recently in partnership, it was agreed that on the dissolution of the partnership the goodwill of the partnership business and the trade marks used therein (of which the trade mark [as in (i.) to -relates] was one) should belong solely to the opponent. The said partnership is now dissolved, and the applicant is not entitled to use or register the said trade mark.
- (xiii.) By articles [as in (xii.) to -dissolution of the partnership] neither of the partners should in any business carried on by him use the name or trade marks used by the said

- partnership. The trade mark [as in (i.) to-relates] is one of the trade marks which were used by the said partnership, and since the dissolution of the said partnership the applicant is not entitled to use or register the said trade mark.
- (xiv.) The device of a ["lion"] is in common use in the trade, and the applicant is therefore not entitled to obtain registration of the words ["Lion Brand"] as part of his alleged trade mark No. _____, except and unless he first disclaims any right to the exclusive use of the said words.
- (xv.) Goods of the opponent's manufacture [or, merchandise] of the same description as the goods for which the applicant is now applying to register his alleged trade mark, are constantly ordered and sold as ["Lion"] goods, and if the applicant is allowed to obtain registration of the device of a [lion] as [or as part of] his trade mark, it will cause his goods to be passed off as and for the opponent's goods.
- (xvi.) The alleged [as in (i.) to-relates] has such a resemblance to the opponent's registered trade mark No. _____ advertised in Trade Marks Journal No. _____, as to be calculated to deceive. The class of goods for the whole of which the above-mentioned applicant is now applying to register the said trade mark includes the goods in respect of which the opponent's said trade mark is registered, and the applicant is therefore not entitled to obtain registration of the said alleged trade mark except and unless the goods in respect of which registration is granted to him are so limited and defined as not to include the goods or description of goods for which the opponent's said trade mark is registered as aforesaid.

2. GROUNDS OF COUNTER-STATEMENT (a).

- (i.) The trade mark to which the above-mentioned application relates has been exclusively used for _____ years last past by the applicant, and is a good, valid, and registrable trade mark.
- (ii.) The trade mark [as in (i.) to-relates] consists of [or contains] an essential particular as defined by the Trade Marks Act, 1905, viz., [a distinctive device, mark, or label], and is therefore registrable.
- (iii.) The trade mark [as in (i.) to-relates] consists of a special and distinctive word used by the applicant as a trade mark before the 13th day of August, 1875, and is there-

(a) See Form T. M. No. S. p. 137, *supra*, for the formal parts of the counter-statement.

fore a good and valid trade mark and is registrable as an old mark.

- (iv.) The applicant's trade mark is not a mere word in ordinary use in the English language descriptive of quality, but is a special and distinctive word by which his goods are generally recognized by the trade and the public, and he is entitled to register the same.
- (v.) The applicant's above-mentioned trade mark is not merely descriptive of the character and quality of the goods to which it is applied, but it was first adopted and has since been exclusively used by the applicant for the purpose of distinguishing goods of his manufacture [or merchandise], and it is generally recognized as being distinctive of such goods.
- (vi.) It is not the fact that the applicant's above-mentioned trade mark has for many years past, or at all, been in common use in the trade. In instances the applicant has obtained injunctions to restrain infringements thereof, and if there has been any user by persons not so restrained it has been without his knowledge, or he would have taken proceedings against them.
- (vii.) It is not the fact that the applicant's above-mentioned trade mark is generally understood by the trade or the public to denote a particular quality of goods; on the contrary it is generally understood to denote goods of the applicant's manufacture [or merchandise], and the trade and the public would be deceived and the applicant would be injured if any other manufacturer or trader were to use it.
- (viii.) It is not the fact that the opponent, or the trade, or the public, have used or understood the applicant's above-mentioned trade mark as describing articles made in accordance with any expired patent. On the contrary, the applicant adopted it before the grant to him of the said patent, and it has always been used and understood as distinguishing goods of his make, and not goods of any particular pattern.
- (ix.) The opponent's trade mark No. is not a good or valid trade mark, but was registered by mistake and wrongfully, and the applicant is now applying for the rectification of the register by the removal therefrom of the said mark.
- (x.) Whether the trade mark which the applicant is now applying to register is or is not the property of the opponent in a foreign country, as to which the applicant has no knowledge, the said trade mark has not up to the present time been known in the United Kingdom in connection with [describe the goods], but the same is a new mark adopted for the first time by the applicant.
- (xi.) The statements contained in the above-mentioned trade mark are true, and the said trade mark is not calculated to deceive. If any such statements are exaggerated, such exaggerations are trifling and immaterial and not calculated to deceive.

- (xii.) The articles of partnership mentioned in the notice of opposition provided that the goodwill and trade marks of the partnership business should belong to the opponent only in the event of the partnership being dissolved by effluxion of time. The said partnership was dissolved at an earlier date by common consent, and the provisions of the said articles were varied in such manner that the goodwill and trade marks devolved upon the opponent and the applicant equally.
- (xiii.) The trade mark to which the above-mentioned application relates was used by the applicant in his business concurrently with the opponent before the 13th day of August, 1875, and is an old trade mark, and was not used by any other person in the same trade, and the applicant is therefore entitled to registration notwithstanding the opponent's registration.
- (xiv.) The opponent uses his trade mark No. only by stamping it on his goods. The applicant only uses his by placing it on the wrappers in which the goods are placed; and the concurrent use of the two trade marks in such different ways is not calculated to deceive. The applicant has used his trade mark for years, and is willing to undertake to use it in the future only as he has hitherto used it.
- (xv.) The opponent uses his trade mark No. only on goods exported by him to [the Colonies and the United States]. The applicant only uses his in [the United Kingdom]; and the concurrent user of the two trade marks in such different parts of the world cannot deceive. The applicant is willing [as in (xiv.)].
- (xvi.) The word , which forms part of the above-mentioned trade mark No. , and also of the opponent's registered mark No. , is a mere word of description, and is not an essential particular of the opponent's said registered mark, nor has he any exclusive rights therein by reason of his registration.
-

3. FORM OF STATUTORY DECLARATION IN SUPPORT OF APPLICATION OR OPPOSITION.

Trade Marks Act, 1905.

In the matter of an opposition
No. _____, by _____, to
application by _____.

I _____ of _____, a member of the firm of _____, the above-named applicants [or opposers], do hereby solemnly and sincerely declare as follows:—

- 1.
- 2.
- 3.

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

Signed

Declared at _____ day of _____
this _____ before me .)

4. FORM OF LETTER WRITTEN BY REGISTRAR TO APPLICANT FOR REGISTRATION OF AN OLD MARK.

SIR,
Adverting to your application No. _____ [and to your agent's letter of the _____], I have to say that you should supply a statutory declaration, with exhibit, setting out and verifying the fact that the mark (either in its original form or with additions or alterations not substantially affecting the identity of the same) has been used within the United Kingdom of Great Britain and Ireland by you and your predecessors in business absolutely by itself as a trade mark in respect of [state the goods] continuously since _____ years before 13th August, 1875, and that, save the said mark, there did not appear upon the bottles containing [or as the case may be] the said goods any devices, words, figures, letters, or any other particulars whatsoever. If, however, such particulars did appear, they should be set out in the declaration so that a judgment can be formed whether they are in the nature of trade mark matter.

I am, &c.,

5. FORM OF CASE ON APPEAL TO THE BOARD OF TRADE.

[*Formal parts.*]

Case on appeal to the Board of Trade (a).

1. [*Set out the material facts of the case in numbered paragraphs.*]
- 2.
- 3.
- 4.

The appellants submit that, under the circumstances hereinbefore stated, the decision of the Registrar should be reversed, and the appellants' trade mark No. above mentioned should be admitted to registration [*or as the case may be*] on the following grounds:

1. Because, &c.
2. Because, &c.

Signed

a) To accompany Form TM No. 29, see p. 452.

6. FORM OF REFERENCE TO THE COURT BY THE BOARD OF TRADE OF APPEAL UNDER §§ 12, 59, WITH DIRECTIONS THEREON.

Trade Marks Act, 1905.

In the matter of an application
No. of for the registration of a trade mark under section 12 of the above-mentioned Act,

and

In the matter of a decision of
the Registrar, dated the
day of , 19 ,

and

In the matter of an appeal dated
the day of , 19 ,
to the Board of Trade from
the above decision.

Reference of Appeal to the Court.

Whereas an appeal has been made to the Board of Trade against the decision above referred to. And whereas the Board of Trade think fit to refer the said appeal to the Court, now therefore the Board of Trade by virtue of the provisions of section 59 of the above-mentioned Act of 1905 do hereby refer such appeal to the Court accordingly.

Dated this day of , 19 .

Secretary to the Board of Trade.

Directions on Reference of the above Appeal to the Court.

For the purpose of the above reference, the Board of Trade, pursuant to Rule 125 of the Trade Marks Rules, 1906, hereby direct that the appellants make application by motion to the Chancery Division of the High Court of Justice to hear and determine the said appeal, and that notice of such application be served upon the Registrar of Trade Marks, and upon (a) such other parties, if any, as may be advised, and that upon the hearing and determination of the said appeal the appellants and the Registrar and such other parties, if any, be respectively at liberty to adduce such evidence by affidavit, examination or cross-examination of witnesses, and otherwise, as the Court may see fit to direct or permit.

Dated this day of , 19 .

Secretary to the Board of Trade.

(a) When the Board of Trade considers that specified parties—*e.g.*, the proprietors of an earlier mark which may conflict—ought to be served, the names of such parties are introduced here.

7. FORM OF REQUIREMENT BY THE BOARD OF TRADE THAT A SPECIAL APPLICATION FOR REGISTRATION UNDER § 9 (5) SHALL BE BROUGHT BEFORE THE COURT.

In the matter of the Trade
Marks Act, 1905.

and

In the matter of an application
by , of for
the registration of a trade
mark in Class .

Requisition for Application to the Court.

Whereas the above-named applicants in pursuance of the provisions of sub-s. 5 of § 9 of the Trade Marks Act, 1905, and Rule 35 of the Trade Marks Rules, 1906, have applied for the registration of the word in Class , in respect of , and have, in accordance with Rule 38 of the said Rules, sent to the Registrar in writing a case in duplicate stating at length the grounds upon which they rely in support of their application, and that they desire to be heard by the Board of Trade:

And whereas by Rule 39 of the said Rules it is provided that the Board may require the applicant to apply to the Court and limit a time for that purpose:

Now therefore the Board of Trade by virtue of the power hereinbefore recited do hereby require the above-named applicant to apply by motion to the Chancery Division of the High Court of

Justice within two months from this date to hear and determine the said application, and that notice of proceedings be served upon the Registrar of Trade Marks pursuant to Rule 129 of the said Rules.

Dated this day of , 19 .

Secretary to the Board of Trade.

8. FORM OF ACCEPTANCE BY THE BOARD OF TRADE OF A SPECIAL APPLICATION UNDER § 9 (5).

In the matter of the Trade
Marks Act, 1905,
and

In the matter of an application
No. by , for the
registration of a trade mark
consisting of the word
in Class in respect of
under sub-s. 5 of § 9 of the
above-mentioned Act.

The Board of Trade having considered the above-named application, the case stating at length the grounds upon which the applicants rely and the statutory declarations of , and having heard the applicants by their , and the Registrar, direct that the application be accepted and that the Registrar proceed with the said application.

Dated this day of , 19 .

An Assistant Secretary to the Board of Trade.

9. FORM OF LETTER USUALLY WRITTEN BY THE BOARD OF TRADE TO AN APPLICANT FOR RECTIFICATION OF THE REGISTER.

Solicitor, Board of Trade.

7. WHITEHALL GARDENS,
LONDON, S.W.

, 19 .

DEAR SIR,

Re Trade Mark No. .

Referring to the pending application by motion that the Register of Trade Marks may be rectified by removing therefrom the above-mentioned mark, I beg to inform you that, having had an opportunity of considering the evidence in support of the motion, I do not propose to put the parties to the expense of briefing counsel to appear on behalf of the Registrar, if you will undertake that in the case of each mark no order shall be made in any way affecting

the Register except a simple order for the removal of the mark, or, if any settlement is proposed between the parties, that you will serve me with a copy of the terms proposed, giving me a reasonable opportunity, if so advised, of objecting thereto on behalf of the Registrar before an order is taken. This undertaking will, should you have the carriage, also bind you to supply me with draft minutes whatever order be made and to give me due notice of all appointments before the Registrar to settle the same.

In the event of your agreeing to this course, I shall be glad to receive the undertaking at your early convenience.

I return the copy evidence which you sent me, and for the loan of which I am obliged.

I am, Dear Sir,
Yours truly,

Solicitor, Board of Trade.

10. SUMMONS FOR LEAVE TO REGISTER.

In the High Court of Justice,
Chancery Division.

Mr. Justice

In the matter of an application by *A. B.* for
the registration of a trade mark No. ,

and

[In the matter of the opposition thereto,
No. of *C. D.*,

and]

In the matter of the Trade Marks Act,
1905.

Let *C. D.*, of , in the county of , and the Registrar of Trade Marks, within eight days after service of this summons on them respectively, inclusive of the day of such service, cause appearances to be entered for them respectively to this summons which is issued upon the application of the above-named *A. B.*, of , in the county of , that the appeal of the said applicant *A. B.*, from the decision dated of the Registrar of Trade Marks in the above-mentioned matters may be heard and determined by the Court and that the said decision of the Registrar whereby he refused registration of the applicant's trade mark No. , above-mentioned, may be reversed, and that he may be directed to proceed with the above-mentioned application of the said *A. B.* [notwithstanding the above-mentioned opposition thereto of *C. D.*] or [notwithstanding the registration of *C. D.*'s trade mark No.], or [notwithstanding the registration of *C. D.*'s trade mark No. in the Sheffield Register]. And that the said *C. D.* may be ordered to pay the costs of this application.

Dated the day of 19 .

(Seal)

This summons was taken out by *E. F.*, of , Solicitor for the above-named *A. B.*

The respondents may appear hereto by entering appearance either personally or by Solicitor at the Central Office, Royal Courts of Justice.

Note.—If the defendant does not enter appearance within the time and at the place above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

11. NOTICE OF MOTION FOR LEAVE TO REGISTER.

[Heading as in No. 10.]

Take notice that the Court will be moved before the Hon. Mr. Justice on the day of 19 . or so soon thereafter as counsel can be heard, by [Mr. . of] counsel on behalf of the above-named *A. B.*, that as in No. 10].

Dated the day of , 18 .

(Signed) *E. F.*, of . Solicitor
for the above-named *A. B.*

To the Registrar of Trade Marks, *and, if there
is an opposition, To Mr. C. D.*

12. NOTICE OF MOTION FOR THE RECTIFICATION OF THE REGISTER.

In the High Court of Justice,
Chancery Division.

Mr. Justice .

In the matter of the registered trade mark
No. of *A. B.*,
and

In the matter of the Trade Marks Act,
1905.

Take notice as in No. 11 to behalf of *C. D.*, of , that the Register of Trade Marks kept under the authority of the above-mentioned Act may be rectified [by removing therefrom the above-mentioned trade mark No.], or [by adding to the registration of the above-mentioned trade mark No. a note disclaiming any exclusive right in the above-named *A. B.* to the use of the word], or [by limiting the registration of the above-mentioned trade mark No. to [describe the goods], and not allowing it to remain in respect of all the goods in Class of the said register as to the Court shall seem just. And that the said *A. B.* may be ordered to pay the costs of this application.

[Dated and signed as in No. 11.]

To Mr *A. B.* and the Registrar of Trade
Marks.

Part II.

FORMS FOR USE IN ACTIONS FOR INFRINGEMENT ^(a).

I. WRIT OF SUMMONS WITH INDORSEMENT.

In the High Court of Justice, 19 . B. No. .
 Chancery Division.
 Mr. Justice .

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

GEORGE THE FIFTH, by the Grace of God, &c.

To C. D., of . in the county of .

We command you that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A. B.; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Robert Baron Loreburn, Lord High Chancellor of Great Britain, the . day of . in the year of our Lord one thousand nine hundred and .

Memorandum to be subscribed on the writ.

N.B. This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [or defendants] may appear hereto by entering an appearance [or appearances] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsement to be made on the writ before issue thereof.

The plaintiff's claim is for an injunction to restrain the defendant from [see forms of Injunction in Part III. of this Appendix], and for an account or damages;

or, The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trade mark, and for an injunction to restrain, &c.

And for an order for delivery up on oath or (at the plaintiff's option) destruction of all documents, articles and things in the possession or power of the defendant or under his control which offend against any of the foregoing injunctions.

^(a) See Schedules to Rules of Supreme Court.

This writ was issued by the said plaintiff, who resides at _____ ;
 or. This writ was issued by *E. F.*, of _____, whose address for
 service is _____, solicitor for the said plaintiff, who resides
 at _____ ;
 or. This writ was issued by *G. H.*, of _____, whose address for
 service is _____, agent for *E. F.*, of _____, solicitor
 for the said plaintiff, who resides at _____ *mention the city,
 town, or parish, and also the name of the street and number
 of the house of the plaintiff's residence, if any*].

Indorsement to be made on the writ after service thereof.

This writ was served by me at _____ on the defendant
 on _____ the _____ day of _____ 19 ____ .
 Indorsed the _____ day of _____ 19 ____ .
 (Signed)
 (Address)

2. NOTICE OF MOTION FOR INJUNCTION.

[Heading as in No. 1.]

Take notice that the Court will be moved before the Hon.
 Mr. Justice _____ on _____ the _____ day of
 19 ____, or so soon thereafter as counsel can be heard, by [Mr.
 of _____] counsel for the above-named plaintiff, that an injunction
 may be granted to restrain the defendant, &c., until judgment in this
 action or further order, from [see Part III. of this Appendix] [and
 take also notice that special leave to serve you with this [short]
 notice for the day aforesaid [with the writ of summons] has been
 obtained from the said Mr. Justice _____].

Dated the _____ day of _____ 19 ____ .
 (Signed) _____ *E. F.*, of _____
 Solicitor for the above-named Plaintiff.
 To the Defendant *C. D.*

3. STATEMENT OF CLAIM.

[Heading as in No. 1. inserting above the title of the action -
 "Writ issued the _____ day of _____, 19 ____."

Statement of Claim (a).

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

(a) The above is the form appended to the Rules of Court, 1883, but fuller particulars will usually be required. Forms 3 (i.), 3 (ii.), and 3 (iii.) are therefore suggested.

3. The following are the acts complained of, viz.:—
(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 [see forms of Injunction in Part III. of this Appendix].

The plaintiff also claims an account or damages.

(Signed)

(Delivered)

3. (i.) [Heading as above.]

Statement of Claim.

1. The plaintiff is the registered proprietor of a trade mark [consisting of _____] (a), which was advertised in the Trade Marks Journal of the _____ day of _____, 19____, and is registered for _____ in Class _____.

2. The defendant has infringed the plaintiff's said trade mark in manner following; that is to say [he has _____].

[3. The plaintiff has applied to the defendant to desist from his wrongful acts aforesaid, but he has refused (or neglected) so to do] (b).

4. The defendant has made considerable profits by selling goods not being the plaintiff's goods under the trade mark of which the plaintiff complains [or in manner aforesaid].

5. The plaintiff has sustained considerable damage from the defendant's wrongful acts aforesaid.

The plaintiff claims—

1. An injunction [as above].
2. An order for delivery up to the plaintiff on oath of all [describe goods] which are in the possession or power or under the control of the defendant, and offend against any injunction to be granted herein.
3. Damages or an account of profits.
4. Costs.

(a) The trade mark need not be described unless the nature of the infringement renders it necessary.

(b) Though previous application is not necessary, if it has been made it should be mentioned.

3. (ii.) [*Heading as above.*]

Statement of Claim.

1. [As in 3 (i.), omitting the description of the plaintiff's trade mark.]

2. The said trade mark consists of [*or contains*] the device of a [lion], and the plaintiff's goods bearing such trade mark are extensively known in the [Indian] markets as ["Lion"] goods, and are frequently ordered and invoiced under that name.

3. No other goods of the same kind are or ever have been known in the [Indian] markets as ["Lion"] goods.

4. The defendant is using on goods intended for export to the [Indian] markets a trade mark [*or label, or wrapper*] on which he places the device of a [lion], and such user is calculated to deceive by inducing purchasers to buy the defendant's goods in the belief that they are buying those of the plaintiff.

5. [As in 3 (i.), par. 4.]

6. [As in 3 (i.), par. 5.]

The plaintiff claims [as in 3 (i.). For form of injunction, see that in *Orr-Ewing & Co. v. Johnston & Co.*, Part III., No. 5, *infra.*]

3. (iii.) [*Heading as above.*]

Statement of Claim (a).

1. The plaintiff has for _____ years last past and upwards offered for sale and sold [a preparation for the human hair] of his manufacture under the title of [Robinson's Hair Stimulant], and previously to the defendant commencing his wrongful acts hereinafter stated no other person except the plaintiff offered for sale or sold under that title any similar preparation.

2. The plaintiff offers for sale and sells and always has offered for sale and sold [his said preparation] in bottles of a peculiar and distinctive shape packed in cases which are also of a peculiar and distinctive shape; and previously to the defendant commencing his wrongful acts hereinafter stated no other person except the plaintiff used for the purposes of trade in any [preparation for the human hair] bottles or cases similar in shape to the plaintiff's bottles and cases.

3. The plaintiff has recently ascertained as the fact is that the defendant for the purpose of passing off his goods as and for the plaintiff's goods is offering for sale and selling [a preparation] not of the plaintiff's manufacture under the title of [Robinson's Hair Stimulant], and in bottles similar in shape to the plaintiff's bottles and packed in cases similar in shape to the plaintiff's cases, whereby

(a) This is intended for a case in which no trade mark has been registered.

divers persons have been induced to purchase the defendant's [preparation] as and for the goods of the plaintiff [or and such acts are calculated to induce, &c.]

4. The defendant has made considerable profits by selling his goods as and for the goods of the plaintiff.

5. [As in 3 (i.), par. 5.]

The plaintiff claims---

1. An injunction to restrain the defendant, his servants and agents, from passing or attempting to pass off the defendant's goods as and for the plaintiff's goods, and in particular from offering for sale or selling any [preparation for the human hair] not of the plaintiff's manufacture by means of the use of the title [Robinson's Hair Stimulant], and by means of the use of bottles similar in shape to the plaintiff's bottles, and by means of the use of cases similar in shape to the plaintiff's cases, or by any of such means [or as may be].
2. Delivery up [as in 3 (i.)].
3. An account of profits or damages.
4. Costs.

4. DEFENCE.

[Heading as in No. 1.]

Defence (a).

The defendant says that:—

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.

(Signed)

(Delivered)

(a) The above is the form appended to the Rules of Court, 1883, but a fuller form varying with the nature of the case will generally be required.

5. REPLY.

[Heading as in No. 1.]

Reply.

The plaintiff as to the defence says that:—

- 1.
- 2.

(Signed)

(Delivered)

6. SUMMONS TO STAY PROCEEDINGS BY CONSENT, THE DEFENDANT
SUBMITTING TO AN INJUNCTION.

[Heading as in No. 1.]

Let all parties concerned attend at the chambers of Mr. Justice
at the Royal Courts of Justice on the
day of , 19 , at o'clock in the noon, on the
hearing of an application on the part of the above-named defendant
that the defendant submitting to a perpetual injunction restraining
[see forms of Injunction in Part III. of this Appendix, *infra*] and
submitting to pay the plaintiff £ in respect of [damages and]
his taxed costs of this action, all further proceedings in this action
may be stayed, or that such further or other order may be made as
to the judge shall seem just.

Dated the day of , 19 .

This summons was taken out by G. H. of , Solicitor for the
above-named Defendant.

To the above-named Plaintiff.

Part III.

PRECEDENTS OF INJUNCTIONS, &c.

1. CROFT v. DAY, 7 Beav. 81, 90.

Label on Blacking Bottles Trade Cards Injunction.

INJUNCTION to restrain the defendant, his servants, &c., "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" (a).

2. SEIXO v. PROVEZENDE, L. R. 1 Ch. 192, 194.

Brand on Casks of Wine Injunction.

Injunction to restrain the defendants, &c., "from affixing or causing to be affixed to any casks of wine shipped to their orders the brand or marks 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 shall be so contrived as to represent, or induce the belief, that such wines are Crown Seixo, or the produce of the *Quinta do Seiro*, or otherwise using the word *Seixo* without clearly distinguishing the same from the wine produced by the *Quinta do Seiro*" (b).

(a) Lord Langdale, M. R.

(b) Wood, V. C.; approved by Lords Watson and Macnaghten in *Montgomery v. Thompson*, 1891 A. C. 217, 221, 224.

And see *Thompson v. Beal's Brewery Co.*, 8 P. R. 479; *Grazier v. Aulroy*, 13 P. R. 1; *Punt v. Mason Punt* 11, 1 P. R. 963, and many other cases.

3. *MAGNOLIA METAL CO. v. ATLAS METAL CO.*, 14 P. R. 389.*Magnolia Metal—Injunction.*

Injunction restraining the defendants, &c., “from casting, packing, describing, advertising, offering for sale, selling, or dealing with any anti-friction metal made up in such a way as not to be readily and clearly distinguishable from the ‘Magnolia Metal’ manufactured by the plaintiffs, and from using the word ‘Magnolia’ as descriptive of, or in connection with, any anti-friction metal manufactured by them or either of them, without clearly distinguishing such anti-friction metal from the anti-friction metal of the plaintiffs” (a).

4. *STEPHENS v. PEEL*, 16 L. T. N. S. 145.*Labels on Bottles of Ink—Injunction.*

Injunction restraining the defendant, &c., “from selling, or exposing, or advertising for sale, or procuring to be sold, any ink or writing fluid in bottles bearing thereon such labels as after mentioned, and from using any labels, or stamps, or advertisements so contrived or expressed as by colourable imitation or otherwise to represent or lead to the belief that the ink sold by the defendant is the ink or writing fluid manufactured by the plaintiffs, and sold by them under the name of ‘Stephens’ Blue Black Writing Fluid’” (b).

5. *ORR-EWING & CO. v. JOHNSTON & CO.*, 7 App. Cas. 219, 233.*“Two Elephant” Yarn—Injunction.*

Injunction restraining the defendants, &c., “from affixing or causing to be affixed to any Turkey red yarn not dyed by the plaintiffs the ticket marked ‘B.’ and from using two elephants on any ticket used on Turkey red yarn, without clearly distinguishing such ticket from the plaintiffs’ ticket mentioned in the pleadings, being the exhibit marked ‘A.’ referred to in the depositions, or so as to represent or induce the belief that any of the said yarn was dyed by the plaintiffs” (c).

(a) Collins, J., approved by the Court of Appeal.

(b) Wood, V.-C.

(c) House of Lords. See *Reddaway v.*

Banham, 1896) A. C. 199, 221; and *Magnolia Metal Co v. Atlas Metal Co.*, 14 P. R. 389, 404.

6. READ BROTHERS v. RICHARDSON & Co., 45 L. T. N. S. 54, 60.

*"Dog's Head" Beer for Exportation—Undertaking on Motion—
Injunction—Costs.*

"The plaintiffs by their counsel undertaking to abide by any order this Court may make as to damages in case this Court shall hereafter be of opinion that the defendants have sustained any by reason of this order which the plaintiffs ought to pay, this Court doth order that the defendants, &c., be restrained from using the figure of a dog's head upon any labels, tickets, or wrappers affixed or applied to bottles of beer or stout sold for exportation or exported by the defendants to any of the Australian Colonies or New Zealand, and from selling for exportation or exporting to any of the said colonies any bottles of beer or stout having affixed or applied thereto any such label, ticket, or wrapper, until judgment in this action or further order; and it is ordered that the plaintiffs' costs of this motion be their costs in the action" (a).

7. BROADHURST v. BARLOW, L. J. N. of C., 1872, p. 183.

Stamps on Shirtings Injunction.

Injunction restraining the defendants, &c., "from stamping, impressing, or affixing, or causing to be stamped, impressed, or affixed on or to any Spanish shirtings or pieces of white calico manufactured or sold by them, any mark consisting of words in the Turkish, Armenian, and Greek languages, meaning 'exactly 12 yards,' and placed between a figure or crest and the words 'Spanish Shirtings' enclosed in a scroll in the same manner as those are respectively placed in the plaintiff's trade mark, or in any manner only colourably differing therefrom" (b).

8. WOTHERSPOON v. CURRIE, L. R. 5 H. L. 508, 523.

"Glenfield Starch" Injunction.

Injunction restraining the respondent, &c., "from using the word '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, the respondent, is 'Glenfield Starch,' or starch manufactured by the appellant." (c).

(a) Court of Appeal.

(b) Wickens, V.-C.

(c) House of Lords.

9. FORD *v.* FOSTER, L. R. 7 Ch. 611, 634.*"Eureka" Shirts—Injunction.*

Injunction restraining the defendants, &c., "from applying the mark or title 'Eureka' to any shirts manufactured by them, or to any shirts sold by them, unless manufactured by the plaintiffs, and from selling any shirts already marked with the mark or title 'Eureka,' unless such mark or title has been applied with the sanction of the plaintiffs; and from issuing any boxes or packages on which the mark or title 'Eureka' shall be applied to shirts not of the plaintiffs' manufacture; and from affixing or using any label, or card, or other mark containing the word 'Eureka' to or upon any shirts not of the plaintiffs' manufacture" (a).

10. WEINGARTEN BROTHERS *v.* CHARLES BAYER & Co.,
22 P. R. 341, 351.*"Erect Form" Corsets—Descriptive Words written in Special Type.*

Injunction restraining the defendants, &c., "from selling or offering for sale corsets in boxes bearing the scroll or an imitation of the scroll used by the plaintiffs in connection with their corsets or any corsets designated by show cards or labels bearing such scroll or imitation or otherwise distinguished by such scroll or imitation" (b).

11. REV *v.* LECOUTURIER, 25 P. R. 265 (292); 27 P. R. 268.*"Chartreuse" Liqueur—Passing off—Injunction.*

Injunction restraining the defendants, &c., "from using the word 'Chartreuse' in connection with the sale of liqueurs other than those manufactured by the plaintiffs as the name of or as descriptive of the liqueur, or without clearly distinguishing the liqueur so sold from the liqueur manufactured by the plaintiffs, and from selling or offering for sale in this country any liqueurs or other liquors not so manufactured in such a manner as to represent or lead to the belief that the liqueurs or other liquors manufactured or imported or sold by the defendants are the manufacture of the plaintiffs" (c).

(a) James, L. J.
(b) House of Lords.

(c) Court of Appeal and House of Lords.

12. MURALO Co. v. TAYLOR & Co., 27 P. R. 261.

"Muralo" Distemper—Passing off—Injunction.

Injunction restraining the defendants, &c., "from in any manner passing off or enabling or assisting others to pass off any distemper not of the plaintiff's manufacture as or for the plaintiff's goods, and from selling or offering or exposing or advertising for sale or procuring to be sold any such distemper as aforesaid under the name 'Muralo' or under any other name which, by reason of colourable imitation of the plaintiff's name and trade mark 'Muralo,' or otherwise, is calculated to represent or lead to the belief that such distemper is 'Muralo' distemper or a distemper of the plaintiff's manufacture" (a).

13. APOLLINARIS Co. v. NORRISH, 33 L. T. N. S. 242.

"Apollinaris Water"—Injunction.

Injunction restraining the defendants, &c., "from selling, &c., any mineral or other waters, not being the genuine Apollinaris Water, under the name of 'Apollinaris Water,' or 'London Apollinaris Water,' or under any other name of which the word 'Apollinaris' so forms part as to be calculated to deceive the public" (b).

14. CARUNCHO v. STEPHENSON, 25 SOL. J. 929.

"La Intimidad" Cigars—Injunction.

Injunction restraining the defendant, &c., "from selling or causing or allowing to be sold, and from in any manner representing, or causing or procuring to be represented, any cigars manufactured, sold, or dealt in by the defendant as 'La Intimidad' cigars, or as cigars manufactured, imported, or sold by the plaintiffs or either of them; and also from affixing, or procuring or causing or allowing to be affixed, to any boxes of cigars manufactured, or bought, or procured, or sold, or attempted to be sold by the defendant, or other-

(a) Eady, J.

(b) Bacon, V.-C. And see also forms of injunctions in *Apollinaris Co. v. Edwards*, Seton, 6th ed. 626; *Millington v. Fox*, 3 My. & Cr. 338; and *Pemberton*, 4th ed. 490; *Edelsten v. Pick*, 11 Hare. 78; *Collins Co. v. Walker*, 7 W. R. 222; and Seton, 6th ed. 623; *Harrison v.**Taylor*, 11 Jur. N. S. 408; and *Pemberton*, 4th ed. 490; *Braham v. Bustard*, 1 H. & M. 447; *McAndrew v. Bassett*, 4 De G. J. & S. 380; and *Pemberton*, 4th ed. 490; *Mickle v. Emery*, Seton, 6th ed. 623; *Siegert v. Findlater*, 7 Ch. D. 801, 814; *McLean v. Fleming*, 96 U. S. 245; 13 U. S. Pat. Gaz. 913, 914.

wise using, or employing, or permitting to be used or employed, any labels, wrappers, brands, or marks used by the plaintiffs or either of them, or so contrived or prepared as to represent or lead to the belief that the cigars manufactured or sold by the defendant are cigars manufactured or sold by the plaintiffs or either of them, and from using the words 'La Intimidad' on any cigars, or boxes or wrappers containing cigars, so as to induce the belief that such cigars are manufactured or imported by the plaintiffs or either of them, pending the trial of this action" (a).

15. BEWLAY & Co., LD. v. HUGHES, 15 P. R. 290, 293.

"Flor de Dindigul" Cigars—Injunction.

Restrain defendant, &c., "from using the names 'Flor de Dindigul' or 'Cigarro de Dindigul' as the brand or title of any cigars not being the plaintiffs' cigars, and from supplying cigars, not being the plaintiffs' cigars, in response to orders for 'Flor de Dindigul' cigars; and from using the name 'Dindigul' in connection with the sale of cigars, not being the plaintiffs' cigars, without clearly distinguishing such cigars from the plaintiffs' cigars. This injunction is not to prevent the defendant from describing any cigars sold by him which are, in fact, made of 'Dindigul' tobacco, as being so made" (b).

16. VALENTINE MEAT JUICE Co. v. VALENTINE EXTRACT Co.,
17 P. R. 673, 688.

*Valentine's Extract of Meat—Name of Firm—Passing off—
Injunction.*

"Order that the defendants, the Valentine Extract Company and Herbert Hughes and each of them, their servants and agents, be perpetually restrained from carrying on business as manufacturers or vendors of any preparation of extract of meat or meat juice under any name or title of which the word 'Valentine' or 'Valentine's' forms part, and from selling, or offering, or exposing, or advertising for sale, or procuring to be sold any such preparation as aforesaid, not being of the plaintiffs' manufacture, under any name or description of which the name 'Valentine' or 'Valentine's' or 'Valtine' forms part. And order that the defendant, Charles Richard Valentine, his servants and agents, be perpetually restrained from carrying

(a) Cave, J.

(b) North, J.

on any such business as aforesaid under any such name or title as aforesaid without clearly distinguishing such business from the business of the plaintiffs, and from selling, or offering, or exposing, or advertising for sale, or procuring to be sold, any such preparation as aforesaid, under any such name or description as aforesaid without clearly distinguishing such preparation from the goods of the plaintiffs. And order that the defendants, the Valentine Extract Co., Ltd., Charles Richard Valentine, and Herbert Hughes, and each of them, their servants and agents, be perpetually restrained from in any manner representing or acting so as to be calculated to lead to the belief that the defendant, Charles Richard Valentine, is or ever has been interested in or connected with the business of the plaintiffs, and from passing off, or enabling or assisting others to pass off, any such preparation as aforesaid, not being of the plaintiffs' manufacture, as or for the plaintiffs' goods" (a).

17. WARWICK TYRE CO., LD. v. NEW MOTOR AND GENERAL RUBBER CO., LD., 17 P. R. 161.

"Warwick" Tyres—Injunction.

Injunction restraining the defendants, &c., "from selling or offering for sale motor tyres as 'Warwick' tyres, or using the word 'Warwick' in connection with the sale or offering for sale of motor tyres in such a way as to lead to the belief that the defendants' motor tyres are motor tyres of the plaintiff company" (b).

18. KERFOOT v. R. A. COOPER, LD., 25 P. R. 508.

"Sweet Lips" Cachous—Trade Mark—Passing off—Sale over Counter—Injunction.

Injunction restraining the defendants, &c., "from selling any cachous, not being the plaintiff's cachous, under the name 'Sweet Lips' or 'Sweet Two Lips,' and from selling or supplying any such cachous as or for 'Sweet Lips' or 'Sweet Two Lips' cachous, or in response to orders for 'Sweet Lips' or 'Sweet Two Lips' cachous" (c).

(a) Court of Appeal. This was followed in *International Plasmon, Ltd. v. Plasmonade, Ltd.*, 22 P. R. 543. See also form of injunction in *Rigden v. Jones*, 22

P. R. 417, 430.
(b) *Neville, J.*
(c) *Eve, J.*

19. EDELSTEN *v.* EDELSTEN, 1 De G. J. & S. 185, 189.*"Anchor Brand Wire"*—Prayer of Bill—Injunction—Account—Delivery up.

Prayer of Bill: "That an account may 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 may be ordered to pay to the plaintiff the amount of such gains and profits. That the defendants may be restrained by injunction 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 is the 'Anchor Brand Wire,' or is 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 may 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 hereinbefore 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 may pay all the costs of the suit" (a).

20. HAVANA CIGAR AND TOBACCO FACTORIES, LD. *v.* TIFFIN (1905), LD., 26 P. R. 473; 27 P. R. 602.*"La Corona"* Cigars—Passing off—No Infringement of Trade Marks—Costs—Set-off.

Injunction restraining the defendants, &c., "from selling, or offering, or exposing, or advertising for sale, or procuring to be

(a) Wood, V.-C., made a decree in the terms of the prayer of the bill. See 1 De G. J. & S. 196; Lord Westbury, C., affirmed the decree. As to the account, see also *Foster v. Megevand*, Pemberton, 4th ed. 492; and the full decree in *Ford v. Foster*, Seton, 6th ed. 625. As to order restraining exportation of goods with forged trade marks, see *Henderson*

v. Jorss, Seton, 6th ed. 625. As to order restraining the bringing into the market of imported goods with forged trade marks, see *Upmann v. Elkan*, L. R. 12 Eq. 140; 7 Ch. 130; *Rivero v. Norris*, Seton, 6th ed. 625; *Del Valle v. Mayer*, *ib.*; *Moet v. Pickering*, 6 Ch. D. 770, 771; 8 *ib.* 372.

sold or passing off, or inducing or enabling others to pass off, cigars not of the plaintiffs' manufacture as or for the plaintiffs' 'La Corona' brand of cigars by the use of any words consisting of or containing the word 'Corona' as a brand name. And it is ordered that the defendants do pay to the plaintiffs the sum of 40s. by way of damages. And it is ordered that it be referred to the taxing master to tax the costs of the plaintiffs of this action and of and occasioned by the said appeal, except so far as such costs have been increased by the claim set up by them in respect of infringement of trade mark, and to tax the costs of the defendants of so much of this action and of and occasioned by the said appeal so far as they have been increased by the said claim in respect of infringement, and the taxing master is to set off the said costs of the plaintiffs and of the defendants and certify to which of them the balance after such set off is due. And it is ordered that such balance be paid by the party from whom to the party to whom the same shall be certified to be due. And it is ordered that the defendants do repay to the plaintiffs the costs of this action paid by them pursuant to the said judgment" (a).

21. GUINNESS v. ULLMER, 10 L. T. O. S. 127.

Engraving Blocks for Printing Forged Labels—Injunction.

Injunction restraining the defendant, &c., "from cutting, engraving, casting, or making, and from causing to be cut, engraved, cast, or made, and also from using or permitting to be used, and from selling or otherwise disposing of or parting with any blocks or plates adapted for printing labels or sheets of labels in imitation of the label furnished by Sparkes Moline to and used by the agents appointed by him for sale of the plaintiffs' stout, as in the plaintiffs' bill mentioned, or any of them, or differing only colourably therefrom. And also from selling or otherwise disposing of, and from delivering over or parting with any of such blocks or plates as are now in their possession, custody, or power, to any person other than the plaintiffs or such person as they shall appoint to receive the same" (b).

22. FARINA v. SILVERLOCK, 1 K. & J. 509.

Printing Forged Labels—Injunction.

Injunction restraining the defendant, &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

(a) Court of Appeal (correcting their previous order as drawn up with respect to costs).
 (b) Shadwell, V.-C. of Eng.

cause mentioned, or containing copies of the signature, or address, or flourish, seal, or stamp, or other marks invented and used by the plaintiff as therein mentioned, or any signature, address, flourish, seal, stamp, 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" (a).

23. LEVER v. GOODWIN, 4 P. R. 503.

Order--Action dismissed as to Trade Mark--Injunction as to passing off Goods--Account--Costs.

Order "that this action so far as the same claims protection in respect of the trade mark No. , stand dismissed out of Court. Order that the defendants, Goodwin Bros., their agents and servants, be restrained from selling, offering for sale, or disposing of any soap not being manufactured for or by the plaintiffs in the wrapper or of the form of any one of the three exhibits admitted in this action to have been issued by the defendants, and marked A, B, and C, or in any wrapper or in any form calculated or intended to pass off, or to enable others to pass off, such soap as or for the goods of the plaintiffs. Order that the following account be taken: that is to say, an account of the profits made by the defendants in selling or disposing of soap made by or for the defendants in any wrapper such as that contained in the exhibits marked A, B, and C, and in the form of those exhibits. Order that the defendants Goodwin Bros. do, within fourteen days after the date of the chief clerk's certificate to be made pursuant to this order, pay to the plaintiffs Lever & Co. the amount which upon taking such account shall be certified to be payable by the defendants to the plaintiffs. Order that it be referred to the taxing master to tax the costs of the plaintiffs of this action up to and including the trial, except so far as the same have been incurred by their claim for protection in respect of the trade mark aforesaid. Order that it be referred to the taxing master to tax the costs of the defendants of this action so far as the same have been incurred by the plaintiffs setting up the said claim for protection in respect of the said trade mark, and the costs of the plaintiffs when so taxed are to be set off against the said costs of the defendants when taxed, and the taxing master is to certify to whom, after such set off, the balance is due. Order that the party from whom such balance shall be certified to be due do pay the amount thereof to the other party. And the question of the costs of this action incurred subsequent to the trial are reserved, and either of the parties are to be at liberty to apply as they may be advised" (b).

(a) Wood. V.-C.

(b) Chitty, J., affirmed by C. A.

24. CLEMENT v. MADDICK, 1 Giff. 98, 101.

Name of Newspaper—Injunction.

Injunction restraining the defendants, &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 [therein]; 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 licence or consent of the plaintiff" (a).

25. INGRAM v. STIFF, 5 Jur. N. S. 947.

Name of Newspaper—Injuring Plaintiff's Paper—Injunction.

Injunction restraining the defendant, &c., "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' form part, and from doing or committing any act or default which may tend to lessen or diminish the sale or circulation of the plaintiff's periodical, called 'The London Journal'" (b).

26. WALTER v. HEAD, 25 Sol. J. 757.

Name of Newspaper—Injunction.

Injunction restraining the defendant, &c., "from printing or publishing any newspaper or other publication in the form of a newspaper with or under the name or title of 'The Times,' and from doing any other act in invasion or infringement of the plaintiff's right or interest in the name or title of 'The Times'" (c).

27. PROWETT v. MORTIMER, 2 Jur. N. S. 414.

Name of Newspaper—Soliciting Customers—Injunction.

Injunction restraining the defendant, &c., "from printing, or publishing, or exposing for sale, or procuring to be printed or sold, the newspaper publication called 'The True Britannia,' or any other newspaper or publication, as a continuation of the plaintiff's news-

(a) Stuart, V.-C. And see *Edmonds v. Benbow*, Seton, 6th ed. 629; *Corns v. Griffiths*, Pemberton, 4th ed. 489; *Mack v. Petter*, 41 L. J. Ch. 782.

(b) Wood, V.-C.

(c) Court of Appeal.

paper 'The Britannia,' in the bill mentioned, and from soliciting custom in the name of the plaintiff's trade and business as for "The Britannia' newspaper" (a).

28. HOGG v. KIRBY, 8 Ves. 215, 226.

Publication of a Magazine as a Continuation of Plaintiff's Magazine—Injunction.

Injunction restraining the defendant, &c., "from publishing or exposing for sale any copy or copies of the defendant's said work, and from printing, publishing, or exposing for sale, any other work or publication as or being a continuation of the plaintiff's work, or of the defendant's work which has been so published as such continuation as aforesaid; and from printing all or any part or parts of the plaintiff's said work"; and Ordered "that the injunction shall be continued as to any letters, &c., admitted by the Answer to have been received from correspondents by the defendant, while publishing for the plaintiff" (b).

29. AINSWORTH v. BENTLEY, 14 W. R. 630.

Publication of Magazine in Breach of Contract—Order—Injunction.

Ordered, "That the defendant, &c., be restrained from carrying on, &c., the said 'Temple Bar Magazine,' but the order to be without prejudice to the publication of the said magazine until the hearing of the cause, so as the name of Bentley do not appear either in the title-page, or in any other part of the said publication, or in any advertisement of the said publication, and this order to be without prejudice to the right (if any) of the plaintiff to damages or profits in respect of any publication of the work" (c).

30. PRINCE ALBERT v. STRANGE, 2 De G. & Sm. 652, 717.

Etchings Improperly Obtained and Published—Catalogues Improperly Published—Decree—Delivery up—Injunction.

Decree, by which—"Declared that the plaintiff is entitled to have delivered to him the impressions (by the Answer of defendant J. admitted to be in his possession) of such of the several etchings in

(a) Stuart, V.-C.

(b) Lord Eldon, C.

(c) Wood, V.-C.

the pleadings mentioned as in the catalogue and in the pleadings are stated to have been etched by the plaintiff; that is to say (description by reference to Nos. in the catalogue); Ordered, that J. shall, within four days after the service of the decree, deliver up the impressions above specified on oath, and leave them with the Clerk of Records and Writs at the Record Office. Ordered, that the defendant S. shall, within four days after the service of the decree, deliver to the Clerk of Records and Writs, at the said Office, the twenty-five copies of the catalogue, being the same as are mentioned in the decree in the other suit of even date. Similar directions as to six copies of the catalogue admitted by J. to be in his possession. Ordered, that the Clerk of Records and Writs shall destroy those copies of the catalogue, giving notice to the solicitors of the several parties of the time and place at which he intends to do so. Injunction restraining the defendants, &c., from making or permitting to be made any engraving or copy of such etchings, or any of them, and from publishing the same; and from parting with or disposing of them or any of them, except in obedience to the decree; and from selling or in any manner publishing the catalogue, or any work being or purporting to be a catalogue of the etchings made by the plaintiff. Provision made for costs. Liberty to apply reserved" (a).

31. CHAPPELL *v.* SHEARD, 2 K. & J. 117, 122.

Name and Title-page of Song—Injunction.

Injunction restraining the defendants, &c., "from printing, publishing, selling, exposing for sale, or otherwise disposing of the song 'Minnie Dale,' or any copy or copies thereof, or any other publication containing a colourable imitation of the name, title, or title-page of the plaintiff's said song" (b).

32. MORISON *v.* MOAT, 9 Hare, 241, 267.

Name of Patent Medicine—Secret Recipe—Injunction.

Injunction restraining the defendant, &c., "from selling, or causing or procuring to be sold, under the title or designation of 'Morison's Universal Medicine,' or 'Morison's Vegetable Universal Medicine,' any medicine made or manufactured by the defendant, or by or under his order or direction"; and restraining the defendant, &c., "from making or compounding any medicines according to the secret in, &c., and from in any manner using the secret of compounding the said medicines or any part thereof" (c).

(a) Knight-Bruce, V.-C.

(b) Wood, V.-C. And see *Emperor of Austria v. Day* (V.-C. Stuart, 2 Giff. 628, 631; Court of Appeal, 3 De G. F. & J. 217, 219), for injunction against printing spurious Hungarian notes, and

order for delivery up of plates used in such printing.

(c) Turner, V.-C. And see *Ansell v. Gaubert*, Seton, 6th ed. 624; *Weston v. Hemmons*, 2 V. L. R. Eq. 121.

33. ESTCOURT *v.* ESTCOURT HOP ESSENCE Co., 31 L. T. N. S. 567.

Hop Essence—Secret Recipe—Trade Name—Representation of Succession in Business—Manufacturing Contrary to Agreement—Injunction.

Injunction restraining the defendants C. Estcourt and the Estcourt Hop Essence Co., &c., "from manufacturing, or selling, or advertising for sale, an article called 'Hop Essence,' or any other substance identical with or only colourably differing from the 'Hop Supplement' manufactured and sold by the plaintiffs, and from using or disclosing to any persons the secret of compounding the said 'Hop Supplement'; and also restraining the defendant company from trading under the name of 'The Estcourt Hop Essence Co., Limited,' and from using any designation, either of the vendors or of the substance offered for sale, calculated to lead purchasers into the belief that such substance is the 'Hop Supplement' manufactured by the plaintiffs, or equivalent or substantially equivalent thereto, or that they, such defendants, or any of them, are the successors in business of the plaintiff's firm, or the original firm who manufactured and sold the said article; and also restraining the defendant C. Estcourt from carrying on or being connected with the business of manufacturing or selling any substance intended to be used as a substitute for hops in brewing" (a).

34. FRANKS *v.* WEAVER, 8 L. T. O. S. 510.

Fraudulently using Another's Testimonials—Injunction.

Injunction restraining the defendant, &c., "from making, vending, or offering for sale, or in any manner disposing of any preparation, mixture, compound, or nostrum, having around, or upon, or in connection with the same, 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, &c., containing any testimonial in favour of the plaintiff's medicine or medical preparation in the said bill described as 'Franks' 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' Specific Solution of Copaiba,' or referred to in connection with any preparation, mixture, com-

(a) Malins, V.-C. The injunction was afterwards rescinded, but on grounds independent of the form of it: L. R. 10 Ch. 276.

pound, or nostrum, made, vended, or disposed of by the said defendant, 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, &c., as aforesaid" (a).

35. WALTER *v.* ASHTON, (1902) 2 Ch. 282, 295.

Unauthorised use of name of Newspaper—"The Times" Cycle—Injunction.

Injunction restraining the defendant, &c., until the trial or further order, "from representing that the cycles offered by him for sale are in fact offered for sale by the proprietors of 'The Times' newspaper, or representing that he is carrying on business as a department of, or in connection with, 'The Times' newspaper, or in any way holding out 'The Times' newspaper, or the proprietors thereof, to be the owners of the business" (b).

36. KNOTT *v.* MORGAN, 2 Keen, 213, 219.

Imitating a Rival Line of Omnibuses—Injunction.

Injunction restraining the defendant, &c., "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 Company,' or any other names, words, or devices painted, stamped, printed, or written thereon, in such manner as to form or to be a colourable imitation of the names, words, and devices painted, stamped, printed, or written on the omnibuses of the plaintiff" (c).

37. GLENNY *v.* SMITH, 2 Dr. & Sm. 476.

Trade Name -Injunction.

Injunction restraining the defendant, &c., "from continuing to use, or from exhibiting or using the words 'Thresher and Glenny,' or the name of the plaintiffs' said firm in any form in or about his

(a) Lord Langdale, M. R.

(b) Byrne, J.

(c) Lord Langdale, M. R. The M. R.

altered the form so as not to restrain all use of the words "London Conveyance Company."

said shop in such a way as to deceive the public, or to lead to the belief that his shop is a shop of the plaintiffs, or that the business carried on there is carried on by the plaintiffs, or is in any way connected with the business of the plaintiffs" (a).

38. WOLMERSHAUSEN v. G. S. WOLMERSHAUSEN & Co., LD.,
W. N. 1892, p. 87.

Trade Name—Misleading Advertisement—Injunction.

Injunction restraining the defendant company "from carrying on their business of 'G. S. Wolmershausen & Co., Limited,' without clearly distinguishing such business from the business of the plaintiff, and from publishing advertisements or issuing circulars in their name of 'G. S. Wolmershausen & Co., Limited,' without clearly distinguishing therein their business from the business of the plaintiff, and from otherwise representing in any way that their business is the business or a branch business of the plaintiff" (b).

39. BRINSMEAD v. BRINSMEAD, 13 T. L. R. 3.

Trade Name—Use of Defendant's own Name.

Injunction restraining the defendant company "from using the name of 'Thomas Edward Brinsmead & Sons, Limited,' or the name of 'Brinsmead,' without adding thereto an express statement that the defendant company are distinct from and have no connection with the old firm of 'John Brinsmead & Sons'" (c).

40. J. & J. CASH, LD. v. CASH, 19 P. R. 181, 183, 186.

Trade Name—Cash's Frillings—Use of Defendant's own Name—Injunction.

Injunction restraining the defendant, Joseph Cash, "from selling any frillings or woven names or initials not manufactured by the plaintiffs as 'Cash's frillings' or 'Cash's Woven Names or Initials,' and from carrying on the business of a manufacturer or seller of frillings or woven names or initials under the name of 'Joseph Cash & Co.' while not in partnership with any other person, and

(a) Kindersley, V.-C. And see *Hudson v. Osborne*, 39 L. J. Ch. 79; *Hookham v. Pottage*, L. R. 8 Ch. 92; *James v. James*, Seton, 6th ed. 629; *Montague v. Moore*,

ib.: *Cave v. Myers*, *ib.*; *Fullwood v. Fullwood*, 38 L. T. N. S. 381.

(b) Chitty, J.

(c) Court of Appeal.

from carrying on any such business either in the name of 'Cash' or under any style in which the name 'Cash' appears without taking reasonable precautions to clearly distinguish the business carried on, and the frillings, woven names and initials manufactured or sold by the defendant from the business carried on, and the frillings and woven names and initials manufactured by the plaintiffs, and from carrying on any such business under any name or in any manner so as to mislead or deceive the public into the belief that the business of the defendant or the frillings or woven names or initials manufactured or sold by him are the business of or goods manufactured by the plaintiffs, or that the defendant is carrying on the business formerly carried on at Coventry by Messrs. J. & J. Cash, the vendors to and predecessors in business of the plaintiffs. And it is ordered that the defendant be also restrained from making over his business in frillings or woven names or initials to or acting as managing director of any limited or other company formed to carry on business in frillings or woven names or initials, and having a name which is calculated or likely to mislead or deceive the public into the belief that the business, frillings or woven names or initials of such company are the business, frillings or woven names or initials of the plaintiffs, or that such company is carrying on the business formerly carried on at Coventry by the said Messrs. J. & J. Cash, and from otherwise assisting any such company to so mislead or deceive the public." (Then followed an injunction restraining the defendant from soliciting the customers of the firm of J. & J. Cash (a).)

41. PINET v. MAISON PINET (1), 14 P. R. 933.

Trade Name--Boots and Shoes--Injunction on the assumption that Name was Defendant's also.

Injunction "To restrain the defendants from carrying on their business as manufacturers of boots or shoes under any name or description of which the name of 'Pinet' forms part, without clearly distinguishing the boots or shoes made or sold by the defendants from those made or sold by the plaintiffs" (b).

42. PINET v. MAISON PINET (2), (1898) 1 Ch. 179; 15 P. R. 65.

Trade Name--Boots and Shoes--Injunction where Name fraudulently adopted by the Defendant.

Injunction restraining the defendants "from using the name 'Pinet' or any title or description including that name in connection

(a) Court of Appeal. This was followed in *Joseph Rodgers & Sons, Ltd. v.*

Simpson, 23 P. R. 348.

(b) Court of Appeal.

with the manufacture or sale of boots or shoes, and from doing any other act or thing conferring, or purporting to confer, either directly or indirectly, upon any other person or persons any right to use the said name or other such title or description as aforesaid in such connection as aforesaid, and from selling or offering for sale any boots or shoes not of the plaintiffs' manufacture under the name of 'Pinet's Special Boots and Shoes,' or 'Pinet's Boots and Shoes'" (a).

43. ABEL MORRALL, LD. v. T. HESSIN & Co., 19 P. R. 557, 565.

Trade Name—Colourable Purchase of Business—Injunction.

Injunction restraining the defendant "from carrying on any business as a needle manufacturer under the name or style of 'J. Y. Morrall' and 'W. Mogg & Co.,' or either of them, or under any other name or style so arranged or combined as by colourable imitation or otherwise to be calculated to represent or lead to the belief that the defendant is carrying on the plaintiffs' business. And an injunction to restrain the defendant, his servants, workmen, and agents, from in any manner passing off or enabling or assisting others to pass off the defendant's goods as or for the plaintiffs' goods" (b).

44. M. MELACHRINO & Co. v. R. MELACHRINO & Co., May 29th. 1888.

Name of Firm—"Original"—Injunction.

Injunction restraining the defendants, &c., "from carrying on business as dealers in cigarettes under the name of 'R. Melachrino & Co.,' or under any other name containing the name 'Melachrino' so arranged or contrived as to represent or lead to the belief that the business so carried on is the business carried on by the plaintiffs, or is in any way connected with the business of the plaintiffs, and from using the name 'Melachrino' in any other manner calculated to represent or lead to such belief; and from selling or offering or exposing for sale, or procuring to be sold, any cigarettes not of the manufacture or merchandise of the plaintiffs, with statements that such cigarettes are 'Original Melachrino Cigarettes,' and from in any other manner selling or passing off their cigarettes as or for 'Original Melachrino Cigarettes,' or cigarettes of the manufacture or merchandise of the plaintiffs" (c).

(a) North, J.

(b) Eady, J., and C. A.

(c) Chitty, J.

45. ARMY AND NAVY CO-OPERATIVE SOCIETY, LD. v. ARMY AND NAVY AND CIVIL SERVICE CO-OPERATIVE SOCIETY OF INDIA, LD., 91 L. T. (Journal) 228.

Name of Company—User on Goods—Injunction.

Injunction restraining the defendants "from using on or in connection with any goods sold, exported, or supplied by them, the stamp or name of 'Army and Navy Co-operative Society, Limited,' either with or without the words 'of India,' or any other stamp or name so closely resembling the name of the plaintiff as would be calculated to lead the public in India and elsewhere to suppose that the goods sold, exported, or supplied by the defendants were goods sold, exported, or supplied by the plaintiffs" (a).

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46. HENDRIKS v. MONTAGU, 17 Ch. D. 638.

Name of Company—Registration—User—Advertisement, &c.—Injunction.

Injunction restraining the defendants "from applying to the Registrar of Joint Stock Companies in England for registration under the Companies Acts of any company to be incorporated under the name of 'The Universe Life Assurance Association,' or any other name likely to mislead or deceive the public into the belief that the company being incorporated as aforesaid is the same as 'The Universal Life Assurance Society'; from issuing or publishing advertisements, circulars, or prospectuses representing that a company is to be incorporated pursuant to the Companies Act, 1862, under the name of 'The Universe Life Assurance Association, Limited,' or any such other name as aforesaid; and from carrying on or commencing any business under the name of 'The Universe Life Assurance Association, Limited,' or any such other name as aforesaid" (a).

47. LEE v. HALEY, L. R. 5 Ch. 155.

Name of Company—Injunction against User in certain Locality.

Injunction restraining the defendant, &c., "from continuing to use and from exhibiting or causing the words 'The Pall Mall Guinea Coal Company,' in Pall Mall, or any other name or style so framed as to be a colourable imitation of the name or style in which the plaintiffs' branch business mentioned in the bill is carried on, or so as to deceive the public, or to lead to the belief that the business carried on by the defendant is the same as the business carried on by the plaintiffs under the name or style of 'The Guinea Coal Company,' or is in any way connected therewith" (b).

(a) Court of Appeal.

(b) Malins, V.-C.

48. WHEELER *v.* JOHNSTON, 3 L. R. Ir. 284.*Name of Mineral Springs—Injunction.*

Injunction restraining the defendant, &c., "from using the words 'Cromac Springs' in connection with his trade or business as a manufacturer or seller of mineral waters, so as to represent that his said waters are so manufactured or sold by the plaintiffs at their works in the bill mentioned, called 'The Cromac Springs,' and from using the words 'Cromac Springs' as the name of the defendant's place of business so as to represent as aforesaid" (a).

49. BRAHAM *v.* BEACHIM, 7 Ch. D. 848, 857.*Name of Collieries—Injunction until certain events.*

Injunction restraining the defendants, "unless and until they shall acquire a colliery or coal mine within the parish of Radstock, from trading under or using the name or style of 'The Radstock Colliery Proprietors,' or any other name or style signifying that the defendants, or either of them, are proprietors of any colliery or collieries at Radstock"; and restraining the defendants, "unless and until they shall become authorised to sell or supply any coals raised or gotten from any colliery or coal mine within the parish of Radstock, from using any style or name signifying or implying that the defendants are selling or supplying, or are authorised to sell or supply, any coal raised or gotten from any colliery or coal mine within the parish of Radstock" (b).

50. SCOTT *v.* SCOTT, 16 L. T. N. S. 143.*False Representation of Continuation of Business—Injunction.*

Injunction restraining the defendants, &c., "from allowing or permitting the brass plate 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 'R. & W. Scott,' or to any other persons whatsoever, that they are carrying on business in continuation of, or in succession to, the business carried on by the late firm of 'R. & W. Scott'" (c).

(a) Chatterton, V.-C. of I.

(b) Fry, J.

(c) Wood, V.-C. And see *Hoffman v.**Duncan*, Seton, 6th ed. 693; *Witt v.**Corcoran*, *ib.* 695; *Graveley v. Winchester*.*ib.* 695; *England v. Curling*, 8 Beav. 129.

51. BURROWS v. FOSTER, 1 N. R. 156.

False Representation of Continuation of Business—Soliciting former Customers—Injunction.

Injunction restraining the defendant, &c., "from issuing or sending, and from causing or procuring to be issued or sent, to any person or persons any further copies or copy of the circular or letter bearing date the _____, in the plaintiffs' bill mentioned, or any other circular or letter signifying or importing that the business carried on by him the said defendant is, and from in any manner representing such business to be a continuation of the business formerly carried on by the firms of Foster, Lacy & Co., and Bashall, Lacy & Co., in the plaintiffs' bill mentioned, or by either of such firms, and from in any manner soliciting or inviting any person or persons who, at the date of the indenture of the _____, in the plaintiffs' bill mentioned, was or were a customer or correspondent, customers or correspondents, of the firms of Foster, Lacy & Co., and Bashall, Lacy & Co., or of either of such firms, and from causing or procuring any such person or persons to be solicited or invited to become or be a customer or correspondent or customers or correspondents of, or to employ him the said defendant in the business carried on by him, or to cease from employing or not to employ the said plaintiffs in the business formerly carried on by the said firms of Foster, Lacy & Co., and Bashall, Lacy & Co., or either of them" (a).

52. MASSAM v. THORLEY'S CATTLE FOOD Co., 14 Ch. D. 748, 762.

False Representation of Continuation of Business—Trade Name—Labels—Advertisements—Circulars—Injunction.

Injunction restraining the defendants, &c., "from selling, shipping, or exporting, or causing or procuring or allowing to be sold, shipped, or exported, and from in any manner representing, or causing or procuring to be represented, any goods manufactured by the defendant company as the manufacture or goods of the late Joseph Thorley, or of the plaintiffs, his trustees and successors in business; and also from in any manner representing, or causing or procuring to be represented, or doing anything which shall lead to the belief that the defendant company have been or are carrying on the business of the late Joseph Thorley; and also from affixing, or permitting or causing to be affixed to any goods or articles manufactured, or bought, or procured, or sold, or shipped, or exported by the defendant company, or otherwise using or employing, or permitting to be used or employed, any labels, wrappers, or marks used by the late Joseph Thorley and the plaintiffs, his trustees and suc-

(a) Turner, L. J.

cessors in business, or so contrived and prepared as to represent or lead to the belief that the goods or articles manufactured, or sold, or shipped, or exported by the defendant company, are the goods or manufacture of the late Joseph Thorley or of the plaintiffs; and also from employing, using, or circulating, or causing to be employed, used, or circulated, any circulars, pamphlets, notices, or advertisements of the late Joseph Thorley or of the plaintiffs, or which shall in any manner represent or lead to the belief that the defendant company have been or are carrying on the business of the late Joseph Thorley, or that they are his successors in business" (a).

53. LABOUCHERE v. DAWSON, L. R. 13 Eq. 322, 327.

Soliciting former Customers after Sale of Business—Injunction.

Injunction restraining the defendant, &c., "from applying to any person who was a customer of the firm of B. Dawson & Co. prior to the , privately by letter, personally, or by a traveller, asking such customer to continue to deal with the defendant, or not to deal with the plaintiffs, the Kirkstall Brewery Co., Limited" (b).

54. WHEELER & WILSON MANUFACTURING CO. v. SHAKESPEAR,
39 L. J. Ch. 36, 38, 41.

False Representation of Agency—Injunction.

Injunction restraining the defendant, &c., "from, in manner aforesaid, or in any other manner, calling, or describing, or representing, his said shop or place of business, No. 32, Union Street, Birmingham, or any other shop, warehouse, or place, not belonging to the plaintiffs, as 'The Original Wheeler & Wilson Sewing Machine Dépôt,' or 'Wheeler & Wilson Sewing Machine Dépôt, established in 1860,' or as a place of business of the plaintiffs, or of 'Wheeler & Wilson,' manufacturers of sewing machines; and from in manner aforesaid, or in any other manner, calling, or describing, or representing, himself or his said firm of T. Shakespear & Co., as the agent or agents for the American 'Wheeler & Wilson' sewing machines, in the same manner in which he has been since 1860, or as the agent of the 'Wheeler & Wilson' sewing machines; and from in any other manner

(a) James, L. J.

(b) Lord Romilly, M. R. Repeated by the House of Lords in *Trego v. Hunt*, (1895) App. Cas. 7, 30. See also *Leggott v. Barrett*, 15 Ch. D. 306; and *Selby v. Anchor Tube Co.*, W. N. 1877, p. 191.

As to opening letters containing orders intended for another firm, see *Scheile v. Brakell*, 11 W. R. 796; and Seton, 6th ed. 686, 687; *Witt v. Corcoran*, Seton, 6th ed. 695; *England v. Curling*, 8 Beav. 129.

representing himself as the agent of the plaintiffs, and from permitting the names 'Wheeler and Wilson' to remain over the door of his shop or business premises, at 32, Union Street, Birmingham, or on the brass plate under the window, or on the brass plate on the door jamb, or on any other part of his said shop or place of business, or on any placard in his said shop, or on the door, or in the window thereof; and from causing the names 'Wheeler & Wilson' to be inserted in any railway time-table, or directory, or other book or publication, under the head of, or described as, sewing machine manufacturers, as residing or carrying on business at No. 32, Union Street, Birmingham, or as in any other manner connected with that or any other shop or place of business of the said defendant, and from doing any other act, matter, or thing representing, or whereby the trade or the public may be led to believe that the defendant has any connection whatever in business with the plaintiffs" (a).

55. JAMES v. JAMES, 41 L. J. Ch. 358.

Fraudulent Disuse of Christian Name—Claim to be the "Only Genuine"—Injunction.

Injunction restraining the defendant, &c., "from using the name of 'Robert James' singly, instead of 'Robert Joseph James,' or 'R. J. James'; also from stating or inserting in his advertisement or circular any words or expressions asserting or suggesting that the ointment manufactured and sold by the plaintiffs is spurious and not genuine" (b).

56. LIEBIG'S EXTRACT OF MEAT Co. v. ANDERSON,
55 L. T. N. S. 206, 209.

Claim to be the only Genuine—Injunction.

Injunction restraining the defendant, &c., "from using the wrappers or making the advertisements complained of containing the words 'This is the only genuine' with reference to the Liebig's Extract of Meat sold or offered for sale by the defendant, and from using any other wrapper or making any other advertisement with reference to such extract sold or offered for sale by the defendant, representing that such extract or the defendant's brand of such extract is the only genuine" (c).

(a) James, V.-C.

(b) Lord Romilly, M. R.

(c) Chitty, J.

57. THORLEY'S CATTLE FOOD CO. v. MASSAM, 14 Ch. D. 763, 781.

Trade Libel—Representation that the Plaintiffs' Goods are Spurious—Injunction.

Injunction restraining the defendants, &c., "from advertising, or representing, or suggesting in their advertisements or circulars that they are alone possessed of the secret for compounding the condiment known as 'Thorley's Food for Cattle,' and from representing, or suggesting, or doing anything calculated to represent or suggest, that the cattle food manufactured and sold by the plaintiffs is spurious or not genuine" (a).

58. THOMAS v. WILLIAMS, 14 Ch. D. 864, 875.

Trade Libel—Representation that the Plaintiff's Goods are Spurious—Injunction.

Injunction restraining the defendants, &c., "from issuing or permitting the issue of the circular dated the _____, and from in any manner representing or suggesting that the goods now made or sold by the plaintiff are imitations of the goods made or sold by J. Thomas & Sons, or Edmund Holyoake" (b).

59. ROUTH v. WEBSTER, 10 Beav. 561, 563.

Unauthorised and Injurious Use of a Person's Name—Injunction.

Injunction restraining the defendants, &c., "from printing, publishing, or circulating, any prospectus or other document of, or relating to a certain company called 'The Economic Conveyance Company,' mentioned and referred to in the plaintiff's bill in this cause, with the plaintiff's name thereto, and from in any manner using the name of the plaintiff so as to identify him as a party interested in, or associated with, the said company" (c).

(a) Malins, V.-C., affirmed by C. A.

(b) Fry, J.

(c) Lord Langdale, M. R.

APPENDIX D.

INTERNATIONAL ARRANGEMENTS.

(See *Patents and Designs Act, 1907, § 91, replacing Patents, &c. Acts, 1883—1902, §§ 103, 104.*)



I.

INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

Signed at Paris, March 20th, 1883.

[*Ratifications exchanged at Paris, June 6th, 1884.*]

Official Translation.

His Majesty the King of the Belgians, His Majesty the Emperor of Brazil, His Majesty the King of Spain, the President of the French Republic, the President of the Republic of Guatemala, His Majesty the King of Italy, His Majesty the King of the Netherlands, His Majesty the King of Portugal and the Algarves, the President of the Republic of Salvador, His Majesty the King of Servia, and the Federal Council of the Swiss Confederation,

Being equally animated with the desire to secure by mutual agreement, complete and effectual protection for the industry and commerce of their respective subjects and citizens, and to provide a guarantee for the rights of inventors, and for the loyalty of commercial transactions, have resolved to conclude a convention to that effect, and have named as their plenipotentiaries, that is to say:—

(Here follow the appointments of the plenipotentiaries.)

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:—

ARTICLE I.

The Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, Holland, Portugal, Salvador, Servia, and Switzerland constitute themselves into a union for the protection of industrial property.

APPENDIX D.

ARTICLE II.

The subjects or citizens of each of the contracting states shall, in all the other states of the union, as regards patents, industrial designs or models, trade marks and trade names, enjoy the advantages that their respective laws now grant, or shall hereafter grant, to their own subjects or citizens.

Consequently they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the formalities and conditions imposed on subjects or citizens by the internal legislation of each state.

ARTICLE III.

Subjects or citizens of states not forming part of the union, who are domiciled, or have industrial or commercial establishments in the territory of any of the states of the union, shall be assimilated to the subjects or citizens of the contracting states (a).

(a) New Art. III. substituted for this in 1900. See *post*, p. 574.

ARTICLE IV.

Any person who has duly applied for a patent, industrial design or model, or trade mark in one of the contracting states, shall enjoy, as regards registration in the other states, and reserving the rights of third parties, a right of priority during the periods hereinafter stated.

Consequently, subsequent registration in any of the other states of the union before expiry of these periods shall not be invalidated through any acts accomplished in the interval: either, for instance, by another registration, by publication of the invention, or by the working of it by a third party, by the sale of copies of the design or model, or by use of the trade mark.

The above-mentioned terms of priority shall be six months for patents, and three months for industrial designs and models and trade marks. A month longer is allowed for countries beyond sea (a).

(a) New Art. IV. substituted for this in 1900, and Art. IV. *bis* added. See *post*, p. 574.

ARTICLE V.

(Relates only to patents.)

ARTICLE VI.

Every trade mark duly registered in the country of origin shall be admitted for registration, and protected in the form originally registered, in all the other countries of the union (a).

That country shall be deemed the country of origin where the applicant has his chief seat of business.

If this chief seat of business is not situated in one of the countries of the union, the country to which the applicant belongs shall be deemed the country of origin.

Registration may be refused if the object for which it is solicited is considered contrary to morality or public order.

(a) No effect can be given to this or any other article of the convention by the Courts of the United Kingdom, except so far as it is embodied in sect. 103 of the Patents Act, 1883 (now sect. 91 of the P. & D. Act, 1907): *In re Californian Fig Syrup Co.*, 40 Ch. D. 620. And it seems that, to entitle a foreign mark to protection in the United Kingdom, it must comply with the requirements of the Act in force: *In re Carter Medicine Co.*, (1892) 3 Ch. 472. And similarly in the United States legislation is necessary to enable effect to be given to it. See opinion of the Attorney-General of the United States, 47 U. S. Pat. Gaz. 397; and *Ex parte Zwack & Co.*, 76 U. S. Pat. Gaz. 1855.

ARTICLE VII.

The nature of the goods on which the trade mark is to be used can, in no case, be an obstacle to the registration of the trade mark.

ARTICLE VIII.

A trade name shall be protected in all the countries of the union, without necessity of registration, whether it form part or not of a trade mark.

ARTICLE IX.

All goods illegally bearing a trade mark or trade name may be seized on importation into those states of the union where this mark or name has a right to legal protection.

The seizure shall be effected at the request of either the proper public department or of the interested party, pursuant to the internal legislation of each country (a).

(a) See additions made to this article in 1900, *post*, p. 575.

ARTICLE X.

The provisions of the preceding article shall apply to all goods falsely bearing the name of any locality as indication of the place of origin, when such indication is associated with a trade name of a fictitious character or assumed with a fraudulent intention.

Any manufacturer of, or trader in, such goods, established in the locality falsely designated as the place of origin, shall be deemed an interested party (a).

(a) New Art. X. substituted for this in 1900, and Art. X. *bis* added. See *post*, p. 575.

ARTICLE XI.

The high contracting parties agree to grant temporary protection to patentable inventions, to industrial designs or models, and trade marks, for articles exhibited at official or officially recognised international exhibitions (a).

(a) New Art. XI. substituted for this in 1900. See *post*, p. 575.

ARTICLE XII.

Each of the high contracting parties agrees to establish a special government department for industrial property, and a central office for communication to the public of patents, industrial designs or models, and trade marks.

ARTICLE XIII.

An international office shall be organised under the name of "Bureau International de l'Union pour la Protection de la Propriété Industrielle" (International Office of the Union for the Protection of Industrial Property).

This office, the expense of which shall be defrayed by the Governments of all the contracting states, shall be placed under the high authority of the Central Administration of the Swiss Confederation, and shall work under its supervision. Its functions shall be determined by agreement between the states of the union.

ARTICLE XIV.

The present convention shall be submitted to periodical revisions, with a view to introducing improvements calculated to perfect the system of the union.

To this end conferences shall be successively held in one of the contracting states by delegates of the said states. The next meeting shall take place in 1885 at Rome (a).

(a) New Art. XIV. substituted for this in 1900. See *post*, p. 575.

ARTICLE XV.

It is agreed that the high contracting parties respectively reserve to themselves the right to make separately, as between themselves, special arrangements for the protection of industrial property, in so far as such arrangements do not contravene the provisions of the present convention.

ARTICLE XVI.

States which have not taken part in the present convention shall be permitted to adhere to it at their request.

Such adhesion shall be notified officially through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the others. It shall imply complete accession to all the clauses and admission to all the advantages stipulated by the present convention (a).

(a) New Art. XVI. substituted for this in 1900. See *post*, p. 575.

ARTICLE XVII.

The execution of the reciprocal engagements contained in the present convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the high contracting parties who are bound to procure the application of the same, which they engage to do with as little delay as possible.

ARTICLE XVIII.

The present convention shall come into operation one month after the exchange of ratifications, and shall remain in force for an unlimited

time, till the expiry of one year from the date of its denunciation. This denunciation shall be addressed to the Government commissioned to receive adhesions. It shall only affect the denouncing state, the convention remaining in operation as regards the other contracting parties.

ARTICLE XIX.

The present convention shall be ratified, and the ratifications exchanged in Paris, within one year at the latest.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their seals.

Dated at Paris the 20th March, 1883.

(Signed by the Plenipotentiaries.)

II.

FINAL PROTOCOL.

(Official Translation.)

On proceeding to the signature of the convention concluded this day between the Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia, and Switzerland, for the protection of industrial property, the undersigned plenipotentiaries have agreed as follows:

1. The words "industrial property" are to be understood in their broadest sense; they are not to apply simply to industrial products properly so called, but also to agricultural products (wines, corn, fruits, cattle, &c.), and to mineral products employed in commerce (mineral waters, &c.).

2. (Relates only to patents.)

3. The last paragraph of Article II. does not affect the legislation of each of the contracting states as regards the procedure to be followed before the tribunals, and the competence of those tribunals (a).

(a) See par. 3 *bis* introduced here in 1900, *post*, p. 576.

4. Paragraph 1 of Article VI. is to be understood as meaning that no trade mark shall be excluded from protection in any state of the union, from the fact alone that it does not satisfy, in regard to the signs composing it, the conditions of the legislation of that state; provided that on this point it comply with the legislation of the country of origin, and that it had been properly registered in said country of origin. With this exception, which relates only to the form of the mark, and under reserve of the provisions of the other articles of the convention, the internal legislation of each state remains in force.

To avoid misconstruction, it is agreed that the use of public armorial bearings and decorations may be considered as being contrary to public order in the sense of the last paragraph of Article VI.

5. The organisation of the special department for industrial property mentioned in Article XII. shall comprise, so far as possible, the publication in each state of a periodical official paper.

6. (After providing for the common expenses of the international office, continues:—)

The Swiss Government will superintend the expenses of the international office, advance the necessary funds, and render an annual account, which will be communicated to all the other administrations.

The international office will centralise information of every kind relating to the protection of industrial property, and will bring it together in the form of a general statistical statement which will be distributed to all the administrations. It will interest itself in all matters of common utility to the union, and will edit, with the help of the documents supplied to it by the various administrations, a periodical paper in the French language dealing with questions regarding the object of the union.

The numbers of this paper, as well as all the documents published by the international office, will be circulated among the administrations of the states of the union in the proportion of the number of contributing units as mentioned above. Such further copies as may be desired either by the said administrations, or by societies or private persons, will be paid for separately.

The international office shall at all times hold itself at the service of members of the union, in order to supply them with any special information they may need on questions relating to the international system of industrial property.

The administration of the country in which the next conference is to be held will make preparation for the transactions of that conference, with the assistance of the international office.

The director of the international office will be present at the meetings of the conferences, and will take part in the discussions, but without the privilege of voting.

He will furnish an annual report upon his administration of the office, which shall be communicated to all the members of the union.

The official language of the international office will be French.

7. The present final protocol, which shall be ratified together with the convention concluded this day, shall be considered as forming an integral part of, and shall have the same force, validity, and duration as the said convention.

In witness whereof the undersigned plenipotentiaries have drawn up the present protocol.

(Signed by the Plenipotentiaries.)

III.

ACCESSION OF HER MAJESTY'S GOVERNMENT TO THE CONVENTION.

The undersigned, ambassador extraordinary and plenipotentiary of her Majesty the Queen of the United Kingdom of Great Britain and Ireland to the French Republic, declares that her Britannic Majesty, having had the International Convention for the Protection of Indus-

trial Property, concluded at Paris on the 20th March, 1883, and the protocol relating thereto, signed on the same date, laid before her, and availing herself of the right reserved by Article XVI. of that convention to states not parties to the original convention, accedes, on behalf of the United Kingdom of Great Britain and Ireland, to the said international convention for the protection of industrial property, and to the said protocol, which are to be considered as inserted word for word in the present declaration, and formally engages, as far as regards the President of the French Republic and the other high contracting parties, to co-operate on her part in the execution of the stipulations contained in the convention and protocol aforesaid.

The undersigned makes this declaration on the part of her Britannic Majesty, with the express understanding that power is reserved to her Britannic Majesty to accede to the Convention on behalf of the Isle of Man and the Channel Islands, and any of her Majesty's possessions, on due notice to that effect being given through her Majesty's Government.

In witness whereof the undersigned, duly authorised, has signed the present declaration of accession, and has affixed thereto the seal of his arms.

Done at Paris, on the 17th day of March, 1884.

(L.S.) (Signed) LYONS.

IV.

DECLARATION OF ACCEPTANCE OF ACCESSION.

(Official Translation.)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland having acceded to the International Convention relative to the protection of industrial property, concluded at Paris, March 20th, 1883, together with a protocol dated the same day, by the declaration of accession delivered by her Ambassador Extraordinary and Plenipotentiary to the Government of the French Republic; the text of which declaration is word for word as follows:—

(Here is inserted the text of No. III. in English.)

The President of the French Republic has authorised the undersigned, President of the Council, Minister for Foreign Affairs, to formally accept the said accession, together with the reserves which are contained in it concerning the Isle of Man, the Channel Islands, and all other possessions of her Britannic Majesty, engaging as well in his own name as in that of the other high contracting parties to assist in the accomplishment of the obligations stipulated in the convention and the protocol thereto annexed, which may concern the United Kingdom of Great Britain and Ireland.

In witness whereof the undersigned, duly authorised, has drawn up the present Declaration of Acceptance and has affixed thereto his seal.

Done at Paris, the 2nd April, 1884.

(L.S.) (Signed) JULES FERRY.

V.

ORDER IN COUNCIL.

(*The Patents Act, 1883.*)

At the Court at Windsor, the 26th of June, 1884. Present, the Queen's Most Excellent Majesty in Council.

Whereas by the provisions of the Patents, Designs, and Trade Marks Act, 1883, it is, amongst other things, provided:—

That if her Majesty is pleased to make any arrangement with the Government or Governments of any foreign State or States for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design or trade mark in any such State shall, subject to the conditions further provided and set forth in the said Act, be entitled to a patent for his invention, or to registration of his design or trade mark (as the case may be) under the said Act in priority to other applicants, and such patent or registration shall have the same date as the date of the protection obtained in such foreign State:

And whereas it has pleased her Majesty to make an arrangement of the nature contemplated by the said Act by and in virtue of a declaration signed and sealed by her Majesty's Ambassador at Paris on the 17th of March, 1884, duly conveying the accession of Great Britain to the International Convention and Protocol for the Protection of Industrial Property, signed by representatives of certain powers on the 20th of March, 1883, and duly ratified on the 6th of June, 1884, power being reserved to her Majesty to hereafter accede to the provisions of the said convention and protocol on behalf of the Isle of Man, the Channel Islands, and any of her Majesty's possessions, which declaration of accession was duly accepted by the French Government on behalf of the signatory powers by and in virtue of a declaration dated the 2nd of April, 1884:

Now, therefore, her Majesty, by and with the advice and consent of her Privy Council, and by virtue of the authority committed to her by the said Act, doth declare, and it is hereby declared, that the provisions of the said Act hereinbefore specified shall apply to the following countries, viz.:—Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, Salvador, Servia, Spain, Switzerland, Ecuador,* and Tunis.*

And it is hereby further ordered and declared that this order shall take effect from the 7th of July, 1884.

C. L. PEEL.

* These States had acceded to the Convention and Protocol.

VI.

SUBSEQUENT ORDERS IN COUNCIL. (a).

Orders in Council admitting Foreign Countries.

	Date of Order.	To take effect from—	“London Gazette.”
Santo Domingo.....	Jan. 27th, 1885 ..	Jan. 27th, 1885 ..	1885, p. 418.
Sweden and Norway.....	July 9th, 1885 ..	July 1st, 1885 ..	1885, p. 3173.
Paraguay and Uruguay* ..	Sept. 24th, 1886 ..	Sept. 24th, 1886 ..	1886, p. 4725.
United States of America...	July 12th, 1887 ..	July 12th, 1887 ..	1887, p. 3827.
Netherlands East Indies....	Nov. 17th, 1888 ..	Mar. 17th, 1889 ..	1888, p. 6412.
Mexico	May 28th, 1889 ..	Sept. 28th, 1889 ..	1889, p. 2954.
Curaçao and Surinam.....	May 17th, 1890 ..	Sept. 17th, 1890 ..	1890, p. 2891.
Santo Domingo.....	Oct. 21st, 1890 ..	Feb. 21st, 1891 ..	1890, p. 5661.
Roumania*	Aug. 5th, 1892 ..	Dec. 5th, 1892 ..	1892, p. 4554.
Ecuador*	May 16th, 1893 ..	Sept. 16th, 1893 ..	1893, p. 2899.
Greece*	Oct. 15th, 1894 ..	Feb. 15th, 1895 ..	1894, p. 5918.
Denmark	Nov. 20th, 1894 ..	Mar. 20th, 1895 ..	1894, p. 6879.
Japan	Oct. 7th, 1899 ..	Oct. 7th, 1899 ..	1899, p. 6241.
Honduras*	Sept. 26th, 1901 ..	Sept. 25th, 1901 ..	1901, p. 6383.
Germany	Oct. 9th, 1903 ..	May 1st, 1903 ..	1903, p. 6220.
Cuba.....	Jan. 12th, 1905 ..	Nov. 17th, 1904 ..	1905, p. 321.
Austria and Hungary.....	May 17th, 1909 ..	Jan. 1st, 1909 ..	1909, p. 3863.

Orders in Council admitting British Possessions.

Queensland	Sept. 17th, 1885 ..	Sept. 17th, 1885 ..	1885, p. 4429.
New Zealand.....	Feb. 8th, 1890 ..	June 8th, 1890 ..	1890, p. 727.
Tasmania.....	April 30th, 1894 ..	Aug. 30th, 1894 ..	1894, p. 2578.
Western Australia.....	May 11th, 1895 ..	Sept. 11th, 1895 ..	1895, p. 2848.
Ceylon	Aug. 7th, 1905 ..	June 10th, 1905 ..	1905, p. 5459.
Australia, Commonwealth of	Mar. 26th, 1907 ..	Feb. 1st, 1907 ..	1907, p. 2178.
Trinidad and Tobago	Aug. 12th, 1907 ..	Aug. 12th, 1907 ..	1907, p. 5603.

Orders in Council revoking Orders of Admission.

Ecuador	April 16th, 1886 ..	Dec. 26th, 1886 ..	1886, p. 1894.
Salvador.....	Sept. 24th, 1886 ..	Aug. 17th, 1887 ..	1886, p. 4726.
Santo Domingo.....	May 28th, 1889 ..	May 28th, 1889 ..	1889, p. 3035.
Guatemala	Feb. 2nd, 1895 ..	Nov. 8th, 1895 ..	1895, p. 754.
Queensland	Mar. 26th, 1907 ..	Feb. 1st, 1907 ..	1907, p. 2178.
Western Australia	Mar. 26th, 1907 ..	Feb. 1st, 1907 ..	1907, p. 2178.
Tasmania	Aug. 12th, 1907 ..	Aug. 12th, 1907 ..	1907, p. 5603.

(a) The Orders in Council down to Jan. 1st, 1908, were made under the Patents Acts, 1883-1902—as to foreign countries, under § 103; as to British possessions, under § 104. The Patents Acts, 1883-1902, were repealed by the Patents and Designs Act, 1907, but the existing Orders in Council were saved by § 98 of that Act. Since Jan. 1st, 1908, the Orders are made under § 91 of the Act of 1907.

* These countries, without acceding to the Convention, entered into corresponding arrangements with this country.

VII.

ADDITIONAL ACT MODIFYING THE INDUSTRIAL PROPERTY
CONVENTION OF MARCH 20, 1883.

Signed at Brussels, December 14th, 1900.

Official Translation.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Belgians; the President of the United States of Brazil; His Majesty the King of Denmark; the President of the Dominican Republic; Her Majesty the Queen-Regent of Spain, in the name of His Majesty the King of Spain; the President of the United States of America; the President of the French Republic; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the King of Portugal and the Algarves; His Majesty the King of Servia; His Majesty the King of Sweden and Norway; the Federal Council of the Swiss Confederation; and the Tunisian Government, having deemed it expedient to make certain modifications in, and additions to, the International Convention of the 20th March, 1883, and also as regards the Final Protocol annexed to the said convention, have named as their plenipotentiaries, that is to say:

(Here follow the appointments of the plenipotentiaries.)

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The International Convention of the 20th March, 1883, shall be modified as follows:—

1. Article III. of the convention shall run as follows:—

“Art. III. The subjects or citizens of states which are not parties to the union shall be assimilated to the subjects or citizens of the contracting states, provided that they are domiciled in, or have industrial or commercial establishments, real and effective, in the territory of one of the states of the union.”

2. Article IV. shall run as follows:—

“Art. IV. Any person who shall have duly applied for a patent, industrial design, or model or trade mark in one of the contracting states, shall enjoy, in order to admit of such request being lodged in the other states, during the periods of time mentioned below, a right of priority, the rights of third parties being reserved.

“Consequently, subsequent registration in one of the other states of the union, before the expiration of such periods of time, shall not be invalidated by any acts accomplished in the interval—either, for instance, by another registration, by the publication of the invention,

or by the working of it, by the sale of patterns of the design or model, or by the use of the trade mark.

“The above-mentioned periods of time during which priority is guaranteed shall be twelve months for patents with respect to inventions, and four months for patents for industrial designs or models, as well as for trade or merchandize marks.”

3. There shall be inserted in the convention an Article IV.*bis* in the following terms:—

“Art. IV.*bis*.” (Relates only to patents.)

4. The two following paragraphs shall be added to Article IX. :—

“In states the laws of which do not admit of seizure upon importation, prohibition of importation may take the place of such seizure.

“The authorities shall not be compelled to effect the seizure in the case of goods in transit.”

5. Article X. shall run as follows:—

“Art. X. The stipulations of the preceding Article shall be applicable to every production which may falsely bear as indication of origin the name of a specified locality, when such indication shall be joined to a trade name of a fictitious character or used with intent to defraud.

“Any producer, manufacturer, or trader engaged in the production, manufacture, or trade of such goods, and established either in the locality falsely designated as the place of origin, or in the district where the locality is situated, is to be deemed a party concerned.”

6. There shall be inserted in the convention an Article X.*bis* in the terms following:—

“Art. X.*bis*. Persons resorting to the countries referred to in the convention (Articles II. and III.) shall enjoy in all the states of the union the protection accorded to nationals against dishonest competition.”

7. Article XI. shall run as follows:—

“Art. XI. The high contracting parties shall, in conformity with the legislation of each country, accord temporary protection to inventions susceptible of being patented, and to industrial designs or models, as well as to trade marks or merchandize marks, in respect of products which shall be exhibited at official or officially recognized international exhibitions held in the territory of one of them.”

8. Article XIV. shall run as follows:—

“Art. XIV. The present convention shall be submitted to periodical revisions with a view to the introduction of amendments calculated to improve the system of the union.

“For this purpose, conferences shall be held successively, in one of the contracting states, between the delegates of the said states.”

9. Article XVI. shall run as follows:—

“Art. XVI. States which are not parties to the present convention shall be allowed to accede to it upon their request.

“The accession shall be notified through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the other states.

“It shall entail, as a matter of right, accession to all the clauses, as well as admission to all the advantages stipulated in the present

convention, and shall take effect one month after the dispatch of the notification by the Swiss Government to the other states of the union, unless a subsequent date have been indicated by the acceding state."

ARTICLE II.

The final protocol annexed to the International Convention of the 20th March, 1883, shall be completed by the addition of No. 3bis in the following terms:—

"3bis." (Relates only to patents.)

ARTICLE III.

The present additional Act shall have the same value and duration as the convention of the 20th March, 1883.

It shall be ratified, and the ratifications shall be deposited at the Ministry for Foreign Affairs, Brussels, as soon as possible, and at the latest within a period of eighteen months from the date of signature.

It shall come into force three months after the protocol of deposit shall have been closed.

In witness whereof the respective plenipotentiaries have signed the present additional Act.

Done at Brussels, in a single copy, the 14th December, 1900.

(Signed by the Plenipotentiaries.)

Procès-Verbal.

The contracting parties having unanimously agreed that the exchange of the ratifications of the additional Act to the Convention of the 20th March, 1883, signed at Brussels on the 14th December, 1900, shall be effected by means of the deposit of the respective instruments in the archives of the Belgian Ministry for Foreign Affairs, the present protocol recording the deposit has been, for this purpose, drawn up at the Ministry for Foreign Affairs this 3rd day of May, 1901.

(Then follow the dates of ratification, as follows:—

United States of America, May 3rd, 1901.

Switzerland, August 5th, 1901.

Denmark, October 10th, 1901.

Portugal, November 5th, 1901.

United Kingdom, December 6th, 1901.

Belgium, December 10th, 1901.

Italy, December 12th, 1901.

Japan, April 21st, 1902.

France, May 23rd, 1902.

Tunis, May 23rd, 1902.

Sweden, June 5th, 1902.

Norway, June 5th, 1902.

Netherlands, June 10th, 1902.)

In conformity with Article 3 of the additional Act of the 14th December, 1900, the present protocol has been closed on this date.

The Belgian Minister for Foreign Affairs,

(Signed) P. DE FAVEREAU.

Brussels, June 14, 1902.

It not having been possible to deposit the ratifications of the President of the United States of Brazil, the President of the Dominican Republic, His Majesty the King of Spain, and His Majesty the King of Servia, within the stipulated period, the Governments of Belgium, Denmark, the United States of America, France, Great Britain, Italy, Japan, Norway, the Netherlands, Portugal, Sweden, Switzerland, and Tunis have unanimously agreed that the additional Act of the 14th December, 1900, shall, from the 14th September, 1902, take effect as regards themselves, and also as regards those of the other four signatory States whose ratifications may in the interval have been deposited.

Certified copy :

The Secretary-General of
the Belgian Ministry for Foreign Affairs,
(Signed) BARON LAMBERMONT.

APPENDIX E.

THE TRADE MARKS REGISTRATION ACTS, 1875—1877, WITH THE ORDERS IN COUNCIL THEREUNDER, AND THE COTTON MARKS RULES.

[*All repealed.*]

THE TRADE MARKS REGISTRATION ACT, 1875.

38 & 39 VICT. c. 91 (a).

An Act to establish a Register of Trade Marks.

[13th August, 1875.]

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, as follows:—

Registration
of trade
marks.

1. A register of trade marks as defined by this Act, and of the proprietors thereof, shall be established under the superintendence of the Commissioners of Patents, and from and after the first day of July one thousand eight hundred and seventy-six a person shall not be entitled to institute any proceeding to prevent the infringement of any trade mark as defined by this Act until and unless such trade mark is registered in pursuance of this Act.

Character-
istics of
registered
trade mark.

2 A trade mark must be registered as belonging to particular goods, or classes of goods; and when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill; but subject as aforesaid, registration of a trade mark shall be deemed to be equivalent to public use of such mark.

Title of first
proprietor of
a trade mark.

3. The registration of a person as first proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of such trade mark, and shall, after the expiration of five years from the date of such registration, be conclusive evidence of his right to the exclusive use of such trade mark, subject to the provisions of this Act as to its connection with the goodwill of a business.

(a) It is frequently necessary to refer to these Acts, though repealed, and they are consequently printed here, for facility of reference.

4. Every proprietor registered in respect to a trade mark subsequently to the first registered proprietor shall, as respects his title to that trade mark, stand in the same position as if his title were a continuation of the title of the first registered proprietor.

Title of proprietor claiming by transmitted proprietorship.

5. If the name of any person who is not for the time being entitled to the exclusive use of a trade mark in accordance with this Act, or otherwise in accordance with law, is entered on the register of trade marks as a proprietor of such trade mark, or if the registrar refuses to enter on the register as proprietor of a trade mark the name of any person who is for the time being entitled to the exclusive use of such trade mark in accordance with this Act, or otherwise in accordance with law, or if any mark is registered as a trade mark which is not authorised to be so registered under this Act, any person aggrieved may apply in the prescribed manner for an order of the Court that the register may be rectified: and the Court may either refuse such application, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may award damages to the party aggrieved.

Rectification of register.

Where each of several persons claims to be registered as proprietor of the same trade mark, the registrar may refuse to comply with the claims of any of such persons until their rights have been determined by the Court, and the registrar may himself submit or require the claimants to submit in the prescribed manner their rights to the Court.

The Court may, in any proceeding under this section, decide any question as to whether a mark is or is not such a trade mark as is authorised to be registered under this Act, also any question relating to the right of any person who is party to such proceeding to have his name entered on the register of trade marks, or to have the name of some other person removed from such register, also any other question that it may be necessary or expedient to decide for the rectification of the register.

The Court may direct an issue to be tried for the decision of any question of fact which may require to be decided for the purposes of this section.

Whenever any order has been made rectifying the register the Court shall by its order direct that due notice of such rectification be given to the registrar.

6. The registrar shall not, without the special leave of the Court, to be given in the prescribed manner, register in respect of the same goods or classes of goods a trade mark identical with one which is already registered with respect to such goods or classes of goods, and the registrar shall not register with respect to the same goods or classes of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or classes of goods as to be calculated to deceive.

Restrictions on registry of trade marks.

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 not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a court of equity; or any scandalous designs.

7. Subject as aforesaid, a register office shall be established from and after such time (not being later than the first day of January one thousand eight hundred and seventy-six), in such manner, and with

Establishment of registry and general rules.

such officers, and at such salaries, to be paid out of moneys provided by Parliament, as the Lord Chancellor may, with the consent of the Treasury, direct; and the Lord Chancellor may, from time to time, with the assent of the Treasury as to fees, make, and when made, alter, annul, or vary, such general rules as to the registry of trade marks, and as to notices to be given by advertisement before the registration of trade marks, and as to the classification of goods for the purposes of this Act, and as to the registration of first and subsequent proprietors of trade marks, and as to the fees to be charged for registration, and also for the continuance of a trade mark on the register or otherwise, and as to the removal from the register of any trade mark, as to notices, and as to the persons entitled to inspect the register, and as to any proceedings to be taken to obtain the judgment or leave of the Court in any matter in which the judgment or leave of the Court is required to be obtained under this Act, and generally for the purpose of carrying into effect this Act, as he may deem expedient.

Any rules made in pursuance of this section shall be laid before both Houses of Parliament if Parliament be then sitting, or if not then sitting, then within ten days from the then next assembling of Parliament, and shall be of the same validity as if they had been enacted by Parliament; provided that if either House of Parliament resolve, within one month after such rules have been laid before such House, that any of such rules ought not to continue in force, any rule in respect of which such resolution has been passed shall, after the date of such resolution, cease to be of any force, without prejudice, nevertheless, to the making of any other rule in its place, or to anything done in pursuance of any such rules before the date of such resolution.

Certificate of registrar to be evidence.

8. The certificate of the registrar 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 evidence of such entry having been made, and of the contents thereof, and of such matters and things having been done or left undone.

Provision as to Cutlers' Company and Sheffield corporate marks.

9. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the County of York (in this Act called "the Cutlers' Company"), and the marks or devices (in this Act called "Sheffield corporate marks") assigned or to be assigned by the master, wardens, searchers, and assistants of that company, be it enacted as follows:—

- (1.) Within the prescribed time and in the prescribed manner the Cutlers' Company shall at their own expense deliver to the registrar under this Act copies of all Sheffield corporate marks in force at the time of such delivery:
- (2.) When any person, after the passing of this Act, applies to the said master, wardens, searchers, and assistants to assign to him any mark or device, notice of such application, with a copy of such mark or device, shall, within the prescribed time and in the prescribed manner, be delivered to the registrar under this Act; and such mark or device shall not be assigned until after the expiration of the prescribed period from the giving of such notice. In like manner, when any person applies for the registration under this Act of a trade

mark as belonging to any goods or class of goods specified in § 2 of the Cutlers' Company's Act of 1860, notice of such application, with a copy of such trade mark, shall, within the prescribed time and in the prescribed manner, be delivered to the Cutlers' Company; and such trade mark shall not be registered until after the expiration of the prescribed period from the giving of the last-mentioned notice:

- (3.) Upon the assigning of any such mark or device, or the registration of any such trade mark as aforesaid, notice of the assignment or registration shall, within the prescribed time and in the prescribed manner, be given to the registrar under this Act, or to the Cutlers' Company, as the case may be:
- (4.) The registrar under this Act, without the special leave of the Court, to be given only in cases where the applicant proves his right, shall not in respect of any goods or classes of goods with respect to which a Sheffield corporate mark shall have been assigned and actually used, and of which mark a copy or description or notice of the assigning thereof shall have been delivered or given to the registrar as aforesaid, register a trade mark identical with such Sheffield corporate mark, or so nearly resembling the same as to be calculated to deceive:
- (5.) The master, wardens, searchers, and assistants of the Cutlers' Company shall not assign to any person a mark or device identical with any trade mark registered under this Act, and notice of the registration whereof shall have been given to the Cutlers' Company as aforesaid, or so nearly resembling the same as to be calculated to deceive:
- (6.) Any person to whom a Sheffield corporate mark legally belongs shall be entitled to have the same mark registered also as a trade mark under this Act, in respect of any particular goods or classes of goods, in the same manner and upon the same terms and conditions in and upon which he might have registered the same if it were not a Sheffield corporate mark:
- (7.) Nothing in this Act shall prejudice or affect the rights and privileges of the Cutlers' Company, nor, save as is otherwise in this Act expressly provided, shall any of the provisions of this Act apply to or in the case of any Sheffield corporate mark.

10. For the purposes of this Act:

Definitions.

A trade mark consists of one or more of the following essential particulars; that is to say:

A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

A written signature or copy of a written signature of an individual or firm; or

A distinctive device, mark, heading, label, or ticket;

and there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures; also

Any special and distinctive word or words or combination of figures

or letters used as a trade mark before the passing of this Act may be registered as such under this Act.

“Prescribed” means prescribed by general rules made in pursuance of this Act; and

“Court” means any of her Majesty’s superior courts of law or equity at Westminster, or any court to which the jurisdiction of such courts may be transferred, or any one or more of such courts which may be declared to be the court for the purposes of this Act by such general rules as aforesaid; but the provisions of this Act conferring a special jurisdiction on the court as above defined shall not, excepting so far as such jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in causes, actions, suits, or proceedings relating to trade marks; and if the register requires to be rectified in consequence of any proceedings in any such court in Scotland or Ireland, due notice of such requirements shall be given to the registrar, and he shall rectify the register accordingly.

Short title
of Act.

11. This Act may be cited for all purposes as the Trade Marks Registration Act, 1875.

THE TRADE MARKS REGISTRATION AMENDMENT ACT, 1876.

39 & 40 VICT. c. 33.

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

Whereas by the Trade Marks Registration Act, 1875, in this Act referred to as the principal Act, it is provided that from and after the first day of July one thousand eight hundred and seventy-six, a person shall not be entitled to prevent the infringement of any trade mark as defined by the principal Act until and unless such trade mark is registered in pursuance of that Act:

And whereas by reason of the number of trade marks, and especially by reason of the difficulties attending the registration of trade marks in relation to textile fabrics, it has been found impossible to complete the registration of existing trade marks within the time specified by the said section; and it is therefore expedient to prolong the time for the completion of such registration as aforesaid, and otherwise to amend the principal Act:

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:

Amendment
of sect. 1 of

1. There shall be repealed so much of § 1 of the principal Act as provides that from and after the first day of July one thousand eight

hundred and seventy-six, a person shall not be entitled to institute any proceeding to prevent the infringement of any trade mark as defined by that Act until and unless such trade mark is registered in pursuance of that Act; and in place thereof be it enacted that—

the principal Act.

From and after the first day of July one thousand eight hundred and seventy-seven, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade mark as defined by the principal Act, until and unless such trade mark is registered in pursuance of that Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade mark before the passing of the principal Act, registration thereof as a trade mark under the principal Act shall have been refused as hereinafter is mentioned.

2. When an application by any person to register as a trade mark a device, mark, name, word, combination of words, or other matter or thing proposed for registration as a trade mark, which has been in use as a trade mark before the passing of the recited Act, has been refused, it shall be the duty of the registrar, on request, and on payment of the prescribed fee, to give to the applicant a certificate of such refusal, and a certificate so granted shall be conclusive evidence of such refusal.

Saving of marks and devices not capable of being registered under Act.

3. This Act may be cited for all purposes as the Trade Marks Registration Amendment Act, 1876.

Short title.

THE TRADE MARKS REGISTRATION EXTENSION ACT, 1877.

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.]

Whereas by § 1 of the Trade Marks Registration Amendment Act, 1876, it is provided that from and after the first day of July one thousand eight hundred and seventy-seven, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade mark as defined by the Trade Marks Registration Act, 1875 (referred to in such Amendment Act and in this Act as the principal Act), until and unless such trade mark is registered in pursuance of the principal Act, or until and unless, with respect to any device, mark, name, combination of words, or other matter or thing in use as a trade mark before the passing of the principal Act, registration thereof as a trade mark under the principal Act shall have been refused, as is in the said Act thereafter mentioned:

39 & 40 Vict. c. 33.

38 & 39 Vict. c. 91.

And whereas by reason of the difficulties attending the registration of trade marks used in the textile industries it has been found impossible to complete the registration of such trade marks within the time specified by the said section, and it is therefore expedient to prolong such time as aforesaid:

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:

Extension of time for registration of trade marks used in textile industries.

1. In so far as relates to the registration of trade marks used in the textile industries, but not further or otherwise, § 1 of the Trade Marks Registration Amendment Act, 1876, shall be construed as if for the words "from and after the first day of July one thousand eight hundred and seventy-seven" there were substituted the words "from and after the first day of January one thousand eight hundred and seventy-eight, or such further time as her Majesty may by Order in Council determine."

Definition of "trade marks used in the textile industries."

2. The expression in this Act "Trade marks used in the textile industries" means the trade marks relating to goods comprised in Classes 23 to 35, both inclusive, of the First Schedule to the Rules under the Trade Marks Registration Acts, 1875, 1876, dated September, 1876.

Short title of Act.

3. This Act may be cited for all purposes as the Trade Marks Registration Extension Act, 1877; and this Act and the Trade Marks Registration Amendment Act, 1876, and the Trade Marks Registration Act, 1875, may be cited together as the Trade Marks Registration Acts, 1875—1877.

ORDERS IN COUNCIL

EXTENDING THE TIME FOR REGISTRATION.

Dec. 12th, 1877,	extension till	June 30th, 1878	(a).
June 29th, 1878,	"	Dec. 31st, 1878	(a).
Nov. 27th, 1878,	"	May 31st, 1879	(b).
May 17th, 1879,	"	July 31st, 1879	(b).

- (a) These orders related only to trade marks used in the textile industries.
 (b) These orders related only to trade marks used for cotton piece goods.

RULES OF AUGUST, 1876, WITH RESPECT TO
COTTON MARKS.*

Cotton Goods.

57. For the purpose of facilitating the granting of trade marks in respect of cotton goods in Classes 23, 24 and 25, there shall be established by the Commissioners of Patents (a), and subject to their control, an office at Manchester (b) for the exhibition of all devices, marks, headings, labels, tickets, letters, words, or figures, or combinations of letters, words, or figures used in the cotton trade, and in these Rules included under the expression "cotton marks" (c).

Establishment of office for exhibition of cotton trade marks at Manchester.

(a) Previous to the coming into operation of the Patents Act, 1883, on January 1st, 1884, the registration of trade marks was under the control of the Commissioners of Patents, now no longer in existence.

(b) This was opened and is still maintained at No. 48, Royal Exchange, Manchester. See T. M. A. 1905, § 64, and Instructions, par. 19.

(c) All cotton marks are treated as exceptional, and advertised and registered by deposit. See *In re Robinson*, 29 W. R. 31.

58 (a). Every person who at the date of the passing of the Act used any cotton mark shall, if resident in the United Kingdom, on or before the first day of January one thousand eight hundred and seventy-seven, and if resident elsewhere, on or before the first day of March, one thousand eight hundred and seventy-seven, send to the Manchester office three representations of such cotton mark, in such form and with such a description as may be from time to time required by the Commissioners of Patents.

Representations of cotton marks to be sent by owners resident in the United Kingdom on or before Jan. 1, 1877; by owners resident abroad on or before Mar. 1, 1877.

(a) This Rule was made on Dec. 1st, 1876, in substitution for the previous Rule 58, by which representations of old cotton marks were to be sent in at Manchester on or before Dec. 1st, 1876.

58a (a). Every person who at the date of the passing of the Trade Marks Registration Act, 1875, used any "combination stamp" (b) for cotton piece goods, shall on or before the first day of February, one thousand eight hundred and seventy-nine, send to the Manchester Branch of the Trade Marks Registry Office four

Extended time for sending representations of combination stamps for cotton piece goods.

* These Rules, though repealed, are given here in order that the position of cotton marks dealt with by the late Manchester Committee of Experts may be comprehended. Where it is not otherwise stated, the Rules were included in the set of Rules issued in August, 1876. Various additions were made from time to time, and in March, 1883, after the

Committee of Experts had completed their labours, an entirely new set was substituted (see p. 589, *infra*). Those Rules were, in their turn, repealed, and the Rules now in force place cotton marks on the same footing as other trade marks, and this would seem to be the case even with B list marks, subject, however, to the provisions of sect. 64 of T. M. A. 1905.

representations of such "combination stamp," in such form and with such a description as may be from time to time required by the Commissioners of Patents.

(a) This Rule was made on Dec. 28th, 1878.

(b) Combination stamps are combinations of several different trade marks which dealers in cotton goods habitually use on such goods, treating the combination as equivalent to a single trade mark. See *Robinson v. Finlay*, 9 Ch. D. 487, for an example of such a combination.

Committee of experts to be appointed, and to divide cotton marks into two classes.

59. A committee (a) of persons versed in the usages of the cotton trade shall be appointed by the Commissioners of Patents, consisting of such number of persons as may from time to time be determined by them; and it shall be the duty of such committee, on or before a time to be named by the Commissioners of Patents, to divide the cotton marks, representations of which have been so sent in to the Manchester office, into two classes, the first class consisting of such of the said cotton marks as are, in the opinion of the committee, trade marks within the meaning of the Act, and the second class consisting of such of the said cotton marks as are not, in the opinion of the committee, trade marks within the meaning of the Act (b).

(a) A list of the Committee of Experts appointed under this Rule will be found in the Instructions issued during the existence of the committee.

(b) The committee were instructed by the Commissioners of Patents in a letter, dated April 4th, 1877, to act on the following principles in dividing the cotton marks into two classes, viz.: (i) To decide only from the evidence before them whether, in their opinion, a mark belonged to the first or second class of cotton marks; (ii) in case of further information being required, the keeper of the Manchester office was authorised to obtain such information for the use of the committee; (iii) in case of a difference of opinion among the committee as to the nature of marks applied for, their decision should be given according to the opinion of the majority, the chairman presiding at each meeting having a casting vote; (iv) single letters were not trade marks within the meaning of the Act; (v) in all cases where more than three persons applied for registration of the same mark for the same description of goods, such mark must be considered as a trade mark not within the meaning of the Act, and must consequently be placed in the second class. By supplementary directions, the committee were instructed that Rule (v) extended to marks so similar, or so nearly resembling each other, as to be substantially the same marks, or calculated to deceive, and was not to be confined to identical marks. And they were also instructed that, in dealing with individual cases, they should bring to bear upon them the knowledge which the members of the committee might have of the state of things in the trade, and to decide with reference to that knowledge, and not merely upon such evidence as might be formally brought before them in the individual cases. Also that borders of marks should not be treated as parts of the marks. See *In re Brook*, 26 W. R. 791.

Acting on the principles thus laid down, the committee divided the marks submitted to them into two classes, known as the A list and the B list, of which the former contained registrable, and the latter non-registrable, cotton marks.

By Rule 62, *infra*, the marks placed in the B list were not to be registered except in pursuance of an order of the Court; and in *In re Orr-Ewing & Co.*, 8 Ch. D. 794, the question was raised how far the decision of the committee was a binding decision. Hall, V.-C., decided that the marks there in question, which had been placed in the B list, were good and valid trade marks, and that they ought to be registered; but the Court of Appeal reversed his decision, holding that the decision of the committee should not be interfered with except under special circumstances. James, L. J., saying that the Court should not interfere, unless satisfied that the committee had proceeded upon some wrong principle or in some improper manner. When, however, the case was brought before the House of Lords (4 App. Cas. 479), the decision of Hall, V.-C., was restored, with the modification that only the

essential particulars of the marks were admitted to registration, and the Lord Chancellor (Lord Cairns) said that "the Rules appear to provide a rough but useful way of separating, by means of the technical knowledge and judgment of the committee, the cotton trade marks into two classes. The first class is to consist of those marks which the committee is of opinion are trade marks within the Act; and proprietors in this class are to have the benefit, arising from this opinion, of being able at once to apply to be registered in respect of those marks. But in doing this they must satisfy the registrar that they are the proprietors, and comply with the conditions of registration as any other applicants would do. With regard to the second class, there is no decision pronounced against them, but the proprietors cannot apply for registration as a matter of course. They must come to the Court, and it must be for the Court to say whether the registrar shall proceed on their application to register, or not. In deciding this the Court will have before it the circumstance that the opinion of the committee was adverse to the claim of a trade mark; but this would be an opinion only, and not a decision arrived at after hearing both sides, or rendered in any judicial proceeding": *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 483; and see *per* Lords O'Hagan and Blackburn. See also *Orr-Ewing & Co. v. Johnston & Co.*, 13 Ch. D. 434; 7 App. Cas. 219; and the cases noted under Rule 62, *infra*.

The function of the committee was solely to decide on the question of registrability or non-registrability, and where they had assumed to decide a question of title, it was held by Jessel, M. R., that the registrar must proceed with the application, leaving it to the owners of other marks to oppose the registration: *Ex parte Ede Brothers & Co.*, 28 W. R. 436.

60. The said committee shall form a list of the cotton marks sent to the Manchester office in each of the aforesaid classes, and shall transmit such lists (a) to the Commissioners of Patents, accompanied by two representations of each of the marks specified in the second class in such list. Committee to form list of marks sent in to Manchester office.

The third representation of each of the marks in the second class in such list shall be retained for reference in the Manchester office.

(a) *I.e.*, the A list and the B list.

61. The Commissioners of Patents may from time to time add to the aforesaid list any cotton marks as they may think just, and such addition shall be deemed to be part of the original list. Marks may be added to list.

62. Any proprietor of a cotton mark not specified in the second class in such list may apply to be registered as proprietor of such cotton mark in manner and subject to the conditions in which he may apply to be registered as proprietor of any other trade mark (a), but it shall not be lawful for the registrar to register (b) any person as proprietor of any cotton mark in the second class of the aforesaid list except in pursuance of an order of the Court (c). Any person claiming to be the proprietor of a cotton mark in Class 1 may apply to be registered.

(a) After being passed by the committee, the marks in the A list had to be advertised, so that an opportunity for opposition might be afforded. In *In re Robinson*, 29 W. R. 31, an A list cotton mark was opposed, but without success.

(b) But he might grant a certificate of refusal to register, thus preserving any previous rights.

(c) For an order of the Court to be obtained for the registration of a B list mark, such a case had to be made out as, in the opinion of the Court, was sufficient to outweigh the opinion of the Committee of Experts: *per* Lord Blackburn in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 501. It is, however, believed that an application to the Court by an owner of a B list mark was never unsuccessful. Such applications were granted in *Ex parte Ede Bros. & Co.*, 28 W. R. 436; *In re Dugdale*, 49 L. J. Ch. 303; *In re J. Hoyle & Sons, Ltd.* (1), Hall, V.-C., May 8th, 1880:

S. C. (2), Chitty, J., Nov. 30th, 1883; *In re Dickinson, Ackroyd & Co.*, Hall, V.-C., July 8th, 1880; *In re Jones Bros. & Co.*, Hall, V.-C., July 10th, 1880; *In re Ward, Sturt & Sharp*, 50 L. J. Ch. 347; *In re Sykes*, 43 L. T. N. S. 626; *In re T. Ashton & Sons*, Hall, V.-C., Feb. 26th, 1881; *In re Franjee, Sands & Co.*, Bacon, V.-C., Nov. 30th, 1883. In *In re Brook*, 26 W. R. 791, which was decided against the applicants on the authority of the decision of the Court of Appeal in *In re Orr-Ewing*, 8 Ch. D. 794, an arrangement satisfactory to the applicants was afterwards arrived at.

“The Court” being the Chancery Division (now the High Court of Justice), the order of the House of Lords was made an order of the Chancery Division in *In re Orr-Ewing* (2), 28 W. R. 412. The registrar will now register a B. list mark in a proper case, without requiring the applicant to go to the Court.

Advertise-
ment of cotton
marks.

62a (a). As soon as may be after the receipt of an application, made as provided by the Trade Marks Rules, for the registration of a mark in Classes 23, 24, 25 aforesaid, or in any one or more of such classes, the registrar shall insert in the official paper an advertisement of such application, showing the name and address of the applicant, the class in which he applies, the number given to the mark by the registrar, the places in London and Manchester respectively where a specimen of such mark is deposited for exhibition, and distinguishing whether the mark has or has not been used prior to the thirteenth day of August one thousand eight hundred and seventy-five.

(a) This and the following Rule were made on Feb. 26th, 1877, in substitution, so far as related to cotton marks, for Rules 13, 15 and 17 of the General Rules of August, 1876, as to advertisement.

Time of re-
gistration of
cotton marks.

62b (a). On the expiration of three weeks from the date of the first appearance of the advertisement of a mark in Classes 23, 24, 25, or in any one or more of such classes, in the official paper, the registrar may, if he is satisfied that the applicant is entitled to registration, register such mark in respect of the description of goods for which he may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee.

(a) See note to previous Rule.

Cotton mark
not to be
registered
except in
manner herein
prescribed.

63. A cotton mark shall not be registered except in manner and subject to the conditions prescribed by these Rules with respect to the registry of cotton marks.

Applications
for registra-
tion of *new*
trade marks
for cotton
goods (Classes
23, 24, and 25)
to be made in
the same man-
ner as for all
other classes
of goods.

63a (a). The Rules numbered 57 to 63 as aforesaid do not apply to such trade marks in respect of cotton goods in Classes 23, 24 and 25 as are not cotton marks which were in use at the date of the passing of the Trade Marks Registration Act, 1875; and applications for the registration of trade marks in respect of goods in Classes 23, 24 or 25, and which marks were not cotton marks in use at the date of the passing of the Trade Marks Registration Act, 1875, shall be made in manner and subject to the conditions in and subject to which applications for trade marks other than cotton marks may be made in conformity with the rules in that behalf for the time being in force.

Provided that where application is made for the registration as a

trade mark in respect of any goods in Classes 23, 24 or 25 of any mark being a cotton mark contained in the second class of the list mentioned in Rule 59 aforesaid, such registration shall not take place except in pursuance of an order of the Court.

(a) This Rule was made on Oct. 21st. 1879.

RULES OF MARCH, 1883, WITH RESPECT TO COTTON MARKS.*

57. [This Rule is identical with Rule 57, *supra*.]

58 (a). The Commissioners of Patents may from time to time add to the first and second class lists of cotton marks formed by the late Manchester Committee of experts any cotton marks as they may think just, and such addition shall be deemed to be part of the original lists.

(a) This is taken from the old Rule 61.

Establishment of office for exhibition of cotton trade marks at Manchester. Marks may be added to the first and second class lists of cotton marks.

59 (a). Any proprietor of a cotton mark in the first class may apply to be registered as proprietor of such cotton mark in manner and subject to the conditions in which he may apply to be registered as proprietor of any other trade mark, but it shall not be lawful for the registrar to register any person as proprietor of any cotton mark in the second class aforesaid, except in pursuance of an order of the Court.

(a) This is taken from the old Rule 62.

Any person claiming to be the proprietor of a cotton mark in first class may apply to be registered.

60. [This Rule is identical with Rule 62a, *supra*.]

61. [This Rule is identical with Rule 62b, *supra*.]

Advertisement of cotton marks. Time of registration of cotton marks.

* See note, p. 585, *supra*.

APPENDIX F.

THE PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883—1902 (SO FAR AS RELATES TO TRADE MARKS), CONSOLIDATED.

(All repealed by T. M. A. 1905, and P. and D. A. 1907.)

THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883 (a). 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.*

[25th August, 1883.]

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, as follows :

(a) The amending Acts are as follows :—

The Patents, Designs, and Trade Marks (Amendment) Act, 1885 (48 & 49 Vict. c. 63).

The Patents Act, 1886 (49 & 50 Vict. c. 37).

The Patents, Designs, and Trade Marks Act, 1888 (51 & 52 Vict. c. 50).

The Patents Act, 1901 (1 Edw. VII. c. 18).

The Patents Act, 1902 (2 Edw. VII. c. 34).

Of such Acts those passed in 1886 and 1901 do not affect trade marks at all, and those of 1885 and 1902 only do so in one or two small details. The Patents and Designs (Amendment) Act, 1907 (7 Edw. VII. c. 28), seems never to have become effective, as it was repealed by the Patents and Designs Act, 1907 (7 Edw. VII. c. 29), which came into operation on the same day, *i.e.*, January 1st, 1908.

The parts of the principal Act which were expunged by the later Acts are printed in italics, and the provisions which were introduced are printed in brackets.

Part I.	PART I.
Preliminary.	PRELIMINARY.
Short title.	1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.
Division of Act into parts.	2. This Act is divided into parts, as follows :— <div style="padding-left: 40px;">Part I.—PRELIMINARY. Part II.—PATENTS. Part III.—DESIGNS. Part IV.—TRADE MARKS. Part V.—GENERAL.</div>

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-three (*a*). Commence-
ment of Act.

(*a*) The Act of 1888, except where otherwise provided, commenced on the 1st January, 1889 (§ 28).

PART II. (SECTS. 4—46.)

PATENTS.

PART III. (SECTS. 47—61.)

DESIGNS.

PART IV.

TRADE MARKS.

Registration of Trade Marks.

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

(2.) The application (*e*) 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 (*f*), and must be left at, or sent by post to *the Patent Office in the prescribed manner* [such place and in such manner as may be prescribed]. See T. M. A.
1905,
ss. 12, 59.

(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 (*g*) in connection with which the applicant desires the trade mark to be registered.

(4.) The comptroller may, if he thinks fit (*h*), refuse to register a trade mark (*i*); 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 (*k*), 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 (*l*).

[(6.) Where an applicant for the registration of a trade mark otherwise than under an International Convention is out of the United Kingdom at the time of making the application, he shall give the comptroller an address for service in the United Kingdom, and if he

fails to do so the application shall not be proceeded with until the address has been given (*m*)].

The amendments in this section were made by § 8 of the Act of 1888.

(*a*) The Comptroller General of Patents, Designs, and Trade Marks: § 117.

(*b*) "Person" includes a body corporate: § 117, Rule 41. There was no limitation to British subjects, and the practice was to grant registration to aliens. See, however, *In re Riviere & Co.*, 26 Ch. D. 48. By § 103, a certain priority was given to foreign applicants who had applied for registration in their own countries.

(*c*) By "claiming to be the proprietor" nothing more was meant than "claiming to be the first to adopt," whether there had been any user or not. The doubt expressed in *In re Anderson*, 54 L. J. Ch. 1084; *Edwards v. Dennis*, 30 Ch. D. 454; and *In re Lyndon*, 32 Ch. D. 109, was removed by *In re Hudson*, 32 Ch. D. 311. And see *In re Hicks*, 22 V. L. R. 636, a decision upon a similar provision in the Trade Marks Act of Victoria. But "a person who puts another's trade mark on the register cannot be a person entitled within the Act": *per* Fry, L. J., *In re Apollinaris Co.*, (1891) 2 Ch. 186, 226; and an importer could not register as his own a trade mark of the foreign producer, at all events, unless he had the control of the entire output: *Ib.* Again, a person cannot register a trade mark without any intention of using it in his business: *In re Apollinaris Co.*, (1891) 2 Ch. 186, 234, 235; *In re Batt*, (1898) 2 Ch. 432. For registration to be good a title had to be shown which is good according to the law of England, so that a mark which had been assigned in gross abroad ought not to be registered: *Pinto v. Badman*, 8 P. R. 181—192, 193; nor a mark which, though registered abroad, did not contain any of the essential particulars required by this Act: *In re Carter Medicine Co.*, (1892) 3 Ch. 472.

(*d*) As to what was a trade mark under this Act, see § 64, *infra*.

(*e*) By § 81 (3), applications for registration of Hallamshire cutlery marks had to be made to the Cutlers' Company.

(*f*) "Prescribed," *i.e.*, by the Rules. See § 117.

(*g*) The application might have been for any goods in a class. But it should have been only for the particular goods for which the applicant had used or was about to use the mark: *Edwards v. Dennis*, 30 Ch. D. 454; *Hargreave v. Freeman*, (1891) 3 Ch. 39; *In re Suter, Hartmann and Rahtjen's Composition Co., Ltd.*, 19 P. R. 42; *In re Hart*, 19 P. R. 569; *Anglo-Swiss Condensed Milk Co. v. Pearks, Gunston and Tee*, 20 P. R. 509; 21 P. R. 261. Similarly, an application for the whole of a class by a person who did not deal or intend to deal in goods in that class was improper: *In re Batt & Co.*, (1898) 2 Ch. 432; (1899) A. C. 428.

(*h*) The comptroller's discretion to allow the registration of a trade mark was limited by §§ 69, 72, 73. See *per* Cotton, L. J., in *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278, and *per* Pearson, J., in *In re Price's Patent Candle Co.*, 27 Ch. D. 681. And, further, "the question whether the comptroller shall, in the exercise of the discretion which the Act gives to him, register a trade mark, is a very different question from any of the questions upon a trade mark that can be raised. He is quite within his duty, and he is quite entitled, if he thinks that—either because there are words in it, the exclusive use of which would be calculated to deceive, or otherwise—there is a sufficient reason, to say 'No; I do not think it is proper to register this trade mark': *per* Kay, J., in *In re Dunn*, 41 Ch. D. 439. And see the same case in the House of Lords, 15 App. Cas. 252; *In re Marks and Tellefsen*, 63 L. T. N. S. 234; *In re Speer*, 55 L. T. N. S. 880; *In re Farrow*, 7 P. R. 260; *In re Turney*, 11 P. R. 37; *In re Pomril*, 18 P. R. 181; and *In re Booth's Distillery, Ltd.*, 21 P. R. 18. It is to be observed that in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 497, Lord Blackburn, referring to § 5 of the Act of 1875, by which it was provided that the Court "may" direct registration of a trade mark to which a claimant is entitled, said: "I cannot construe this section as meaning anything else than that, where the Court of Chancery is satisfied that the applicant is a person who is for the time being entitled to the exclusive use of a trade mark in accordance with law, and that the trade mark is one within the definition in the Act, the Court is, *ex debito justitiæ*, to rectify the register, just as it would, before the Act of 1875, have been bound *ex debito justitiæ*, on similar proof, to prevent any one infringing the trade mark shown to be his property." And his lordship went on to say that, though the burden of proof lay upon the person making the application, yet if he did produce such proof as would, in the opinion of the Court,

entitle him to an injunction, he did not think that the Court had any discretion to consider whether the registration would be inconvenient. If the comptroller had an absolute discretion to reject any mark he thought fit, the result might be, in the case of an old mark, to destroy a very valuable property without redress. These statements must, however, be taken in connection with the dicta in the House of Lords in *Eno v. Dunn*, 15 App. Cas. 252, *e.g.*, per Lord Herschell, at p. 261, where he said: "Those sections" (*i.e.*, §§ 72 and 73) "prohibit the registration of a trade mark in certain specified cases; but there is no duty cast upon the comptroller of registering every other trade mark that may be applied for. On the contrary, whilst he is in certain cases prohibited from registering, a discretion whether to register or not appears to me to be in all cases plainly conferred. Of course, this discretion must be reasonably and not capriciously exercised." It is to be observed that Lord Blackburn was primarily referring to an old mark, and Lord Herschell to a new one. In any event the comptroller was forbidden to refuse registration without giving the applicant an opportunity of being heard: § 94. Whether the comptroller was justified in registering oriental words as a trade mark, *quære*: *In re Dechurst & Sons, Ltd.*, (1896) 2 Ch. 137.

(i) Before refusing to register a mark, the comptroller was to give the applicant ten days' notice of a time when he might be heard personally or by his agent: § 94.

(k) As to limited registration, see note (e) to § 72, p. 612, *infra*.

(l) The Court was the High Court of Justice in England: § 117. The Court had no jurisdiction to deal with an application which the comptroller had refused, except upon an appeal to the Board of Trade and a reference of the matter by the Board to the Court: *In re Normal Co., Ltd.*, 35 Ch. D. 231. But the Board should have referred the matter to the Court: *ib.* On the matter coming before the Court all objections could be taken, whether originally raised by the comptroller or not: *In re Sanitas Co., Ltd.*, 4 P. R. 533. When the comptroller refused an application, and the matter was taken to the Court, the usual rule was to make the applicant pay the comptroller's costs, whether successful or unsuccessful: *In re Van Duzer*, 34 Ch. D. 623. Where the Court was moved to direct the comptroller to proceed with an application to register notwithstanding the existence on the register of a mark belonging to a foreign company, and notice was sent to the company, but was not acknowledged, the Court directed the comptroller to proceed in the company's absence without prejudice to any opposition, the applicant undertaking to give due notice to the company of the advertisement: *In re Stringer*, 8 P. R. 445. In referring an appeal to the Court, the Board of Trade might direct notice of appeal to be served on parties who were not before the comptroller, and might allow further evidence to be adduced, and the Court would not hear the appeal until the directions of the Board of Trade were complied with: *In re Extract of Meat (Baron Liebig) Photograph Brand, Ltd.*, 17 P. R. 161; and see *In re Royal Worcester Corset Co.*, 26 P. R. 185, and other cases at pp. 373, 374.

(m) As to the address for service, see *per* Lindley, L. J., in *In re King & Co.*, (1892) 2 Ch. 462, 378; also *In re Robertson, Sanderson & Co.*, 9 P. R. 213.

63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, *the application shall be deemed to be abandoned* (a) [the comptroller shall give notice of the non-completion to the agent employed on behalf of the applicant, and if at the expiration of fourteen days from that notice the registration is not completed, shall give the like notice to the applicant, and if at the expiration of the latter fourteen days, or such further time as the comptroller may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned].

Limit of time for proceeding with application.

See T. M. A. 1905, s. 18.

(a) This provision was first made by the edition of March, 1883, of the Rules under the old Acts. The amendments in this section were made by § 9 of the Act of 1888. By the combined operation of this section and § 113 all applications not completed within the prescribed time by the applicant's default lapsed, whether they were pending at the date of this Act or had been made subsequently: *In re Hayward & Co.*, 54 L. J. Ch. 1003. And this was so, though the default was occa-

sioned by the neglect of the applicant's agent, and not of the applicant himself: *Jackson & Co. v. Napper*, 35 Ch. D. 162. But a trade mark registered in 1885, in pursuance of an application made in 1879, was allowed to remain on the register, subject to certain disclaimers, and to the entry of a note on the register making the five years for the purposes of § 76 run from 1885 and not from 1879: *In re Hayward & Co.*, 54 L. J. Ch. 1003. An application which had been abandoned might afterwards be renewed, at all events where the applicants were not personally in default: *Jackson & Co. v. Napper*, 35 Ch. D. 162; *In re Bancroft & Co.*, 5 P. R. 203. In *In re United Vineyards Proprietors' Co.*, Stirling, J., Nov. 8th, 1889, an application made in 1876 had lapsed in consequence of the applicants having failed to comply with a request from the registrar for the payment of the final fee, the letter containing such request having miscarried. The applicants supposed that the mark had been registered, and took no further step. In 1882 a somewhat similar new mark was registered for the same goods by another firm. In 1889 the mistake was discovered by the original applicants, and they at once made a fresh application. The matter was referred to the Court, and it was held that, the mark having been used long before 1875, the registration should proceed, notwithstanding that the firm registered in 1882 refused to consent, while not appearing to actively oppose. So, also, in *In re Loftus*, (1894) 1 Ch. 193, a renewed application was allowed to proceed.

Conditions of registration of trade mark.

See T. M. A. 1905, ss. 9, 15.

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

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

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

(3.) *Provided that any special and distinctive word or words, 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.*

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

- (a.) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner ; or
- (b.) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark ; or
- (c.) A distinctive device, mark, brand, heading, label, or ticket ; or
- (d.) An invented word or invented words (i) ; or
- (e.) A word or words having no reference to the character or quality of the goods, and not being a geographical name (k).

(2.) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or of any of them (l) ; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must

disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register (*m*).

(3.) Provided as follows :

- (i.) A person (*n*) need not under this section disclaim his own name (*o*) or the foreign equivalent thereof, or his place of business (*p*); but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;
- (ii.) 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 (*q*).]

The amendments in this section were made by § 10 of the Act of 1888.

(a) This section is enlarged from § 10 of the Act of 1875. The essential particular is that which causes a mark which, without it, would not be a registrable trade mark, to be a registrable trade mark; it is that by virtue of which registration is granted to a mark; and when the validity of an alleged trade mark is being considered by the Court, "the first duty cast upon the Court is to ascertain whether some one or more than one of the essential particulars of a trade mark, as defined by the Act, is found to exist, so that the mark may be described with one or more than one essential particular or particulars which distinguish it": *per* Earl Cairns, C., in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 479. This being so, it was provided by § 92 that, though non-essential particulars of registered trade marks might be altered with the leave of the Court, essential particulars might not be. Where, therefore, two trade marks had been registered, one of which contained the name of the firm in ordinary type, and the other contained it printed in the form of a signature, Jessel, M. R., allowed a firm who had acquired the trade mark by assignment to substitute their own name for the name printed in ordinary type, but refused to allow any alteration of the signature in the second mark: *In re Dewhurst*, M. R., June 11th, 1880. See also *In re Murphy & Co.*, 7 P. R. 163. A trade mark which did not contain any essential particular, and was therefore not registrable, did not become a good trade mark by remaining five years on the register: *In re Palmer* (1), 21 Ch. D. 47; (3), 24 Ch. D. 504; *In re Ralph*, 25 Ch. D. 194; *In re Leonard & Ellis*, 26 Ch. D. 288; *In re Lloyd & Sons*, 27 Ch. D. 646; *In re Wragg*, 29 Ch. D. 551; *Edwards v. Dennis*, 30 Ch. D. 454; *Wood v. Lambert*, 32 Ch. D. 247; *In re Spencer*, 54 L. T. N. S. 659; *In re Apollinaris Co.*, (1891) 2 Ch. 186. So in Victoria: *Lewis v. Klapproth*, 11 V. L. R. (E.) 214; *Wolfe v. Alsop* (2), 12 V. L. R. 421; *Wolfe v. Lang & Co.*, 13 V. L. R. 752. The definition section in the Canadian statute is wider, so that cases on this section must be applied with caution in Canada: *Smith v. Fair*, 14 Ont. Rep. 729.

(b) See *ante*, p. 39. The words "individual or firm" in clause (a) as in clause (b) meant a real human being and a real firm, the names of fictitious persons falling under clause (c), and if the name fell under clause (a) it was excluded from clause (c), and *vice versa*: *per* Smith, L. J., *In re Holt*, (1896) 1 Ch. 711, 724, 725. The name of a living public character unconnected with the business fell under this clause and could not be registered if printed in ordinary type: *In re Carroll*, 16 P. R. 82. The name of an individual in ordinary type was not made distinctive by having the descriptive name of the goods added: *In re Gianacis*, 6 P. R. 467; *In re Hannay*, 7 P. R. 46; *In re Edge*, 8 P. R. 207. And see *Pirie v. Goodall*, (1892) 1 Ch. 35, where Lindley, L. J., stated that "Pirie's" in the genitive was not the name of an individual or firm for the purposes of this clause.

(c) See *ante*, p. 46; and *In re Dewhurst*, M. R., June 11th, 1880. Registration of a signature, together with a descriptive word, gave no exclusive right in the descriptive word: *Watt v. O'Hanlon*, 4 P. R. 1.

(d) See *ante*, pp. 48, 64. The word "distinctive" applied to all the varieties of marks mentioned in this sub-section: *per* Cotton, L. J., in *Waterman v. Ayres*, 39 Ch. D. 29; and *per* Chitty, J., in *Buriland & Co. v. Broxburn Oil Co., Ltd.* (2), 42 Ch. D. 274;

and see *Pirie v. Goodall*, (1892) 1 Ch. 35. The distinctiveness which was required could not consist solely in colour: *In re Hanson*, 37 Ch. D. 112. To entitle a mark to registration it must at the date of registration distinguish the goods of the person registering it from all others: *In re Apollinaris Co.*, (1891) 2 Ch. 186, 226, 230; and an importer could not register as his own the trade mark of the foreign producer, at all events, unless he had the control of the entire output: *Ib.*

(e) To be registrable, a brand could not consist of words unless they were capable of registration as such: *Pirie v. Goodall*, (1892) 1 Ch. 35; nor did the addition of the word "brand," as part of a trade mark, to words which were not capable of registration, validate the trade mark: *In re Paine*, 9 P. R. 130. *Seem*, a water-mark woven into the texture of paper might be a brand: *per Williams, J.*, in *Pirie v. Goodall*, (1892) 1 Ch. 35.

(f) A word used alone was not a heading: *per Earl of Selborne, C.*, in *In re Leonard & Ellis*, 26 Ch. D. 288, 295.

(g) The label itself must have been distinctive, so that a label with the name of the proprietors in ordinary type and words descriptive of the goods was not a distinctive label: *In re Price's Patent Candle Co.*, 27 Ch. D. 681; *In re Bradley*, 9 P. R. 205; *In re Birmingham Vinegar Brewery Co.*, 11 P. R. 195; nor could words which were descriptive or common to the trade be such a label: *Great Tower St. Tea Co. v. Smith*, 6 P. R. 165. It was thought that a distinctive label must contain elements capable of themselves of constituting essential particulars within the Act, and that a novel combination of old elements, none of which fell within this description, would not do: *In re Bryant & May, Ltd.*, 8 P. R. 69; but in *In re Bradley*, 9 P. R. 205, Chitty, J., while holding that a mark when looked at as a whole must contain at least one of the essential particulars, thought that a novel combination of devices not in themselves distinctive, because in common use, would be capable of registration: *cf. In re Birmingham Vinegar Brewery Co.*, 11 P. R. 195. The label was the entire combination: *Pinto v. Badman*, 8 P. R. 181, 191, *per Lord Esher, M. R.*; see *In re Apollinaris Co.*, (1891) 2 Ch. 186; *In re Smokeless Powder Co.*, (1892) 1 Ch. 590. A label was held to be distinctive in *In re Bryant & May, Ltd.*, 4 Times L. R. 675; and see *Bryant & May v. Heyde*, 7 N. S. W. Rep. (E.) 72. The registration of a distinctive label did not give an exclusive right to descriptive words appearing on it: *In re Hudson*, 32 Ch. D. 311; *In re Atkins Filter & Engineering Co., Ltd.*, 3 P. R. 164; *Symington & Co. v. Footman, Pretty & Co.*, 56 L. T. N. S. 696; *Watt v. O'Hanlon*, 4 P. R. 1; *Lewis's v. Goodbody*, 67 L. T. N. S. 194; *Rugby Portland Cement Co. v. Rugby & Newbold Cement Co.*, 8 P. R. 241; 9 P. R. 46; *cf. In re Paine* (2), (1893) 2 Ch. 567; nor to words common to the trade registered in connection with it: *British Tea & Trading Association, Ltd. v. Cooke, Bacon, V.-C.*, June 8th, 1886. And where applicants applied for registration of a label containing descriptive words, and contended that their registration would give them a right to the descriptive words, the opinion of the Court of Appeal negating the claim was stated in the order of the Court allowing the registration to proceed: *In re Hudson*, 32 Ch. D. 311. Words not constituting a proper trade mark did not become entitled to registration by the addition of flourishes placed round them with a view to making up a distinctive label: *In re Clement & Cie.*, *per Romer, L. J.*, (1900) 1 Ch. 114; and see *In re Weingarten Bros.*, 29 V. L. R. 965.

(h) See *ante*, pp. 53, 56. Fancy words were not registrable under the Act of 1875: *Ex parte Stephens*, 3 Ch. D. 659; and see *Rose v. Evans*, 48 L. J. Ch. 618. A fancy word could not be made out of that which was not one by prefixing the word "the": *In re Stapley & Smith*, 29 Ch. D. 877; nor could words which, used separately, were not fancy words, become so by being used in combination: *Pirie v. Goodall*, (1892) 1 Ch. 35. In determining whether a word was a fancy word the time to be looked at was the date of registration, and the word was not to be criticised by the light of subsequent events: *In re Barril T. M.*, (1896) 2 Ch. 600, 605, 607, *per Lindley and Lopes, L. JJ.*; *In re Burroughs, Wellcome & Co.*, (1904) 1 Ch. 736. An old mark was not considered to be in common use unless it had been used by more than three firms, but the leave of the Court was necessary for the second or third registration of the same, or substantially the same, old mark. See note (e) to § 72, and note (f) to § 74.

(i) See *ante*, p. 56. The new clauses (d) and (e) were inserted on the recommendation of a select committee appointed to inquire into the working of the Act of 1883 for the purpose of obviating the difficulty which had been experienced in

construing the term "fancy word." Nevertheless, for some years the Courts showed a disposition to construe the new term "invented word" by the light of the decisions upon fancy words. It was accordingly held that the term "invented word" was impliedly subject to the qualification expressly imposed by the legislature in clause (e) in the case of known words, viz., that it should have no reference to the character or quality of the goods, and great ingenuity was exercised in discovering some covert reference to character or quality in words which, to the ordinary purchaser, would convey no meaning. Thus, registration was refused by Kay, J., to "Satinine" for starch (*In re Meyerstein*, 43 Ch. D. 604), by North, J., and the C. A. to "Somatose" for an extract of meat (*In re Farlenfabriken*, (1894) 1 Ch. 645), and by Kekewich, J., and the C. A. to "Solio" for photographic paper: *In re Eastman Photographic Materials Co.*, 14 P. R. 487. This last decision, however, was reversed by the House of Lords ((1898) A. C. 571), whose decision finally established, first, that it was not essential that an invented word should have no reference to the character or quality of the goods; secondly, that the decisions upon "fancy words" were no guide in construing the substituted clauses (d) and (e). But, as was said by Lord Shand, "there must be invention and not the appearance of invention only. It is not possible to define the extent of the invention required; but the words should be clearly and substantially different from any word in ordinary and common use. The employment of a word in such use, with a diminutive or a short and meaningless syllable added to it, or a mere combination of two known words, would not be an invented word; and a word would not be 'invented' which, with some trifling addition or very trifling variation, still leaves the word one which is well-known or in ordinary use, and which would be quite understood as intended to convey the meaning of such a word." Registration was also refused by Kekewich, J., to the word "Electrozone" (*In re British Electrozone Co.*, 13 P. R. 447) on the ground that it was a word known in the United States, and by the same learned judge and the C. A. to "Pirle" (*In re Ripley*, 15 P. R. 154) on the ground that it was the equivalent of "pearl"; and these cases appear to be unaffected by the decision of the House of Lords. So "Unceda" was refused registration as being a mis-spelling of "you need a": *In re Unceda T. M.*, (1901) 1 Ch. 550; (1902) 1 Ch. 783. So in Canada "Shur-on" has been held not to be an invented word for pince-nez, as being equivalent to "Sure on": *Kirstein, Sons & Co. v. Cohen Bros.*, 39 Can. Sup. Ct. 286. But "Vezet," though said to be the Dutch equivalent to V Z, was allowed, subject to a disclaimer by the applicants of the exclusive right to the letters V Z: *In re Verschure & Zoon*, 22 P. R. 568. Again, the word "Eboline" (*In re Salt*, (1894) 3 Ch. 166) was held incapable of registration by Chitty, J., as being a geographical name owing to the existence in Italy of a town called "Eboli": cf. *In re Magnolia Metal Co.*, (1897) 2 Ch. 385. The following words were also held bad for various reasons:—"Absorbine" (*Christy v. Tipper*, (1904) 1 Ch. 696; (1905) 1 Ch. 1); "Bioscope" (*Warwick Trading Co. v. Urban*, 21 P. R. 240); "Haematogen" (*Hommel v. Gebrüder Bauer & Co.*, 21 P. R. 576; 22 P. R. 43); "Diabolo" (*In re Philippart*, 25 P. R. 565), and in the Cape Colony "Rooibosch" (*Heatie Bros. v. Hartley*, Cape Good Hope, 26 S. C. R. 586). On the other hand, the word "Mazawattee," which was compounded of two words of different foreign languages, viz., Hindustani and Cingalese, was held to have been properly registered for tea: *In re Densham*, (1895) 2 Ch. 176. So "Savonol" (*J. C. & J. Field & Co., Ltd. v. Wages Syndicate, Ltd.*, 17 P. R. 266); "Tachytype" (*In re Linotype Co.*, (1900) 2 Ch. 238); "Kodak" (*Kodak, Ltd. v. London Stereoscopic and Photographic Co., Ltd.*, 20 P. R. 337), were held to be admissible as invented words. With regard to the admissibility of foreign words Lord Herschell said, in *In re Eastman Photographic Materials Co.*, (1898) A. C. 571, 581, "I do not think that a foreign word is an invented word simply because it has not been current in our language. At the same time I am not prepared to go so far as to say that a combination of words from foreign languages so little known in this country that it would suggest no meaning, except to a few scholars, might not be regarded as an invented word."

(k) See *ante*, p. 59. The reason for inserting in clause (e) the condition that the word shall have no reference to the character or quality of the goods is explained by Lord Herschell in *In re Eastman Photographic Materials Co.*, (1898) A. C. 571, to be that "the vocabulary of the English language is common property; it belongs alike to all, and none ought to be permitted to prevent the other members of the

community from using for purposes of description a word which has reference to the character or quality of the goods," and upon this point there was no difference between the policy of the Act of 1883 and the Act of 1888. Thus, in *In re Dunn*, 41 Ch. D. 439, where an application under the Act of 1883 to register the words "Fruit Salt" for baking powder was opposed by Eno, who had used the name for a medicine, Fry, L. J., said, "I cannot help regarding Mr. Eno's attempt as an instance of that perpetual struggle which it seems to me is going on, to enclose and appropriate as private property certain little strips of the great open common of the English language." But, as was subsequently pointed out by Lord Herschell, this reason does not apply to an invented word—a word which is newly coined. Names of imaginary persons, such as the characters in a romance, were included under this clause, and did not fall under clause (a): *In re Holt*, (1896) 1 Ch. 711. Now any word can be registered with the sanction of the Board of Trade or the Court under § 9 (5) of the Act of 1905.

In *In re Magnolia Metal Co.*, (1897) 2 Ch. 371, objection was taken that "Magnolia" was a geographical name by reason of the existence of certain places of that name in the United States. The Court of Appeal in affirming the decision of Kekewich, J., overruling this objection, interpreted the term "geographical name" as follows:— "It must, we think, in the absence of special circumstances, be interpreted so as to be in accordance in some degree with the general and popular meaning of the words, and a word does not become a geographical name simply because some place upon the earth's surface has been called by it. For example, we agree with Kekewich, J., that the word 'Monkey' is not proved to be a geographical name by showing merely that a small and by no means generally known island has been called by that name. If, indeed, in its primary and obvious meaning the word has reference to locality, as the word 'Melrose' in *Van Duzer's Case* (34 Ch. D. 623), or the word 'Eboli' in *Sir Titus Salt & Co.'s Case* ((1894) 3 Ch. 166) (from which Chitty, J., declined to distinguish the derivative 'Eboline'), it may well be a geographical name within the meaning of the sub-section. Even where the primary signification is not geographical, if the name is really a local name (however little known the locality may be), and the name is given because of the connection of the article with the locality, whether that be real or imputed only by those who give the name, it may well be a geographical name within the meaning of the sub-section. An instance of this is to be found in the case of the word 'Apollinaris,' given to the water from a spring known as the Apollinaris Spring. So, if 'Magnolia' had been the name of a place where the metal was manufactured, we should have been by no means inclined to say that it would not be a geographical name when applied to the article manufactured in the place having the name." See also *per* Kekewich, J., in *In re Apollinaris Co.*, (1891) 2 Ch. 186, and *In re Clement & Cie.*, (1900) 1 Ch. 114. Under this head the word "Quaker" as applied to spirituous liquors was held to be a good trade mark (*In re Ellis & Co.*, 21 P. R. 617); but the word "Century" was held to be inadmissible as referring to quality or character: *In re Printing Machinery Co.*, 23 P. R. 38.

(d) "Figures" meant numerals. See *Ex parte Stephens*, 3 Ch. D. 659. In the Act of 1905 the word "numerals" is substituted. When it was wished to register the same essential (or "material," by which nearly the same thing appears to have been meant) particular, with a number of varying additions, the proper course was to register the marks as a series, under § 66, *q.v.* See also note (e) to § 72, *infra*. Inasmuch as the parts of a combination mark which were not within the definition of "essential particulars" were not entitled to registration or protection when standing alone, there could not be infringement of a combination mark unless the essential particular was taken. See *In re Hudson*, 32 Ch. D. 311; *In re Atkins' Filter & Engineering Co., Ltd.*, 3 P. R. 164; *Burland & Co. v. Brorburn Oil Co., Ltd.* (2), 42 Ch. D. 274; *Watt v. O'Hanlon*, 4 P. R. 1. In *In re Horsburgh*, 53 L. J. Ch. 237, where a registered trade mark consisted of a distinctive device and a descriptive word, it was held that substantially the same descriptive word might be registered by another firm with a different device, from which it follows that the use of the second trade mark would be no infringement of the first.

The Instructions under this Act prohibited the registration of the following as new marks or prominent parts of new marks:—

The Royal Arms, or arms so nearly resembling them as to be calculated to deceive. Representations of the Queen, or of any member of the Royal Family.

Representations of the Royal Crown.

The National Arms or Flags of Great Britain. (See *Ex parte Davids & Co.*, 16 U. S. Pat. Gaz. 94, as to the American practice.)

Prize or exhibition medals were also formerly excluded, but are now admitted. (As to these, see *Batty v. Hill*, 1 H. & M. 264; *Taylor v. Gillies*, 59 N. Y. 331; *In re Bush & Co.*, 10 U. S. Pat. Gaz. 164; *In re Brook*, 26 W. R. 791; *In re Farina* (2), 27 W. R. 456. But they could not be treated as constituting an essential particular: *In re Bryant & May, Ltd.*, 8 P. R. 69.)

(m) If the essential particular claimed was a distinctive label, it seems very doubtful whether the applicant could be called on to disclaim anything contained in it. "The truth is that the label does not consist of each particular part of it, but consists in the combination of them all": *per* Lord Esher, M. R., *Pinto v. Badman*, (1891) 2 Ch. 186, 191. And see *per* Fry, L. J., at p. 188; also in *In re Apollinaris Co.*, (1891) 2 Ch. 186, 233; and *per* Chitty, J., in *In re Smokeless Powder Co.*, (1892) 1 Ch. 590; also *In re Clement & Cie.*, (1900) 1 Ch. 114. See also *In re Albert Baker & Co.*, (1908) 2 Ch. 86, a decision under the Act of 1905; and *In re Weingarten Bros.*, 29 V. L. R. 465, a decision under the Victorian Act of 1890.

Where an application was made for registration as an old mark of a composite mark which did not fall within the definition in § 64 (3) (ii) so that the application could only be made under (1) and (2), it was held that for the purposes of disclaimer it was immaterial whether the application was in respect of a new or an old mark: *In re Wright, Crossley & Co.*, (1900) 2 Ch. 218. Where a label was composed of two parts, the part consisting merely of directions for use and descriptive matter, it was held that that was added matter which ought to be disclaimed: *In re Royal Baking Powder Co.*, 19 P. R. 261. Where the essential particular consisted in the combination of devices, it was held sufficient so to describe it in the application without stating the nature of the combination; it was held further that, provided that a mark complied with the requisites of § 64, the whole mark need not appear on any one ticket, label, stamp or impression, but that a combination of several marks might be treated as equivalent to a single mark, and that the component parts of such combination mark need not all be visible at the same time. Accordingly, a registration of a mark consisting of three separate labels was held good: *In re J. & J. Crompton & Co., Ltd.*, 19 P. R. 265. A disclaimer under the Act was held to be an answer to an interlocutory application for an injunction by the registered proprietor founded on his common law right to restrain the use of the disclaimed matter in a manner calculated to deceive: *Rosenthal v. Reynolds*, (1892) 2 Ch. 301; but this case was questioned in Scotland, and an interdict has been granted under similar circumstances: *Bayer v. Baird*, 15 P. R. 615. And see *Puckham & Co. v. Sturgess & Co.*, 15 P. R. 652, a passing-off action in which North, J., himself recognized that the defendants were not entitled to use a name, the exclusive right to which the plaintiffs had disclaimed as being descriptive, so as to represent that the defendant's goods were the plaintiffs'; and the fact that the application in *Rosenthal v. Reynolds*, (1892) 2 Ch. 301, was interlocutory must be borne in mind. Cf. *In re Loftus*, (1894) 1 Ch. 193. Under the Act of 1905 the effect of disclaiming is limited, see § 15.

(n) "Person" includes "company," and under this section, as amended, added words which, if used alone, might require to be disclaimed, need not be disclaimed if used as part of the name of the company owning the trade mark: *In re Smokeless Powder Co.*, (1892) 1 Ch. 590. And see *In re Clement & Cie.*, 16 P. R. 173.

(o) It was not necessary that the full name, either in the case of a single trader, or in the case of a firm, should be placed upon the trade mark, if it was used fairly and *bonâ fide* in such a way that it could not be mistaken for anything else than the name of the manufacturer of the goods to which the mark related; nor was it necessary that the name should be the private name of the owner if he traded under another name; and it was also no objection that the name should be used in the possessive case. Accordingly it was held by Stirling, J., explaining *Pirie v. Goodall*, (1892) 1 Ch. 35, that the firm of J. & J. Colman were not bound to disclaim the word "Colman's": *In re Colman*, (1894) 2 Ch. 115. But a firm describing themselves as successors to another firm had to disclaim the name of their predecessors: *In re Birmingham Vinegar Brewery Co.*, 11 P. R. 195.

(p) "The names of foreign springs, when added to a trade mark tendered for registration by a limited company with a registered office in England, are [were] not protected against the requirement of a disclaimer by the exception in favour of a

'place of business'": *In re Apollinaris Co.* (1891) 2 Ch. 186, 211, *per Kekewich, J.*

Old marks.

(q) See *ante*, p. 61. The wording of this subsection was wider than that of the corresponding provision in § 10 of the Act of 1875. *E.g.*, a single letter might be registered as an old mark, though it was formerly excluded from registration: *In re Mitchell* (1), 7 Ch. D. 36. An old mark had to be registered as a whole, and in the exact form in which it had been actually used. Thus, in *In re Royal Baking Powder Co.*, W. N. 1880, p. 49, the applicants were not allowed to register the word "Royal," or the words "Royal Baking Powder," apart from the rest of the label with which they had been used. And see *Wright, Crossley & Co. v. Royal Baking Powder Co.*, Cape Good Hope, 15 S. C. R. 9. So in *In re Simpson, Davies & Sons*, Jessel, M. R., January 12th, 1881, the registration of a trade mark consisting of a cross would have been held to be wrongful, by reason of the points of the cross registered being differently shaped from the points of the cross used, had it not been proved that there had been user in both forms. So in *Russell & Sons, Ltd. v. Smith*, Jessel, M. R., June 18th, 1880, it was held that registration was wrongful because the user had been of a rough outline of a crown, and the registration was of an elaborate crown, with all the shading filled in. And see *cases at pp. 62, 63*. On the other hand, in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 479, the House of Lords directed registration of the essential particular, omitting the immaterial additions. However, by §§ 64, 74, the entire mark would be registered, with a disclaimer of the additions. See *Baker v. Rawson*, 45 Ch. D. 519; *In re Mecus*, (1891) 1 Ch. 41; *In re Fuente*, (1891) 2 Ch. 166; *In re Phillips*, (1891) 3 Ch. 139. A mark must not be registered as an old mark if it was only used before 1875 as part of a mark: *Baker v. Rawson*, 45 Ch. D. 519; *In re Fuente*, (1891) 2 Ch. 166; *Richards v. Butcher* (2), (1891) 2 Ch. 522; *In re Kinahan*, 10 P. R. 393; *In re Heddle*, 20 P. R. 599; nor if used only on packing cases to identify the contents: *In re Powell*, (1893) 2 Ch. 388; (1894) A. C. 8. And see *Richards v. Butcher*, (1891) 2 Ch. 522. And if a device had been registered as an old mark, but was never used *per se*, the registration was bad and would be rectified upon the application of a party aggrieved: *Baker v. Rawson*, 45 Ch. D. 519, 528. See also *In re Fuente*, (1891) 2 Ch. 166.

Where it was sought to register as a new trade mark a mark which, though not used before 1875, had yet been used for some years with fraudulent misstatements contained in it, registration would be refused, even though the misstatements were corrected in the mark as tendered for registration: *In re Fuente*, (1891) 2 Ch. 166. So also where the word "registered" had been wrongly applied to the mark, unless this was due to a *bonâ fide* mistake: *In re Altman*, 21 P. R. 753. Compare *In re Lyle and Kinahan, Ltd.*, 24 P. R. 249, where the misrepresentation being not in the mark itself but in the price lists, and being due to a mistake, the registration was allowed to proceed.

Where blanks were left in the marks as registered, there was nothing to prevent the proprietor from filling them up in actual use: *Newman v. Pinto*, 4 P. R. 508, *per Kekewich, J.*; *Melachrino v. Melachrino Egyptian Cigarette Co.*, 4 P. R. 215; *M. Melachrino & Co. v. R. Melachrino & Co.*, Chitty, J., May 29th, 1888.

Registration under this Act was, by the Instructions, refused to the words "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To Counterfeit this is Forgery," also to pictorial representations of goods to which the marks were to be applied, or names of persons in the possessive case in combination with the names of goods.

Connection of trade mark with goods.

See T. M. A. 1905, s. 8.

65. A trade mark must be registered for particular goods or classes of goods (a).

(a) This came from § 2 of the Trade Marks Registration Act, 1875. The appropriation of a trade mark to particular goods or classes of goods was not new. See *Hall v. Barrows*, 4 De G. J. & S. 150; *Ainsworth v. Walmesley*, L. R. 1 Eq. 518; *Somerville v. Schembri*, 12 App. Cas. 453. See also *per Pearson, J.*, in *In re Lyndon*, 32 Ch. D. 109; and *per North, J.*, in *Hart v. Colley*, 44 Ch. D. 193. By the Rules under the Act of 1875, it was provided that where a trade mark was registered, a similar trade mark should not be registered in the name of another proprietor for any goods in the same class without the leave of the Court: but this requirement

of the leave of the Court was afterwards limited to cases in which the second application was in respect of the same goods or description of goods. See § 72. The fact that a trade mark had been registered for goods in one class would not prevent another from obtaining registration for the same mark for different goods in another class: *In re Lake and Elliott*, 20 P. R. 605. Under the Act of 1875, registration for part of a class was granted to old marks: in *Ex parte Barrows*, W. N. 1877, p. 119; L. J. N. of C. 1877, p. 110; *In re Lysaght*, Dig. 623; *In re Rabone*, Dig. 643; *In re Ashton & Sons*, Hall, V.-C., February 26th, 1881; and to new marks in *In re Jelley, Son & Jones*, 51 L. J. Ch. 639; *In re Braby & Co.*, 21 Ch. D. 223; and *In re Clark & Co.*, 27 Sol. J. 396, though in this case the mark was common for other goods in the class; and refused to a new mark in *In re Hargreaves*, 11 Ch. D. 669. And see *In re De Otaday*, W. N. 1885, p. 177; *In re Metcalf*, 31 Ch. D. 454. Registration ought to be applied for only in respect of goods for which the mark was used or intended to be used: *Edwards v. Dennis*, 30 Ch. D. 454; *Hargreave v. Freeman*, (1891) 1 Ch. 39; *In re Bott & Co.*, (1898) 2 Ch. 432; (1899) A. C. 428; *In re Suter, Hartmann & Rahtjen's Composition Co., Ltd.*, 19 P. R. 42; *In re Hart*, 19 P. R. 569; *Anglo-Swiss Condensed Milk Co. v. Pearks, Gunston & Tee*, 20 P. R. 509; 21 P. R. 261. In cases of Sheffield marks within § 81 (2), the Cutlers' Co. were to register old marks for all the metal goods in § 81, though they might have been used for some only: of such goods *per North, J.*, in *In re Lambert*, 5 P. R. 542. If a mark was used for other goods than those in respect of which it was registered, even though in the same class, such user might be restrained if a similar mark had been used and registered by another firm in respect of those other goods: *Upper Assam Tea Co. v. Herbert & Co.*, 7 P. R. 183.

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

Registration of a series of marks.

See T. M. A. 1905, s. 26.

a. This section was entirely new, but a mode of registration bearing a resemblance to that for which provision is here made was suggested by the Court of Appeal as the right one in *In re Barrows*, 5 Ch. D. 353, and was occasionally adopted. See note *c* to § 72, *infra*, and cases there cited. In some cases, however, this form of registration was not considered satisfactory by the applicant, usually because, the different combinations not being individually registered, the registered proprietor was unable to get such a certificate of registration as would enable him to obtain registration in foreign countries. In *In re Fox & Co.*, Hall, V.-C., May 7th, 1881, the V.-C. allowed a person who had registered a device together with a word (which, under the Act of 1875, could not be an essential particular in a new trade mark) to obtain a separate registration of the same device with a different word, so that the same one essential particular was separately registered twice over, with additions which, for the purposes of the Act, were immaterial. After this decision, separate registration was generally granted by the registrar to marks which would more properly have been registered in a series, or, as it was more generally called, by representation. The concluding words of this section rendered separate registration unnecessary, but there was nothing to prevent it. It should, however, be noted that in *Baker v. Rawson*, 45 Ch. D. 519, 530, North, J., appears to have considered that a mark already registered should not be allowed to be registered over again with a mere addition common to the trade and consequently disclaimed. This decision was followed by Cozens-Hardy, J., in *In re Player*, (1901) 1 Ch. 382, but under the present Act the same proprietor is not debarred from registering two similar marks (§ 19), and under the former Acts the fact that

a mark had been registered superfluously was not necessarily a ground for taking it off the register at the instance of a rival trader:—*In re A. & A. Crompton & Co.*, 19 P. R. 265. See *In re Phillips*, (1891) 3 Ch. 139.

Trade marks may be registered in any colour.

See **T. M. A. 1905, s. 10.**

67. A trade mark may be registered in any colour [or colours], 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 [or colours] (a).

The amendments in this section were made by § 11 of the Act of 1888.

(a) In the early Acts and Rules no mention was made of colour, on account of the difficulty of properly advertising marks applied for in colour. See *per* Jessel, M. R., in *In re Robinson*, 29 W. R. 31. A trade mark registered in black and white consisted of the device registered, whatever might be the colour in which it was used, and it was therefore regarded as entitled to protection in whatever colour it might be used, and against rival marks in whatever colour: *Nuthall v. Fining*, C. A., Jan. 21st, 1880. There it was said that, in cases of alleged infringement, the true test of comparison was to compare the designs of the two trade marks in the same size and free from colour, and that similarities in respect of colour would only be regarded in order either to prove fraud, or to turn the scale when the question of infringement, leaving colour out of sight, was very difficult to decide. In *Hanson v. British Tea and Trading Association, Ltd.*, Bacon, V.-C., April 9th, 1884; C. A., June 19th, 1884, a label had been used, which, as registered under the Act of 1875, was divided into three parallel stripes of equal width, of which the outer ones were shaded and the middle one was left white, and which had the words “ ‘Red, white, and blue’ label ” printed across it, and the name of the plaintiffs at the foot, and which, in actual use, was coloured with the French tricolour; and though it was registered without colour, an injunction was granted to restrain the use of a label similarly coloured and containing the same words. But where a fresh application was made to register the same label for other goods under this Act, registration was refused by the comptroller, and his refusal was upheld by the Court, on the ground that the distinctiveness required in a mark tendered for registration could not consist solely in colour: *In re Hanson*, 37 Ch. D. 112. When the question was whether a trade mark sent in for registration was too similar to one already registered for registration to be permitted, and the trade mark already on the register was in practice used in colour, the question was taken into consideration whether the subsequent trade mark, if similarly coloured, would be likely to cause deception: *In re Worthington*, 14 Ch. D. 8; and in *In re Bass, Ratcliff & Gorton, Ltd.*, 19 P. R. 529, Romer, L. J., doubted whether in determining whether an old mark, which was always used in a particular colour, was distinctive, all consideration of colour ought to be omitted. In *In re Jeffrey & Co.*, Stirling, J., May 18th, 1888, the applicants for registration were allowed to bind themselves by a note on the register not to use the trade mark in black colour, nor in so dark a hue as to resemble black; and in *In re Johnson, Philpott & Co.*, North, J., Feb. 21st, 1888, the register was rectified by consent by adding a note that the registered proprietor was only to use his mark in blue and white. By § 10 of the Trade Marks Act, 1905, a trade mark may be limited to one or more specified colours.

In Canada, the same effect as that provided by this section is given to registration in colour: *Smith v. Fair*, 14 Ont. Rep. 729; and in the United States also a trade mark cannot consist in colour alone: *Ex parte Landreth*, 31 U. S. Pat. Gaz. 1441; *Fleischmann v. Starkey*, 25 Fed. Rep. 127.

In some exceptional cases, under the Act of 1875, trade marks were found to be incapable of advertisement or registration in black and white, the only peculiarity being the combination of colours, *e.g.*, where coloured threads were twisted in the wick of a candle, or combined in the selvage of a piece of stuff. In such cases the marks were registered by deposit, actual specimens of the marked article being sent in to the registrar and deposited by him at the Patent Museum. For instance, there were so deposited specimens of certain marks for worsted stuffs in Class 34, numbered 5844 to 5850, and consisting of selvages containing distinctive coloured threads. See “Trade Marks Journal,” Vol. II., No. 51, p. 88. The use of colour being very frequently of importance in the cotton trade, it was decided that all

marks for goods in the cotton classes 23—25) should be registered by deposit. When a trade mark was thus registered by deposit, the actual thing deposited, colour included, constituted the trade mark, so that in questions of infringement the point was whether the device, plus colour, was imitated in the offending mark with sufficient exactness to deceive. And the same rule was applied in registration cases, colour being taken into consideration in estimating the degree of resemblance. Thus, in *In re Robinson*, 29 W. R. 31, a device of a silver rupee being already registered, another applicant sought to obtain registration of a device of a gold mohur, and this was granted, on the ground that all that was registered was a silver coin, notwithstanding that, if the second mark were to be coloured silver, deception would be probable. In such cases it was held that the proper manner of regarding the colour was a question for the trade, and that if, in the opinion of the trade, deception might arise, the Court would act on that opinion: *Mitchell v. Henry*, 15 Ch. D. 181. See also *In re Christiansen*, 3 P. R. 54, as to the opinion of the trade. Besides the cases above referred to, see *In re Orr-Ewing*, 8 Ch. D. 798; 1 App. Cas. 479; *In re Brook*, 26 W. R. 791; and *In re Jones Bros. & Co.*, Hall, V.-C., July 10th, 1880.

This section 67 appears to have had the effect of giving trade marks registered by deposit at the Patent Office Library, or registered in pursuance of an application accompanied by coloured representations, the same advantages as registration in black and white, so that the colour of a trade mark registered in colour would not, except in very exceptional cases, such as that of the coloured selvage, be a part of the mark, but after one trade mark was so registered, another would not be entitled to be used or registered, if it would be likely to be mistaken for the first, on the supposition that the first mark was used in any different colour from that in which it was registered.

68. Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller (a), [unless the comptroller refuse to entertain the application] (b).

Advertisement of application.
See T. M. A. 1905. s. 13.

The amendments in this section were made by § 12 of the Act of 1888.

(a) "The object of the advertisement is to give to persons who might be claimants of the trade mark proposed to be registered the opportunity of coming forward and objecting": *per* Hall, V.-C., *In re Meikle*, 24 W. R. 1067. Consequently, as was there held, when a refusal of the comptroller to register a trade mark was overruled, the only order that could be made was an order for him to proceed with the application, so that the usual course of advertisement, &c., might be followed. This course was adopted by Hall, V.-C., in *In re Orr-Ewing*, 8 Ch. D. 794, and subsequent cases. For a similar reason a mark which had been wrongfully registered would be removed from the register, even though a new application might be successfully made to register it: *In re Apollinaris Co.*, (1891) 2 Ch. 186, 231. It was not, however, incumbent on persons to see the advertisement, so that if a common mark had been registered, in consequence of the firms interested in opposing it having failed to see the advertisement of the application, they were able to obtain the removal of the mark from the register, with costs, on application within a reasonable time after the registration was brought to their knowledge: *In re Hyde & Co.*, 7 Ch. D. 724. See *In re Palmer* (3), 24 Ch. D. 504; *In re Kuhn & Co.*, 53 L. J. Ch. 238; *Edwards v. Dennis*, 30 Ch. D. 454; *In re Lloyd & Sons*, 27 Ch. D. 646; *In re Wragg*, 29 Ch. D. 551; *Wood v. Lambert*, 32 Ch. D. 247; *In re Spencer*, 54 L. T. N. S. 659; *In re Apollinaris Co.*, (1891) 2 Ch. 186.

(b) This exception was no doubt inserted in consequence of the case of *Ex parte Saxlehner*, Q. B. D., July 7th, 1887, in which the comptroller refused to advertise applications by Saxlehner for the registration of certain trade marks, on the ground that similar marks were already registered in the name of the Apollinaris Co., so that registration could not be granted and advertisement was useless; but on application by Saxlehner the Q. B. Div. granted a rule to show cause why a mandamus to advertise should not issue. The matter does not appear to have been further contested, and the marks were advertised in the "Trade Marks Journal" for July 27th, 1887.

Opposition to
registration.
See T. M. A.
1905,
ss. 14, 59.

69.—(1.) Any person (*a*) may within *two months* [one month or such further time, not exceeding three months, as the comptroller may allow (*b*)] of the *first* advertisement of the application, give notice in duplicate at the Patent Office of opposition (*c*) to registration of the trade mark, and the comptroller shall send one copy of such notice to the applicant.

(2.) Within *two months* [one month] 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 (*d*).*

[(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, after hearing (*e*) the applicant and the opponent, if so required, decide whether the trade mark is to be registered (*f*); but his decision shall be subject to appeal to the Board of Trade, who shall, if required, hear (*e*) the applicant and the opponent and the comptroller, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.

(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 (*g*).

(5.) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the comptroller may determine to be reasonable.

(6.) Where the opponent is out of the United Kingdom he shall give the comptroller an address for service in the United Kingdom.]

(*a*) This section came from the old rules. The amendments were made by § 13 of the Act of 1888.

There was no limitation of the right of opposing to persons who could themselves claim registration: *In re Riviere & Co.*, 26 Ch. D. 48; and "the statute allows any person to oppose an application for registration, whether he has or has not a personal interest in the result": *per* Lord Macnaghten, in *Eno v. Dunn*, 15 App. Cas. 252, 262; nor was there any limitation of the right of opposing on the ground of similarity to proprietors of trade marks registered for the same goods, or even for goods in the same class, as the goods for which the applicant was seeking to register. But an opposition on this ground would, of course, not succeed unless the two marks would come into collision in some way when being used. Thus, in *In re Simpson, Davies & Sons*, Jessel, M. R., Jan. 12th, 1881, the application was for registration in class 22 for railway waggons, and the successful opposition was by a firm registered in class 4 for coal, whose trade mark was used by placing it on the waggons in which the coal

was conveyed and sold. In *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278, a mark applied for in respect of wines was not allowed to be registered on account of its similarity to a mark already registered for spirits; and in the similar case of *In re Turney*, 11 P. R. 37, beer and rum were for this purpose held to be the same description of goods. So in *In re La Union Agrícola Sociedad Anónima*, 25 P. R. 295 (beer and liqueur). So also in Victoria, *In re Webendorfer Bros.*, 23 V. L. R. 34 (gunpowder and cartridge cases). And see *In re Gutta Percha and Rubber Manufacturing Co. of Toronto, Ltd.*, 26 P. R. 84, 428, a decision under the Trade Marks Act, 1905, where it was held that confusion might arise between goods falling within different classes for the purposes of registration. See also *Boord and Son v. Huddart*, 21 P. R. 149; *Finlay v. Shamrock Co.*, 22 P. R. 301; *Blogg v. Anderson*, N. S. W., 21 L. R. Eq. 238, where a similar question arose in an action for infringement. In *Lever v. Abrams*, 8 C. L. R. 609, the Supreme Court of Australia held that a word registered and used for soaps could not be registered by another applicant for boot polish. In *In Re Dunn*, 41 Ch. D. 439; 15 App. Cas. 252, the opposition failed in the Court of Appeal, because a mark used for baking-powder was thought not to be capable of being mistaken for a mark used for powder for an effervescing drink, but in the House of Lords the opposition succeeded. Registration was also refused on the ground of fraudulent misstatements contained in the mark as previously used for several years, though corrected in the mark as tendered for registration: *In re Fuente*, (1891) 2 Ch. 166. The opposition might be by a person with whom the applicant had covenanted not to use the mark. See the Victorian case of *Ex parte Grist & Bowring*, 11 V. L. R. 630.

It was thought that if what was desired was not to have the registration altogether refused, but to have it limited by the addition of a note stating, *e.g.*, that the mark was only to be used in trade with a particular country, and the applicant was willing to consent to such limitation, it was not necessary to go through the process of entering a notice of opposition, but that an order directing that the mark, if registered, was to be registered with the addition of a note to the desired effect, might be obtained by the applicant on an *ex parte* application: *In re Keep Brothers*, 25 Ch. D. 187. The entry of such notes was, however, objected to by the comptroller, and was not allowed in later cases.

(b) The period allowed seems to have been at most three months from the date of the advertisement, not three months after one month, *i.e.*, four months. See *In re Moet*, 7 P. R. 226, 230.

(c) The notice of opposition might be amended, even after the counter-statement had been put in: *In re Moet*, 7 P. R. 226.

(d) This being the time at which the case stood for the determination of the Court, it was held that the costs of the previous proceedings in the office could not be given to a successful opponent: *In re Brandreth*, 9 Ch. D. 618; *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278. Where a claim had been wrongfully set up to use a certain trade mark, the claimants were ordered to pay the costs of cross adjourned summonses, as well as of an action which had been brought to enforce the right, even though they had not actually used the mark in question: *Davis v. Tylor*, Jessel, M. R., April 24th, 1879. In *In re Hudson*, 32 Ch. D. 311, no costs of an opposed application were given to successful applicants, on the ground that they had caused the litigation by the manner in which they had put forward their case. By the rules under the Act of 1883 the proceedings subsequent to the case standing for the determination of the Court were to take the form of an application by the applicant to the Court by summons for leave to register. Now (T. M. A. 1905, § 14) the proceedings are assimilated to those in the case of an unopposed application for registration, and the rights of the parties are decided by the Registrar, with an appeal to the Court, or, by consent, to the Board of Trade. Under the earliest Acts and Rules the opponent was required to take out a summons for directions, which almost always resulted in the applicant being directed to apply for leave to register. See *In re Simpson, Davies & Sons*, 15 Ch. D. 525; also *In re Johnston*, 43 L. T. N. S. 672.

(e) It seems that if, for any reason, an opponent was not heard, his course was to apply for a mandamus: see *per* Bowen, L. J., in *In re Lambert*, 6 P. R. 344.

(f) The position which the comptroller ought to take up was thus defined by the Law Peers who formed the majority in *Evo v. Dunn*, 15 App. Cas. 252. Lord Watson said, "The statute nowhere confers an absolute right to register a

trade mark. The comptroller, by § 62, may, if he thinks fit, refuse to register, his refusal being subject to an appeal to the Board of Trade, who may either hear the parties, and decide whether and subject to what conditions, if any, registration is to be permitted, or may refer the matter to the Court for its determination. § 72 (2) prohibits the registration, with respect to the same goods or description of goods, of 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. That provision is supplemented by the broader enactments of § 73 to the effect that '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.' These prohibitory clauses cast upon the applicant the duty of satisfying the comptroller, or the Court, that the trade mark which he proposes to register does not come within their scope. In an inquiry like the present, he does not hold the same position which he would have occupied if he had been defending himself against an action for infringement. There the onus of showing that his trade mark was calculated to mislead rests, not on him, but upon the party alleging infringement; here he is *in petitorio*, and must justify registration of his trade mark by showing affirmatively that it is not calculated to deceive. It appears to me to be a necessary consequence that, *in dubio*, his application ought to be disallowed." Lord Herschell said, "The case was argued on behalf of the respondent as if he had an absolute right to have any trade mark registered which was not proved to fall within the terms of either the 72nd or 73rd section of the Act. I do not so read the statute. Those sections prohibit the registration of a trade mark in certain specified cases; but there is no duty cast upon the comptroller of registering every other trade mark that may be applied for. On the contrary, whilst he is in certain cases prohibited from registering, a discretion whether to register or not appears to me to be in all cases plainly conferred. Of course this discretion must be reasonably and not capriciously exercised: but it is, in my opinion, a reasonable exercise of it to refuse registration when it is not clear that deception might not result from it." See, however, *per* Lord Blackburn in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 479, as to old marks. In accordance with the principles above laid down by Lord Herschell, registration of a device was refused by Kekewich, J., on the ground that a similar device was used by the opponent as an advertisement though not registered as a trade mark, notwithstanding that the case did not fall within either § 72 or § 73: *In re Sphincter Grip Armoured Hose Co.*, 10 P. R. 54; and North, J., came to a similar decision in the case of a label: *In re Roger* (2), 12 P. R. 149. And see *In re Pomral*, 18 P. R. 181; *In re Booth's Distillery Co., Ltd.*, 21 P. R. 18; compare *In re Verity*, 19 P. R. 56. The comptroller had also power to deal with oppositions based on the alleged fraud of the applicant for registration: *In re Maet*, 7 P. R. 226.

(g) It was convenient that unless other directions were given by the Court or the Board of Trade, the appeal to the Court should be heard on the same evidence as before the comptroller: *In re Farrow*, 7 P. R. 260. But there was no binding limitation. See also *In re Roger*, 11 P. R. 637; *In re Kingsford & Sons*, 15 P. R. 197; *In re Extract of Meat (Baron Liebig) Photograph Brand, Ltd.*, 17 P. R. 161, as to evidence where an appeal was referred to the Court. Under the Act of 1905 the declarations may be used in Court on an appeal (§ 49). On an opposed application coming before the Court, the Court had full jurisdiction to decide as to the validity of the mark, notwithstanding that the comptroller had originally, under § 62, passed it for registration: *In re Achenz*, 35 Ch. D. 248. And where an application was duly opposed, all questions as to the validity of the mark were open to the consideration of the Court; but the Court would not readily overrule the comptroller: *In re Farrow*, 7 P. R. 260. The Court had no power to give leave to amend the notice of opposition, nor, after the appeal had been presented, had the comptroller, he being *functus officio*: *In re Robertson, Sanderson & Co.* (2), (1892) 2 Ch. 245. Where an opponent appealed against the comptroller, upon an application made by a Scotch or Irish firm having no address for service in the United Kingdom, and the appeal was referred to the Court, he might address the notice of motion to the comptroller only, and give informal notice of the proceedings to the applicant: *In re Robertson, Sanderson & Co.* (1), 9 P. R. 213. And see *In re King & Co.*, (1892) 2 Ch. 462. Where an opponent's appeal was referred to the Court, but before the hearing the parties agreed to its dismissal without costs, the registrar would not proceed with the registration without

an order of the Court; and in order to obtain the order, it was not sufficient for the applicant to produce the written consent of the parties, but the Court required the production of a consent brief: *In re Crosfield*, 15 P. R. 754.

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

Assignment and transmission of trade mark.

See T. M. A. 1905. s. 22.

(a) This section came from § 2 of the Act of 1875.

Assignments and transmissions were to be entered in the register: see §§ 78, 87, *infra*. By § 4 of the Act of 1875, it was enacted that every proprietor registered in respect of a trade mark subsequently to the first registered proprietor should, as respected his title to that trade mark, stand in the same position as if his title were a continuation of the title of the first registered proprietor. This enactment was not repeated, the same result being effected by generalising the language of § 76. Compare the American case of *Walton v. Crowley*, 2 Bl. C. C. 440. R. Cox, 166.

(b) As to the connection between trade marks and the goodwill of the business, see *Cooper v. Hood*, 26 Beav. 293; *Churton v. Douglas*, Johns. 174; *Shipwright v. Clements*, 19 W. R. 599; *Cotton v. Gillard*, 44 L. J. Ch. 90; *Pinto v. Badman*, 8 P. R. 181; *Hammond v. Malcolm, Brunner & Co.*, 9 P. R. 301; *In re Magnolia Metal Co.*, (1897) 2 Ch. 371; *In re Ashton*, 48 W. R. 389; *In re Harness*, 17 P. R. 40; *Rey v. Lecouturier*, 25 P. R. 265; 27 P. R. 268; and the American cases of *Sohier v. Johnson*, 111 Mass. 238; *Witthans v. Braun*, 44 Md. 303; *Taylor v. Bemis*, 4 Biss. 406; *Weston v. Ketchum* (1), 39 N. Y. Super. Ct. 54, and S. C. (2), 51 How. Pr. 155; *Morgan v. Rogers*, 19 Fed. Rep. 596; *Smith v. Fair*, 14 Ont. Rep. 729. "The main object of the restriction upon assignments imposed by the Act would seem to be to prevent confusion or deception by suggesting that the articles to which the mark is applied continue to have some connection or other with the original registered owner"; *per* Court of Appeal in *In re Magnolia Metal Co.*, (1897) 2 Ch. 371, 396; and it seems that in considering the sufficiency of the connection of the trade mark with the goodwill, regard must be had to this object. Where a trade mark has been placed on the register, but no business exists in which it is used, the mark cannot be assigned, since there is no goodwill to be assigned with it: *Ex parte Lawrence Bros.*, 44 L. T. N. S. 98. See *In re Farina* (4), 44 L. T. N. S. 99. In *In re Wellcome*, 32 Ch. D. 213, the English agents of an American firm had registered in their own names two trade marks used by the latter, and subsequently assigned them to them; and it was held by Chitty, J., that the assignment being an assignment to the persons entitled to the goodwill of the business for the purposes of which the trade marks had been registered, it was an assignment of the trade marks in connection with the goodwill, within this section, notwithstanding that the persons originally registered had no interest in the goodwill; and where a member of a firm erroneously obtained registration in his own name of a mark belonging to the firm, the proper course was to assign to the firm, and the comptroller ought to register the assignment: *In re ...*, 9 P. R. 93; cf. cases on rectification at p. 659. As to goodwill, see Ch. IX.

(c) "An assignee has no exclusive right to a trade mark unless the assignment is of a business co-extensive with the trade mark as registered": *per* Fry, L. J., in *Edwards v. Dennis*, 30 Ch. D. 454. And an assignment of a trade mark with a goodwill consequently gives the assignee no right in the trade mark in connection with any goods other than those to which the goodwill extends: *Ib.*

A patentee is carrying on business, and has, therefore, an existing goodwill, as long as he receives royalties from licensees, though he does not himself manufacture: *In re Ralph*, 25 Ch. D. 194.

71. Where each of several persons claims to be registered as pro- Conflicting

claims to
registration.

See T. M. A.
1905, s. 20.

prietor 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 (a).

(a) This section came from § 5 of the Act of 1875. The rules under this Act directed that the mode of submission to the Court should be by special case. This was also provided by the Rules under the former Acts, and *Allsopp v. Walker*, Dig. 545, was heard on special case, and in *Ex parte Grimshaw*, W. N. 1877, p. 24, Hall, V.-C., refused to order otherwise. It was, however, found to be so difficult in practice to settle the statement of facts that in all cases of rival claim the practice was adopted of applying to the Court by way of motion or summons, asking at the same time for the leave of the Court to have the matter decided in that way, and it is believed that after the first year or two from the passing of the Act of 1875 there is no instance of a special case to be found. *Allsopp v. Walker* was a case in which the registration of a trade mark was objected to on the ground of its similarity to another trade mark, but the cases which this section and the rules under it appear to have been really intended to govern were cases in which not similar, nor even identical, trade marks were claimed, but in which *the same* trade mark was claimed, e.g., where a partnership had been dissolved and a question had arisen between the former co-partners as to the way in which the trade marks of the partnership had been transmitted.

Restrictions
on registra-
tion.

See T. M. A.
1905, s. 19.

72.—(1.) Except where the Court has decided (a) that two or more persons are entitled to be registered as proprietors of the same trade mark, the comptroller shall not register (b) in respect of the same goods or description of goods (c) a trade mark identical with one already on the register with respect to such goods or description of goods.

(2.) [Except as aforesaid] (d) the comptroller shall not register (b) with respect to the same goods or description of goods (c) a trade mark *so nearly resembling* [having such resemblance to] a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive (e).

The amendments in this section were made by § 11 of the Act of 1888.

(a) This section came from § 6 of the Act of 1875, by which the "special leave" of the Court was required for such subsequent registration. Of this leave of the Court, Jessel, M. R., said in *In re Jelley, Son & Jones*, 51 L. J. Ch. 639, that it "is not a capricious leave. It merely means that the second man must show his title." The same principle continued to govern the decisions of the Court, which had to be obtained on motion or adjourned summons. It was for the Court to judge as to the similarity, so that registration might be granted notwithstanding the adverse decision of the Manchester Committee of Experts (see notes to cotton rules, *ante*), or refused, notwithstanding the favourable decision of a foreign Court: *In re Farina* (2), 27 W. R. 456. "The Court," being the High Court of Justice, an order of the House of Lords should be made an order of the High Court of Justice. See *In re Orr-Ewing* (2), 28 W. R. 412.

(b) The comptroller's discretion to allow registration was limited by this section: *In re Prier's Patent Candle Co.*, 27 Ch. D. 681; *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278; *Eno v. Dunn*, 15 App. Cas. 252.

(c) The prohibition of § 6 of the Act of 1875 was of registration "in respect of the same goods or *classes* of goods." The alteration in the language confined the prohibition to cases in which the goods were substantially the same, so that it no longer applied to cases of different goods which happened to be grouped together in the same class. Thus, registration of a device was allowed for gelatine notwithstanding previous user of the same device (without registration) by the opponent for other goods in the same class, viz., sago and tapioca, on the ground that the goods were not so closely connected as to make the registration calculated to deceive: *In*

re Leiner, 20 P. R. 253. Even under the Act of 1875 registration was sometimes granted to similar marks for different goods included in the same class, when no clashing could take place. See note (a) to § 65, and note (a) to § 69.

(d) Before the introduction of these words by the Act of 1888 the prohibition was absolute; but it was held that the Court had a certain discretion where the case was not precisely covered by this section: *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278.

(e) The meaning of the words "calculated to deceive" was considered in *In re Lyndon*, 32 Ch. D. 109, in which Fry, L. J., said that "the words 'calculated to deceive' import at first sight a design to deceive; but I think it plain, from the rest of the section and the decisions of the Courts, that a mark is within the section 'calculated to deceive' when that mark, fairly used, is so like a mark on the register, also fairly used, as that the one is likely to be mistaken for the other." And Bowen, L. J., said "a trade mark is calculated, by its resemblance to another already on the register, to deceive, if in the course of its legitimate use in the trade it is likely to do so." In *In re Farina* (1), 26 W. R. 261, Hall, V.-C., appears to have thought that a mark ought only to be refused registration as being "calculated to deceive" if it bore such a resemblance to the earlier mark that an injunction would be granted to restrain the use of it; but in *In re Marks & Tellefsen*, 63 L. T. N. S. 231, Pearson, J., considered that the question in such cases was, not whether an injunction would necessarily be granted to restrain the use of the mark applied for, but whether it so nearly resembled the earlier mark as to be likely in future to give rise to litigation; and in *In re Speer*, 4 P. R. 521, Kay, J., took the same view, and went on to explain that the comptroller would be right in refusing to register a mark which was so composed as to be likely to cause the goods to which it was applied to be known by the same name in the market as the goods to which the older mark was applied. And see also *per* Kay, J., in *In re Dunn*, 41 Ch. D. 439, and *per* Stirling, J., in *In re Baschiera & Co.*, 33 Sol. J. 469. The House of Lords decided in favour of this view: *Kno v. Dunn*, 15 App. Cas. 252. Again, in *In re La Société Anonyme des Ferreries de l'Etoile*, (1894) 1 Ch. 61; (1894) 2 Ch. 26, Stirling, J., thus lays down the duties of the comptroller: "If," he said, "it is brought to his notice by the evidence adduced by an opponent that, even though the two marks are not physically similar, there is a reasonable probability of the public being misled into buying one thing when they think they are buying another, I apprehend that it would be his duty to refuse registration;" and on appeal, Lindley, L. J., intimated that if a device could not be registered as being calculated to deceive, a description of it in words could not be registered, inasmuch as regard ought to be had to the appeal to the ear as well as to the appeal to the eye. And see *In re Pomril*, 18 P. R. 181; *Reiners, Von Laur & Co. v. Fehr*, 9 Cape Good Hope, 306. In *In re Dechurst & Sons, Ltd.*, (1896) 2 Ch. 137, the same principle was extended to a description in Burmese characters: and it was held further, that the consent of the owner of a mark already on the register was not conclusive on the question whether a mark was calculated to deceive. And see *In re Ehrmann*, (1897) 2 Ch. 495. The provisions of this section existed not merely for the benefit of the owners of trade marks, but for the protection of the public, viz., to prevent confusion and deception, and the like principle governed the Court in considering whether it ought to encourage concurrent applications. *Per* Stirling J., in *In re Ehrmann*, (1897) 2 Ch. 495, where applications by two persons who had dissolved partnership were refused although each consented to the other's application. Cf. *In re König & Ehardt*, (1896) 2 Ch. 236, where the existence on the register of several marks containing a particular device for a variety of goods in a particular class was held no bar to registration of a mark containing a similar device for other goods in the same class subject to a note of disclaimer of the exclusive right to the device, the previous owners consenting or not objecting. If the essential and permanent particulars of the two marks were too similar, it was immaterial that there were differences in the non-essential and changeable elements: *In re Murphy & Co.*, 7 P. R. 163; *In re Currie*, 13 P. R. 381. It has been held in Victoria, that when A. and B. have for years used marks bearing a certain resemblance to one another, A. cannot afterwards register a mark still more similar to B.'s mark: *In re Rowley & Pyne*, 9 V. L. R. (L.) 307; and in Canada, the use of a heart-shaped label which the proprietor erroneously believed to be properly registered was held to be a bar to the registration of a label of a similar shape and general appearance: *De Kuyper v. Van Dulken*, 24 Can. Sup. Ct. Rep. 114.

Registration
as a series.

See T.M.A.
1905, s. 26.

The restriction imposed on the registration of similar trade marks did not extend to similar marks of the same owner, but when one person applied for the registration of an essential particular, or combination of essential particulars, together with varying additions, the proper course was to register the marks as a series under § 66, *ante*. The older Act contained no provision corresponding to those of § 66, but the same course was considered to be the right one, viz., either to register the essential particular, omitting the additions, but stating that there were to be such, or else to register the essential particular with one form of addition, but stating that that might be varied. See *In re Barrows*, 5 Ch. D. 353; *In re Brook*, 26 W. R. 791; *In re William Dixon, Ltd.*, Jessel, M. R., April 4th, 1879; *Davis v. Tylor*, Jessel, M. R., April 21th, 1879; *In re Clippens Oil Co.*, Jessel, M. R., March 11th, 1881; *In re Steedman*, L. J. N. of C. 1883, p. 83; though occasionally separate registration was granted to marks which differed only in non-essential respects, as in *In re Fox & Co.*, Hall, V.-C., May 7th, 1881; but see *Baker v. Rawson*, 45 Ch. D. 519, 530; *In re Player & Sons*, (1901) 1 Ch. 382. See the observations of Jessel, M. R., in *In re Kuhn & Co.*, 53 L. J. Ch. 238, as to registration with a note of disclaimer. Also *infra*.

Old marks
favoured.

When the second of two trade marks which it was thought might conflict was claimed by a different person from the registered proprietor of the first one, it made a considerable difference whether the second mark was an old one or a new one; for it was the duty of a manufacturer, when adopting a new mark, to take especial care to select a distinctive one, and the Court was far more strict in deciding whether this had been done, than it would be in deciding as to similarities between old marks. So that old marks bearing a certain similarity to each other might sometimes be allowed to be registered, though if the mark last applied for were a new one, registration would be refused to it: *In re Jelley, Son & Jones*, 51 L. J. Ch. 639; *In re Rosing*, 51 L. J. Ch. 975; *In re Lambert*, 6 P. R. 344; and see *per* Lord Blackburn in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 499.

The "Three
Mark Rule."

When the Act of 1875 came into operation it was soon discovered that trade marks which were for practical purposes indistinguishable had in various instances been used by two or more firms, generally in different parts of the country, for the same or substantially the same goods, and the injustice of giving an exclusive right to the first of these firms was felt to be so great that what is known as the "Three Mark Rule" was promulgated by the Commissioners of Patents. The first public announcement of the new rule was made by Jessel, M. R., in *In re Walkden Acetated Waters Co.* (54 L. J. Ch. 394), when he stated that the Lord Chancellor was of opinion that the number of times that a device or emblem might be registered as a trade mark for articles of the same class ought, for the sake of distinctiveness, in no case to exceed three. That was a case in which the application was for the registration of a mark similar in its main features to two others already on the register. The mark was a new one, and the application was only allowed upon condition of the consent of both the previously registered proprietors being produced. On account of the mark in that case having been a new one, an idea arose that the rule was only applicable to new marks, but in *In re Hyde & Co.* (54 L. J. Ch. 395) the Master of the Rolls took another opportunity of referring to the rule, and stated that the Lord Chancellor had personally come to the decision that not more than three registrations of the same, or practically the same, mark should be allowed, and that this was also his own decision; and, in fact, that of the Commissioners of Patents, having been communicated to the Attorney and Solicitor-General. This decision was intended to cover old marks, and not merely new ones. A mark used in substance by more than three firms could not be registered, but must be treated as open. The rule therefore was, that where a mark had been used by more than three firms it was common to the trade and incapable of registration; that where a mark had been used by two firms or three firms before the 13th of August, 1875 (the date of the passing of the Act of 1875), it was the old mark of each firm, and each firm was entitled to registration, almost as of right, on proof of the facts; but that where a mark had been registered by one firm or two firms, another firm would not be allowed to register substantially the same mark for the same goods as a new mark, except by the consent of the previously registered proprietors. See *In re Leonardt*, Dig. 610; *In re Mitchell (2)*, Dig. 611; *In re Jelley, Son & Jones*, 51 L. J. Ch. 639; *In re Brook*, 26 W. R. 791; *In re Powell*, Dig. 589; *Ex parte Sales, Pollard & Co.*, Dig. 620; *In re Kuhn & Co.*, 53 L. J. Ch. 238; *Bembow v. Low (4)*, 44 L. T. N. S. 875; *Mousson & Co. v. Bachm.*, 26 Ch. D. 398; and *In re Vergaras*, Hall, V.-C., June 3rd,

1881, in which last case the same mark was allowed to be registered by three separate firms as a new mark, all consenting. In *In re Walkden, & Co.*, 54 L. J. Ch. 394, the mark was allowed to be registered as a new mark with the consent of two other firms who had registered similar marks as their old marks. The tendency of later cases, however, appears to have been to attach less importance than formerly to the consent of previous owners, and to prohibit altogether the registration of a new mark similar to an old one; since the section, it was said, was framed for the protection of the public as well as of the trade mark owners: *In re Dewhurst & Sons, Ltd.*, (1896) 2 Ch. 137, and *In re Ehrmann*, (1897) 2 Ch. 495, where registration was refused; and see *In re König & Ebhardt*, (1896) 2 Ch. 236. An old mark might be registered under the Three Marks Rule, notwithstanding that another similar mark had been on the register for upwards of five years: *Jackson & Co. v. Napper*, 35 Ch. D. 162; *In re Bancroft & Co.*, 5 P. R. 209. And to entitle a mark to such registration it was not necessary to show user on the identical goods for which it was sought to register; it was sufficient to show actual user before August, 1875, on substantially identical goods—*e.g.*, hatchets and axes, gimlets and augers, coopers' drawing-knives and carpenters' drawing-knives: *Jackson & Co. v. Napper*, 35 Ch. D. 162. In *In re United Vineyards Proprietors' Co.*, Stirling, J., Nov. 8th, 1889, the company applied in 1876 for the registration of a device of a salamander with the words "The Salamander" as their old mark for brandy, used upwards of twenty years before 1876; but the application lapsed in consequence of the applicants having never received a letter from the registrar requesting the final fee to be forwarded. The applicants supposed the mark to have been registered. In 1882 another firm obtained the registration of a different device of a salamander as their new mark for fermented liquors and spirits. In 1889 the original applicants became aware of the non-registration, and at once made a fresh application for registration of their original mark as their old mark for brandy, used since 1850. The firm registered in 1882 refused to consent to the application, but did not appear to oppose it; and it was held that the registration should proceed, the mark being an old one. Where a new mark had been registered and much used, and another similar mark which had not been much used was proved to be an old mark and was allowed to be registered, the new mark was not removed from the register, but was allowed to remain there side by side with the old one: *Manson & Co. v. Buchan*, 26 Ch. D. 398. But where the word "Emollio" had been used for several years prior to 1870, but had been abandoned from that year till 1881, when the user was recommenced in a different form, and there had been considerable use of the word "Emolline" by another firm since 1876, "Emollio" was not allowed to be registered: *In re Grossmith*, 6 P. R. 180. In *In re Some & Fleming Manufacturing Co.*, 30 Ch. D. 505, the applicants had used the mark in England and America since 1872, and had registered it in America in 1881. On their applying for registration in 1885 registration was refused by the comptroller on account of a somewhat similar mark having been registered by another firm in 1877, but that firm not appearing to oppose, though served with notice of the application, and the mark being an old one, registration was granted. So in *In re Bancroft & Co.*, 5 P. R. 209; *In re Kenrick & Jefferson*, 7 P. R. 321. To bring a mark within the rule and entitle it to registration, notwithstanding a previous similar registration for the same goods, foreign user was insufficient, and there must have been user within the United Kingdom: *In re Münch*, 50 L. T. N. S. 12; *Charles Bayer & Co. v. Strauss, Adler & Co.*, Cape Good Hope, 24 S. C. R. 27; with which compare *In re Riviere & Co.*, 26 Ch. D. 48; *Leonard & Ellis v. Wells & Co.*, 26 Ch. D. 288, *per Fry, J.*; and *Berliner Brauerei Gesellschaft Tivoli v. Knight, Stocks & Co.*, W. N. 1883, p. 70; *In re Kenfry*, 23 V. L. R. 44. And the mere passage of marked goods through England, without any sale or exposure for sale, is not user of the mark in England: *Jackson & Co. v. Napper*, 35 Ch. D. 162; *In re Meas*, (1891) 1 Ch. 41. And see *Newman v. Pinto*, 4 P. R. 508, *per Kekewich, J.* The user within the United Kingdom must have been substantial, and not merely nominal and unknown to the other proprietor: *In re Hobson, Tessier & Co.*, 86 L. T. N. S. 188. A mark would be held to have been in common use, and to be consequently incapable of registration in any name, if the substantial part of it was so, though the minor parts were sometimes varied; *e.g.*, in *In re Wragg*, 29 Ch. D. 551, the device of a syphon, hand and glass, was held to be common to the mineral waters trade, though in the six cases relied on the three elements appeared together in three only, the syphon and hand in one, and the syphon and glass in two. From the same case it appears that the cases of user, which make the mark common, need

not all have been on the goods, as in three out of the six cases the user was only on invoices and circulars, and not on the bottles. But see *In re Verity*, 19 P. R. 58, where it was held that the registration of a trade mark was not improper as calculated to deceive by reason only of the prior user of a similar trade mark in respect of similar goods not on the goods themselves, but on price lists advertising the goods, and that the latter trade mark was not entitled to registration.

Registration
with a note.
See T.M.A.
1905, s. 21.

In some cases the similarity between marks was got over by registering for different goods, though in the same class (see note (a) to § 65, *ante*; also *In re Kenrick & Jefferson*, 7 P. R. 321; *In re König & Ebhardt*, (1896) 2 Ch. 236); or restricting the manner of user in respect of colour (*In re Johnson, Philpott & Co.*, North, J., Feb. 21st, 1888; *In re Jeffrey & Co.*, Stirling, J., May 18th, 1888); or otherwise (*In re Whiteley*, 43 L. T. N. S. 627; *In re Sykes*, 43 L. T. N. S. 626; *In re Farina* (3), Dig. 654; see *In re De Otaduy*, W. N. 1885, p. 177); or the locality within which the mark is to be used (*In re Rabone*, Dig. 645; *In re Keep Brothers*, 26 Ch. D. 187; *In re Mitchell & Co.*, 28 Ch. D. 666; *In re Johnson, Philpott & Co.*, North, J., Feb. 21st, 1888; *In re Steel*, Chitty, J., Jan. 12th, 1893.) Where registration was granted with a limitation, the nature and extent of the limitation ought to appear on the face of the register, so as to be ascertainable by persons searching the register: *In re Mitchell & Co.*, 28 Ch. D. 666. See *In re De Otaduy*, W. N. 1885, p. 177. And in the same spirit, the improper grant of an exclusive right in common elements was avoided by the use of disclaimers (*In re Leonardt*, Dig. 610; *In re Mitchell* (2), Dig. 611; *In re Hubbuck*, Jessel, M. R., June 20th, 1879; *Ex parte Sales, Pollard & Co.*, Dig. 620; *In re Kuhn & Co.*, 53 L. J. Ch. 238; *In re Hoyle & Sons, Ltd.* (2), Chitty, J., Nov. 30th, 1883; *In re Davies*, Chitty, J., March 9th, 1885; *In re König & Ebhardt*, (1896) 2 Ch. 236; and see *In re Dewhurst & Sons, Ltd.*, (1896) 2 Ch. 137; see also, § 74); and permission to use a mark was reserved to certain persons, on registration against all others being granted: *Ex parte Hemming & Son*, Jessel, M. R., April 27th, 1881. In *In re Dewhurst & Sons, Ltd.*, (1896) 2 Ch. 137, the Court of Appeal held that registration subject to a condition imposing a geographical limit ought not to be allowed. See now, however, § 21 of the Act of 1905.

Marks com-
pared as used.

In considering whether there is in fact such similarity between two marks as to exclude the second from registration, it is very important to compare them in the actual mode of user—*e.g.*, as branded on metal goods: *In re Jelley, Son & Jones*, 51 L. J. Ch. 639; *In re Rosing*, 54 L. J. Ch. 975; *Nathall v. Vining*, C. A. Jan. 21st, 1880. And compare *Davis v. Reid*, 17 Grant, Up. Can. Ch. 69. And if there are blanks in the new mark, as tendered for registration or registered, regard will be had to the manner in which these are filled up in practice (*In re Christiansen*, 3 P. R. 54; *In re Lyle and Kinahan, Ltd.*, 24 P. R. 249); and the manner of arrangement of parts common to the trade will also be taken into consideration: *ib.* And see *In re Farrow*, 7 P. R. 260. And it was held that, if one trade mark had been registered without colour, but was in practice used in a particular colour, and another trade mark was offered for registration which was distinguishable without colour, but might by the addition of colour be made to resemble the first mark, registration would be refused (*In re Worthington*, 14 Ch. D. 8); and see *In re La Union Agricola*, 25 P. R. 295; and *à fortiori*, where it was proved that the proposed new mark was intended to be used in the same colour as the opponent's mark: *In re Turney*, 11 P. R. 37. And see *In re Biegel*, 4 P. R. 525; and *In re La Société Anonyme des Ferreries de l'Étoile*, (1894) 2 Ch. 26, in which case, it being conceded that where a device of a star had been registered for glass a device of a red star could not be registered, a mark consisting of the words "Red Star Brand" was removed from the register; also *In re La Union Agricola*, 25 P. R. 295. Although a trade mark had to be distinctive, irrespective of colour (*In re Hanson*, 37 Ch. D. 112), it might be registered in colour (§ 67), an advantage which was previously reserved for cotton marks and other marks of a special character requiring registration by deposit. In such a case it was held that the colour was part of the mark, so that a gold coin might be registered for goods for which a silver coin was already registered, though if both were in gold, or both in silver, there would be a similarity (*In re Robinson*, 29 W. R. 31). In *In re Lyndon*, 32 Ch. D. 109, it was held by the Court of Appeal that a mark tendered for registration must be compared with a mark already registered, not as actually used, but as registered, and on the footing that the applicant's mark will be fairly used; and "it is established now that when two marks are being compared together for the purpose of

Colour.
See T.M.A.
1905, s. 10.

seeing to what extent one resembles the other with reference to the question of registering or not, the Court must presume a fair user of the mark; and at the same time it is established that the Court must look, in deciding such a question as this, to the mode in which the mark would be stamped or affixed, the character of the goods upon which it is affixed, and generally to all the circumstances of the case with respect to the placing on of the mark and the user of it. But, though the circumstances are to be looked at, it is a cardinal proposition that the Court must presume a fair user": *per* Chitty, J., in *In re Haines, Batchelor & Co.*, 5 P. R. 669. In the same way Cotton, L. J., said, in *In re Lambert*, 6 P. R. 344, 351: "In considering whether the mark is calculated to deceive, we must consider what would be the ordinary use, without fraud, of the mark, and not go into the question of what might be done by a fraudulent user. If that were done—if there were a fraudulent user—then the Court would interfere, not because the man had not got the trade mark, but because he was using that trade mark fraudulently, so as to pass off his goods for those of another. That matter of fraud is not to be considered in dealing with the question whether the mark is so like another as to be calculated to deceive. In dealing with that question you must assume that it is fair and right." And see *In re Farrow*, 7 P. R. 260; and *In re Kutnow*, 10 P. R. 401. It has been held in Victoria (*Ex parte Kennedy*, 9 V. L. R. (L.) 335), and the same would appear to hold good in this country, that the marks ought to be compared taken apart, and not as seen side by side, and that the question is whether it is or is not probable that an incautious person would be deceived.

In the case of cotton marks which were brought before the Manchester Committee of Experts, due weight had to be given to their opinion as to the distinctiveness of the marks (*Over-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 479), but they seem to have given somewhat too wide an interpretation to the expression "substantial similarity" in their instructions. See *In re Brook*, 26 W. R. 791. The cotton rules being repealed, a B. list mark might be registered without an application to the Court, if the Registrar considered that a mistake had been made. Cotton marks.

For instances of cases in which registration was refused on the ground of similarity, reference may be made to *Allsopp v. Walker*, Dig. 545, in which the first mark was a man's hand held upwards, and the second was a female hand pointed horizontally; *In re Jelley, Son & Jones*, 51 L. J. Ch. 639, in which the first mark was a pointer at a point, with the word "Staunch," and the second was a pointer feeding out of a porridge pot; *In re Rosing*, 54 L. J. Ch. 975, in which the first mark was a plain horn with a looped cord, and the second was a sprig of two roses with a twisted horn; *Barrows v. Pelsall Coal and Iron Co.*, Dig. 530, in which the marks were a crown with "B. B. H." in Roman letters, and a crown with "B. B. S." in italics; *In re Worthington & Co.*, 14 Ch. D. 8, a plain triangle, and a triangle containing a church with an inscription; *In re Barker & Son*, 53 L. T. N. S. 23, where each label consisted of a sporting scene; *In re Marks & Tellefsen*, 63 L. T. N. S. 231, in which the general arrangement of the two marks was very similar; *In re Speer*, 4 P. R. 521, a dog, tower, and harp, in each case; *In re Sanitas Co., Ltd.*, 4 P. R. 533, where the application was for the word "Sanitas," which was included in two previous marks; *In re Grossmith*, 6 P. R. 180, where "Emollio" was thought too similar to "Emolline"; *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278, where each mark contained prominently a device of a golden fleece; *In re Buschiera & Co.*, 33 Sol. J. 469, a lion and a winged lion; *In re Murphy & Co.*, 7 P. R. 163, a lion rampant with a crown and a lion rampant with a sheaf; *In re Dunn*, 41 Ch. D. 439; 15 App. Cas. 252, "Fruit Salt" for producing a beverage and "Fruit Salt" baking powder; *In re Farrow*, 7 P. R. 260, a bull's head and a bison; *In re Goodall*, 42 Ch. D. 566, a similar arrangement of common words; and see *In re Farina* (2), 27 W. R. 456; *In re Hargreaves*, 11 Ch. D. 669; *In re Meyerstein & Co.*, 43 Ch. D. 604; *In re Turney*, 11 P. R. 37; *In re Dewhurst and Sons, Ltd.*, (1896) 2 Ch. 137; *In re Pomril, Ltd.*, 18 P. R. 181; *In re Booth's Distillery Co.*, 21 P. R. 18; *In re Capsuloid Co.*, 23 P. R. 782, ("Tablone" and "Tabloid"); *In re La Union Agricola*, 25 P. R. 295, and other cases; also *Ex parte Kennedy*, 9 V. L. R. (L.) 335, in Victoria. Cases of refusal.

For instances of cases in which registration was not refused on the ground of similarity, see *In re Farina* (1), 26 W. R. 261, where a label had been registered with a small seal in one corner, and application was made for the registration of the same seal alone; *In re Lyndon*, 32 Ch. D. 109, a man's head surmounting the word "way," and a helmeted female head surmounting the word "Athena"; *In*

Cases of non-refusal.

re Haines, Batchelor & Co., 5 P. R. 669, a shaded device of a pointer at a point, facing to the left, and surmounting the word "Staunch," and an outline device of a pig, facing to the left, and surmounting the initials "H. B. & Co.;" *In re Burgoyne*, 6 P. R. 227. "Emu" and "Oomoo"; *In re Pianolist Co.*, 23 P. R. 774, "Pianola" and "Neola"; *In re Simpson*, L. J. N. of C. 1890, p. 143; *In re Loftus*, (1894) 1 Ch. 193. So also in Victoria. *In re Robert Harper & Co.*, (1906) V. L. R. 238, "Maizona" and "Maizema." See also *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 479, and the other cotton cases mentioned in the notes to the old cotton rules. Except in the cases of cotton marks the opposition has usually been successful, and registration has either been refused altogether or only granted subject to limitations.

The comptroller was entitled to his costs of resisting an application on the ground of similarity to a registered mark; at all events, unless the marks were very clearly distinct. See *In re Patent Plumbago Crucible Co.*, Jessel, M. R., Aug. 1st, 1879. Now note sect. 48 of T. M. A. 1905.

Where the Registrar had refused to register on the ground of similarity to a registered mark, and the marks did not appear to be similar, but the owner of the registered mark had not been served with the notice of motion of the person applying for the registration of the second mark, Chitty, J., directed the registered owner to be served, and on that being done, and no objection being made, ordered the registration to proceed: *In re Milne & Co.*, Chitty, J., July 6th, 1883. And where the comptroller objected to register a mark on the ground of similarity to a registered mark, the usual practice came to be to require notice of the application to be given to the proprietor of the registered mark: *In re Sone & Fleming Manufacturing Co.*, 30 Ch. D. 505; *In re Bancroft & Co.*, 5 P. R. 209; *In re Buschiera & Co.*, 33 Sol. J. 469. And see *In re Extract of Meat (Baron Liebig) Photograph Brand, Ltd.*, 17 P. R. 161. This practice was objected to, but approved by Parker, J., in *In re Royal Worcester Corset Co.*, 26 P. R. 185.

Further restriction on registration.

See T. M. A. 1905, s. 11.

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

(a) This section was taken from § 6 of the Act of 1875, and was amended by § 15 of the Act of 1888. The wording of the original enactment was "would not be deemed entitled," and the present wording, "would be deemed disentitled," seems less open to misinterpretation. That the original enactment only referred to deceptiveness inherent in the mark itself, and not to liability to be mistaken for another mark, was held by Jessel, M. R., in *In re Horsburgh*, 53 L. J. Ch. 237. Kay, J., however (*In re Grossmith*, 6 P. R. 180; *In re Dunn*, 41 Ch. D. 439), and Stirling, J. (*In re Swift Specific Co.*, 6 P. R. 352), appear to have thought that words were within this section which bore a resemblance to words included in an earlier mark. And Cotton, L. J., took this view in *In re Dunn*, 41 Ch. D. 439. But in that case Lindley, L. J., expressly concurred in the view taken by Jessel, M. R., and Fry, L. J., did not dissent from it. And in *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278, the observations of Cotton, L. J., incline rather in the same direction.

However, since the decision of the House of Lords in *Eno v. Dunn*, 15 App. Cas. 252, which was considered on the footing that the section applied to words tendered for registration which were calculated to deceive by reason of similarity to words previously in use by a different trader, the wider construction has been given to the enactment. See *In re Hill*, 10 P. R. 113; *In re Thewlis & Blakey*, *ib.* 369. This much seems to be clear, that the comptroller was necessarily bound to refuse marks which offended against either §§ 72 or 73, whether he himself discovered the objection, or whether his attention was called to it in the course of an opposition; that the comptroller had a discretion either to register or not in cases which did not offend against these sections, though he ought not to reject an application without some adequate legal or moral reason, and that he could exercise this discretion either of his own motion under § 62, or on an opposition under § 69, which contains no

limitation of the grounds upon which a mark might be opposed. The question as to what was the exact meaning of § 73 was somewhat academical, when it was remembered that the comptroller had a judicial discretion to register or not, and that, even if an objectionable mark escaped his vigilance, it might be removed from the register under § 90 as having been registered without sufficient cause. Under this section an application might be refused by reason of the similarity of the trade mark to other trade marks which were not on the register, or which had been refused registration as calculated to deceive, and if the comptroller called the attention of the applicant to the existence of such marks, *semble*, the applicant would be bound to make inquiries as to the user: see *In re Booth's Distillery Co.*, 21 P. R. 18.

There is no doubt that § 73 applied to cases in which a trade mark contained a false statement of origin (*In re Horsburgh*, 53 L. J. Ch. 237); or in which the trade mark untruly stated that the proprietors were the "sole makers" (*In re Hayward & Sons*, 54 L. J. Ch. 1003); or in which it untruly stated the name and address of the maker (*In re Hill*, 10 P. R. 113); or in which the mark was habitually used as part of a deceptive whole: *Wood v. Lambert*, 32 Ch. D. 217. If a trade mark tendered for registration contained the words "trade mark" so placed as to be likely to mislead the public into the belief that a particular part of the trade mark, and not the whole of it, was claimed and registered, registration ought to be refused under this section: *In re Apollinaris Co.*, (1891) 2 Ch. 186, 233, 235; *In re Wills*, (1893) 2 Ch. 262. See *Hammond v. Malcolm, Brunker & Co.*, 9 P. R. 301; *In re Colman*, (1891) 2 Ch. 402; *In re Phillips*, (1891) 3 Ch. 139. Compare, however, *In re Bass, Ratcliff & Gritton, Ltd.*, 19 P. R. 529. The onus of proving that a mark was not calculated to deceive under this section was on the applicant for registration (*Kno v. Dunn*, 15 App. Cas. 252; *In re Theclis & Blakey*, 10 P. R. 369); but a mark was not calculated to deceive merely because it included the capability of being used by the party registering it for purposes of deception: *per North, J.*, in *In re Kutnow*, 10 P. R. 101. Thus, in *In re Smokeless Powder Co.*, (1892) 1 Ch. 590, it was held that the words "Smokeless Powder" used as part of the name of the company were not calculated to deceive the public into the notion that the company had a monopoly in smokeless powder. But registration was refused to a mark which, as previously used, contained fraudulent misstatements, though they were corrected in the mark as tendered for registration: *In re Fuente*, (1891) 2 Ch. 166.

Where it was sought to register as a trade mark a word or words which were or might be appropriate to the article to which the trade mark was to be applied, the applicant was in the dilemma that the alleged trade mark was either descriptive or deceptive: if the word or words were properly applicable to the article and might be truly used with respect to it, they were descriptive and were not within the definition section: if they might be read as stating something with respect to the article which was untrue, they were deceptive within the present section: so that *quicumque eoi* the application must fail. Thus, in *In re Sannon & Co.*, Dig. 625, where the mark was "Anglo-Portuguese Oysters," either the oysters were of Anglo-Portuguese origin, in which case any one had a right to say that they were so, or they were not of such origin, in which case no one had a right to say so: and this was adopted by Lopes, L. J., in *In re Van Duzer*, 34 Ch. D. 623. And see *In re Hamay*, 7 P. R. 46; *In re Edge*, 8 P. R. 207. Under the corresponding section of the Victorian Act of 1890 it has been held that letters commonly used to denote words might be calculated to deceive, and accordingly the letters "P. & O." for whisky, which had no connection with the Peninsular and Oriental Co., were refused registration: *In re Ferguson & Co.*, 29 V. L. R. 331. These decisions have, of course, no application to words passed by the Board of Trade or the Court under § 9 (5) of the Act of 1905, and in *In re Grosfield*, 26 P. R. 837, Moulton, L. J., pointed out that a descriptive word might well become distinctive.

As to what will be deemed to disentitle to protection in a court of justice, see further Ch. 7, *ante*.

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

(a.) In the case of an application for registration of a trade mark

Words which are descriptive or deceptive.

Saving for power to provide for entry on register of common marks as

additions to
trade marks.

See T. M. A.
1905, s. 15.

used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive (*b*) 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 (*c*) in the goods with respect to which the application is made :

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

Any distinctive (*b*) word or combination of words, though the same is common to the trade (*c*) 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 (d) in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.*

[(2.) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

Provided that a person need not, under this section, disclaim his own name or the foreign equivalent thereof, or his place of business (*e*); but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.]

(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 (*f*).

The amendments in this section were made by § 16 of the Act of 1888.

a This section was new in 1883, and was not very clearly expressed, but what was intended appears to be that when a trade mark sent in for registration contained, together with an essential particular, a feature which was in common use in the trade, that common feature must be disclaimed, so that the rest of the trade might not be deprived of their right to use it. The additions to which this section related were apparently not quite the same as the additions to an essential particular referred to in § 64 (2), but such as would be capable of distinguishing the goods, were it not that in point of fact they had been used by several different firms. Thus, if a device of an animal were registered in combination with the words "First quality," for iron, the case would be within § 64; but if the same device were to be registered in combination with a crown, the case would be within the present section, the crown being *prima facie* distinctive, but in point of fact common to the trade. Long user did not entitle members of a trade to register a particular device as part of their trade marks when the user was fraudulent in its inception and was still calculated to deceive (*In re Heaton*, 27 Ch. D. 570); and if words forming part of a trade mark were calculated to deceive, the person claiming the mark could not assist his application for registration by disclaiming the objectionable words: *Eno v. Dunn*, 15 App. Cas. 252. It seems that where a distinctive label was registered as a whole, words which were included in the label were a part of the label, and not additions to it, and need not consequently be disclaimed under this section: *In re Apollinaris*

Co., (1891) 2 Ch. 186, 233; *Pinto v. Badman*, 3 P. R. 181, 188, 191; *In re Smokeless Powder Co.*, (1892) 1 Ch. 536; *In re Clement & Cie.*, (1900) 1 Ch. 114; but see *In re Wright, Crossley & Co.*, (1900) 2 Ch. 218.

(b) The word "distinctive" was applicable to all the matters here mentioned: *per* Chitty, J., in *Burland & Co. v. Broxburn Oil Co., Ltd.* (2), 42 Ch. D. 274. And see *per* Cotton, L. J., in *Waterman v. Ayres*, 39 Ch. D. 29. There is at first sight a contradiction in terms here, as a mark common to the trade could not, of course, be distinctive; but what was intended appears to be that any mark which was *prima facie* distinctive, but which was really common to the trade, must be disclaimed when registered as part of a combination. The epithet "distinctive" would thus be here applied to every mark which was not inherently incapable of appropriation by an individual. This view was approved by Chitty, J., in *Burland & Co. v. Broxburn Oil Co., Ltd.* (2), 42 Ch. D. 274, and was subsequently adopted by the Court of Appeal in *In re Faulder*, (1902) 1 Ch. 125. From the dicta in the Court of Appeal in *In re Hudson*, 32 Ch. D. 311, and *In re Atkins Filter & Engineering Co., Ltd.*, 3 P. R. 164, it would appear that their attention had not been directed to this word.

(c) The words "common to the trade" have been construed to mean "open to the trade": *Humphries v. Taylor Drug Co.* (2), 59 L. T. N. S. 820; and *Burland & Co. v. Broxburn Oil Co., Ltd.* (2), 42 Ch. D. 274; *In re Apollinaris Co.*, (1891) 2 Ch. 186, 209, 210; and this seems to be what was meant. In *Thompson v. Montgomery*, 41 Ch. D. 35, Lindley, L. J., said that "nothing can be common to the trade which is used only by one person in the trade": but in § 64, where it was intended to exclude from registration fancy words "in common use," that expression was employed, and the difference of language seems to show that the phrase here meant that which is of common right, whether in common use or not. When it was alleged adversely to an applicant for registration, that the whole or a part of his trade mark was common to the trade, the onus was upon the person alleging that this was so to prove it, not upon the applicant for registration to prove the contrary: *In re Leonard & Ellis*, 26 Ch. D. 288; *In re Edgington*, 6 P. R. 513; and see *Pinto v. Badman*, 3 P. R. 189; *Boord & Sons v. Thom & Cameron, Ltd.*, 24 P. R. 697. And the entries in the registry office books of applications for registration do not prove that a mark is in common use, as they only prove that the applications entered have been made, not that they have all been properly made, or upon true allegations, or that the marks applied for have in fact been used: *Orr-Ewing & Co. v. Johnston & Co.*, 13 Ch. D. 134. A mark is not made common to a particular trade by the fact that persons engaged in different trades have used it on goods of a different character (*Somerville v. Schembri*, 12 App. Cas. 453), nor by fraudulent user by infringers (*Barlow & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 414, 419), nor by the fact that goods marked with it have passed through England from one foreign country to another, without any offering for sale in England: *Newman v. Pinto*, 4 P. R. 508 (*per* Kekewich, J.). And see *Jackson & Co. v. Napper*, 35 Ch. D. 162; *In re Merus*, (1891) 1 Ch. 41. In considering whether a mark is common to the trade, the question is whether there is so much resemblance between the several marks in question as to be likely to cause confusion, and after a long uninterrupted user of a registered mark every reasonable intendment ought to be made in support of the registration: *In re Buss, Rateliff, Gretton & Co.*, 19 P. R. 529. Where the marks to be compared are registered as old marks, there must be a substantial identity between them: the question is not of necessity the same as upon an opposition to the registration of a new mark by the owner of an old mark: *Ibid.* (*per* Romer, L. J.). In a number of cases since the Registration Acts marks have been found to be common to different trades: thus, a number of words and devices to the iron trade: *In re Barrows*, 5 Ch. D. 353; *In re Davies*, Chitty, J., March 9th, 1885; the words "Bank of England," to the sealing-wax trade: *In re Hyde & Co.*, 7 Ch. D. 724; the word "Selected," and other words and devices, to the steel-pen trade: *In re Leonardt*, Dig. 610; *In re Mitchell* (2), Dig. 611; *In re Kuhn & Co.*, 53 L. J. Ch. 238; the letters "S. P." to the snuff trade: *Ex parte Saies, Pollard & Co.*, Dig. 620; the Eton arms to the hat trade: *Lucke v. Webster*, Jessel, M. R., April 4th, 1879; the words "Braided Fixed Stars," to the match trade: *In re Palmer* (3), 24 Ch. D. 504; the words "La Minerva, Habana," "La Pureza," and "Gold Leaf," to the cigar and tobacco trade: *In re Lloyd & Sons*, 27 Ch. D. 646; *Newman v. Pinto*, 4 P. R. 508; *Partlo v. Todd*, 12 Ont. Rep. 171; a device of a syphon, hand, and glass to the mineral-water trade: *In re Wragg*, 29 Ch. D. 551; the words

Common marks.

“Extra,” “Extra G.,” “Coker,” to the canvas trade: *In re Hayward & Sons*, 51 L. J. Ch. 1003; the words “Mandarin Tea” to the tea trade: *British Tea & Trading Association, Ltd. v. Cooke*, Bacon, V.-C., June 8th, 1886; the words “Old Innishowen” to the whiskey trade: *Watt v. O’Hanlon*, 4 P. R. 1; the words “Parchment” and “Bank” to the paper trade: *In re Goodall*, 42 Ch. D. 566; *Pirie v. Goodall*, (1892) 1 Ch. 35; various animals, devices, and colours to the cotton trade: *Orr-Ewing & Co. v. Johnston & Co.*, 7 App. Cas. 219; *Wallace & Co. v. King & Co.*, Bombay High Ct., April 30th, 1879; *In re Hoyle & Sons, Ltd. (2)*, Chitty, J., Nov. 30th, 1883. And see *Orr-Ewing & Co. v. Registrar of Trade Marks*, 1 App. Cas. 479; *In re Brook*, 26 W. R. 791; *Boord & Sons v. Thom & Cameron, Ltd.*, 24 P. R. 697.

Disclaimers
under the Act
of 1875.

(d) The practice of entering disclaimers in the register appears to have originated with the cases of *In re Leonardt*, Dig. 610, and *In re Mitchell (2)*, Dig. 611. In those cases the consent of the owner of the mark was required, but in *In re Kuhn & Co.*, 53 L. J. Ch. 238, an order for a disclaimer was made notwithstanding that the owner did not formally consent, and in other cases the registration was subjected to limitations entered on the register. See cases cited in note (c) to § 72, *supra*. The practice was carried so far, that in *In re Hoyle & Sons, Ltd. (2)*, Chitty, J., Nov. 30th, 1883, a trade mark, consisting of a pheasant sitting on a gate, was registered with a disclaimer of the bird, leaving only the gate. See the order of the House of Lords in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 479; and see also the statement by Jessel, M. R., in *In re Kuhn & Co.*, 53 L. J. Ch. 238; and *Baker v. Rawson*, 45 Ch. D. 519, 530.

In *In re Hudson*, 32 Ch. D. 311, the Court of Appeal appears to have thought that a disclaimer could not be compulsorily enforced under the Act of 1875; but there does not seem to have been much argument on the point, and the case was decided on the ground that the words of which it was sought to compel a disclaimer were descriptive, and could not in any event be claimed as a result of the registration of the label. The words not being *prima facie* distinctive, the question as to disclaimer could not really arise. The same was the case in *In re Atkins Filter & Engineering Co., Ltd.*, 3 P. R. 161. In *In re Hayward & Sons*, 54 L. J. Ch. 1003, Kay, J., held that the Court had power under the Act of 1875 to order a compulsory disclaimer, and he accordingly ordered a disclaimer to be entered of the words “Extra G.,” which were common to the trade. And see *Baker v. Rawson*, 45 Ch. D. 519, 530.

Disclaimers
under the
Acts of 1883
—1888.

The provision in the Patent Acts being that the common particular must be disclaimed *in the application*, the question was raised whether such a disclaimer could be made at a later date, and North, J., in *In re Goodall*, 42 Ch. D. 566, decided that this could not be done, and that an application from which a necessary disclaimer had been omitted was simply null and void. So also Chitty, J., in *In re Mecus*, (1891) 1 Ch. 41, Kekewich, J., in *In re Apollinaris Co.*, (1891) 2 Ch. 186, 212, and Byrne, J., in *In re Wright, Crossley & Co.*, (1900) 2 Ch. 218. See also *In re Player & Sons*, (1901) 1 Ch. 382. In *In re Swift Specific Co.*, 6 P. R. 352, Stirling, J., refrained from deciding whether an application defective in this respect was invalid, but directed a disclaimer to be entered on the register; and see *per North, J.*, in *Baker v. Rawson*, 45 Ch. D. 519, 530. Subsequent disclaimers have also been directed under these Acts by Kay, J.: *In re Hayward & Co.*, 54 L. J. Ch. 1003 (“Extra,” “Coker”); by Kekewich, J., *Humphries v. Taylor Drug Co.* (2), 59 L. T. N. S. 820 (“Herbalin”); and by Chitty, J.: *Burland & Co. v. Broxburn Oil Co., Ltd. (2)*, 42 Ch. D. 271 (“Washerine”); *In re Edge*, 8 P. R. 207 (“Filtered Blue”). It was also held by Kekewich, J., that the fact that a common word had been registered as part of a trade mark, without a disclaimer, did not necessarily disentitle the owner of the mark to his costs in an action against a person who had adopted the same trade mark: *Newman v. Pinto*, 4 P. R. 508. Where a distinctive device had been registered, together with words which were in fact common to the trade, but without any disclaimer, no right was acquired in the common word, even after the lapse of five years from registration: *British Tea and Trading Association, Ltd. v. Cooke*, Bacon, V.-C., June 8th, 1886 (“Mandarin Tea”). Inasmuch as the section only provided for disclaimer of matters common to the trade, a trader was not allowed to register, as an addition to a device, words which were not necessarily of common right and which had, in fact, been used by one firm only besides himself, with a disclaimer of any exclusive right to such words, for the purpose of avoiding a conflict with the longer user of the other firm. If

he had a concurrent right with the other firm, he must register without a disclaimer: if he had not, he could not register the words at all: *In re Meeus*, (1891) 1 Ch. 41.

(e) See notes (n) and (o) to § 64 (3) (i); and *In re Apollinaris Co.*, (1891) 2 Ch. 186, 211.

(f) The intention of this sub-section was to introduce here the "Three Mark Rule," as to which see note (e) to § 72, *supra*. That rule was that registration of the same or substantially the same mark might be granted to not more than three persons, who could prove real user before August 13th, 1875, but that proof of user by more than three persons before that date debarred all persons from registering. For there to have been "public user" by more than three persons, it would seem that the user by each must have been substantial (*In re Hodson, Tessier & Co.*, 86 L. T. N. S. 188), and such as came or ought to have come to the knowledge of each of the others. But the marks used need not have been absolutely identical, nor in all cases on the actual goods: *In re Wragg*, 29 Ch. D. 551. It will be noticed that this sub-section only related to old marks. In the case of new marks a second registration of the same device would not be granted under § 72, except by the consent of the previously registered proprietor, and a disclaimer might even then be required as a condition of his consent. User is not proved by the books of applications for registration, as the allegations therein contained are not proved: *Orr-Ewing & Co. v. Johnston & Co.*, 13 Ch. D. 431.

Effect of Registration.

75. *Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark (a).*

[Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark, and the date of the application shall for the purposes of this Act be deemed to be, and as from the first day of January one thousand eight hundred and seventy-six to have been, the date of the registration (b).]

Registration equivalent to public use.

See T. M. A. 1905, s. 16.

(a) The original § 75, for which the present section was substituted by § 17 of the Act of 1888, came from § 2 of the Act of 1875, the provision in which Act was made expressly subject to the existence of a connection with goodwill. This is not expressly stated in the present section, but must, in the view of the Court of Appeal, be implied, for the words "registration of a trade mark shall be equivalent to public use of the trade mark" "did not and could not mean that continued registration was equivalent to continued use": *per Lindley, M. R., In re Batt*, (1898) 2 Ch. 432. Registration did not entitle to an injunction in respect of goods for which the mark had not been used, though it had been registered for them, at all events unless the mark had been exactly copied: *Edwards v. Dennis*, 30 Ch. D. 451; *Hargreave v. Freeman*, (1891) 3 Ch. 39. And see *Apollinaris Co. v. Snook*, 7 P. R. 174; 8 P. R. 166. In the United States also registration is equivalent to public use. See *In re Dutcher Temple Co.*, U. S. Pat. Comm. Decis., 1871, 248. Apart from the legislation on the subject, public use of a trade mark gives a property in it. See *per Lord Blackburn*, in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 496. It has been decided that to constitute public use it is not sufficient for the marked goods to be advertised: they must be actually in the market. But so long as that is the case, length of user is not necessary. See *McAndrew v. Bassett*, 4 De G. J. & S. 380; *Maxwell v. Hogg*, L. R. 2 Ch. 307; *Wheeler v. Johnston*, 3 L. R. Ir. 284; *In re Simpson, Davies & Sons*, Jessel, M. R., Jan. 12th, 1881. And see the remarks of Chitty, J., on this section in *Barlow & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 395, 404.

(b) The last part of this clause, as altered, came from Rule 32 of the Rules of 1883, and originally from the old rules. The principle that registration dated from the receipt of the application prevailed throughout. By this section a slight alteration was made by substituting the date of the application for the date of the receipt of it.

Right of first proprietor to exclusive use of trade mark.

See T. M. A. 1905,

ss. 39, 40.

Effect of registration.

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

(a) This section came from § 3 of the Act of 1875. Until the end of five years from registration the only effect of it was, as was said in the Court of Appeal in *Nuthall v. Vining*, C. A., Jan. 21st, 1880, to qualify the registered proprietor for suing infringers—in other words, registration was “simply a condition precedent to suing,” *per* Chitty, J., in *Mouson & Co. v. Boehm*, 26 Ch. D. 398; and in *Barlow & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 395, 405; *In re Hudson*, 32 Ch. D. 325; and see *Sen-Sen Co. v. Britten*, (1899) 1 Ch. 692; *Bow v. Hart*, (1905) 1 K. B. 592; *Hommel v. Gebrüder Bauer & Co.*, 20 P. R. 801; and it seems that when an action was brought to restrain an alleged infringement of a trade mark which had been registered for less than five years, the defendant might rebut the *prima facie* evidence of the plaintiff's right afforded by his registration, without moving to rectify the register by expunging the mark. See *In re Palmer* (1), 21 Ch. D. 47; *Lover v. Goodwin*, 4 P. R. 492; *Weaver v. Sanitary Engineering and Ventilation Co.*, L. J. N. of C., 1887, p. 144; *Weaver v. Stiff & Sons*, *ib.* After the expiration of five years from registration, the title of the registered proprietor was, for the purposes of an action for infringement, an absolute right, and could not be disputed except upon an application under § 90 to rectify the register: *Edwards v. Dennis*, 30 Ch. D. 454; *Apollinaris Co., Ltd. v. Herrfeldt*, 4 P. R. 178; *Boord & Sons v. Thom and Cameron, Ltd.*, 24 P. R. 697; and if after that period the defendant in an infringing action set up a concurrent right it was necessary that he should apply to be put on the register, *ib.* Compare *Evans v. Smith*, 3 Times L. R. 390, and *Bodega Co., Ltd. v. Owens*, 6 P. R. 236, where this principle does not appear to have had full effect given to it. This applied also to cases of colourable imitation, as well as to cases of direct copying: *Rodgers & Sons, Ltd. v. Rottgen*, 5 Times L. R. 678. The lapse of five years from registration was, however, no bar to proceedings brought for the purpose of rectifying the register. It seems that the description of goods given on registration was not conclusive: *Hargreave v. Freeman*, (1891) 3 Ch. 39. In *Apollinaris Co. v. Snook*, 7 P. R. 474, the validity of a registered trade mark was not allowed to be questioned in an action for infringement, there being no motion to rectify, but the fact that the mark had been registered for less than five years, so that the registration was only *prima facie* and not conclusive evidence of the right of the registered proprietor, does not seem to have been pointed out. The action was dismissed on appeal (see 8 P. R. 166), in consequence of the mark having been removed from the register in other proceedings, so that the decision of the Court of Appeal on the point here raised was not taken. The question came before the Court of Appeal in *Pinto v. Badman*, 8 P. R. 181, where a mark recently registered was alleged to have been infringed, and although there was no valid application to rectify, and the mark was, in fact, left on the register, yet the action was dismissed on the ground of want of title in the plaintiffs. Lord Esher, M. R., said (p. 189): “The 76th section of the Act says that the registration is *prima facie* evidence of the plaintiff's right to the exclusive use of the label, but it is only *prima facie* evidence. It follows that it can be met. That is not denied”; and Fry, L. J., said (p. 193): “It is undoubted that under the Statute of 1883, when a trade mark has been registered, it gives a *prima facie* title to the registered owner to sue for an infringement of it; but that right is *prima facie* only, and may be repelled by evidence of the defendant, or may be repelled by evidence which the plaintiff himself puts in.” The view originally entertained as to the effect of this section, and the corresponding section of the Act of 1875 upon applications to rectify, appears to have been that during the first five years from registration the mark remained liable to removal from the register, *e.g.*, on application by the true proprietor of it, when it had been wrongfully registered in the name of another person, as in *Ex parte Lawrence Bros.*, 41 L. T. N. S. 98; *In re Australian Wine Co., Ltd.*, 61 L. T. N. S. 427; but that after the expiration of five years from registration the title of the registered proprietor was secure against individual rival claimants, but as “the Act only says that after five years the person who has registered a trade mark shall be entitled to the trade mark, but does not say that the mark as registered shall be

deemed to be a trade mark"—see *per* Jessel, M. R., in *In re Palmer* (1), 21 Ch. D. 47; and compare the Victorian cases of *Lewis v. Klapproth*, 11 V. L. R. (E.) 214; *Wolfe v. Alsop* (2), 12 V. L. R. (E.) 421; *Wolfe v. Lang & Co.*, 13 V. L. R. 752—the trade mark remained liable to removal for inherent defects in it—*e.g.*, that it contained no one of the essential particulars specified by § 64. Thus in *In re Palmer* (1), 21 Ch. D. 47; and (3) 24 *ib.* 504, the words “Braided fixed stars,” registered for matches, were expunged, on the ground that at the date of the registration and ever since they had been merely descriptive of matches prepared in a particular way. So where the word “Valvoline” had been registered, though it had been used as a descriptive term: *In re Leonard & Ellis*, 26 Ch. D. 288. And see *In re Ralph*, 25 Ch. D. 194; *In re Lloyd & Sons*, 27 Ch. D. 646; *In re Wragg*, 29 Ch. D. 551; *Wood v. Lambert*, 32 Ch. D. 247; *In re Spencer*, 54 L. T. N. S. 659. Since the case of *Edwards v. Dennis*, 30 Ch. D. 454, however, it was generally recognized that § 90 (§ 5 of the Act of 1875) overrode the provisions of this section (§ 3 of the Act of 1875), and that even after the lapse of five years the registration of a mark which was for any reason wrongful might be rectified. In that case Cotton, L. J., said that “the third section (of the Act of 1875) is intended to afford assistance to a person who is bringing an action against another person for passing off his goods as the goods of the person who brings the action. In such a case, if the plaintiff shows that he has been on the register for five years, that dispenses with the necessity of his adducing evidence of exclusive use of his trade mark. But the third section is no bar to an application under the fifth section for rectification of the register, and in the case of such an application the Court is bound to consider whether the trade mark is properly on the register; for, although it may have been on for five years, if it ought not to have been on at all, then it can be taken off.” And in this the other Lords Justices concurred. That there was no distinction for this purpose between the Acts of 1875 and 1883 was held by North, J., in *Baker v. Rawson*, 45 Ch. D. 519, 531. Where words common to the trade—*e.g.*, “Mandarin Tea”—had been registered in combination with a distinctive device, or in connection with a distinctive label, for upwards of five years, no exclusive right was thereby acquired in the words: *British Tea and Trading Association, Ltd. v. Cooke*, Bacon, V.-C., June 8th, 1886; *In re Wills*, (1893) 2 Ch. 262; and the same principle as to the lapse of five years was applied in Scotland: *Cowie v. Herbert*, 14 P. R. 436; and a corresponding provision in the Victorian Act has received a similar construction: *Mitchell & Co. v. Joshua Bros.*, 17 V. L. R. 736. In *Lumplough v. Bedzler*, C. A., Nov. 12th, 1880, it was held that the registered words “Pyretic Saline” were purely descriptive. See *Reinhardt v. Spalding*, 49 L. J. Ch. 57; and *Wheeler v. Johnston*, 3 L. R. Ir. 284. In *In re Haggard & Co.*, 54 L. J. Ch. 1003, a note was entered on the register that in the case of a mark registered in 1855 the five years were to run from that date, and not from the date of the application, which was in 1879. In a Scotch case of *John Dewar & Sons, Ltd. v. Dewar*, 17 P. R. 341, it was held that a mark might be impeached after it had been on the register for five years as not being registrable in an action for a declaration that the entry of the trade mark on the register was made without sufficient cause, inasmuch as that declaration would involve rectification even though the Scotch Court had no power itself to entertain an application under § 90. And see *Boord & Sons v. Thom & Cameron*, 23 P. R. 509; 24 P. R. 697.

As to the effect of registration in Canada, see *McCull v. Thal*, 28 Grant, Up. Can. Ch. 48; *Partlo v. Todd*, 17 Can. Sup. Ct. 196; *Watson v. Westlake*, 12 Out. Rep. 419; *De Kuiper v. Van Dulken*, 24 Can. Sup. Ct. 114; *Smith v. Fair*, 11 Out. Rep. 729; and in New South Wales, *Harris v. Ogg*, 5 N. S. W. Rep. (E.) 114; *Walker v. Cargill*, 5 N. S. W. Rep. (E.) 243; *Bryant & May v. Heyde*, 7 N. S. W. Rep. (E.) 72.

(b) The right to the exclusive use of a trade mark, first asserted in *Gout v. Alplough*, 5 Leg. Obs. 495, and *Millington v. Fox*, 3 My. & Cr. 338, and after much discussion affirmed by the Chancery judges (see Ch. 6, *ante*), was afterwards given by statute upon registration.

(c) See § 70 as to the connection with goodwill.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under

Restrictions on actions for infringement, and on defence

to action in
certain cases.
See **T. M. A.**
1905, s. 42.

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 (a). The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused (b).

Necessity for
applying for
registration.

(a) This part of this section came from § 1 of the Act of 1876. By § 1 of the Act of 1875, failure to obtain registration was fatal to the owner of a trade mark, whether old or new. The effect of the alteration introduced by the Act of 1876 was clearly explained by Lord Blackburn in the House of Lords in *Orr-Ewing v. Registrar of Trade Marks*, 4 App. Cas. 498, in which he said: "This alters the Act of 1875 in two respects: it renders registration a condition precedent to a proceeding to recover damages, as well as to a proceeding to prevent infringement; and it provides that if the proprietor of a trade mark in use before the passing of the principal Act has been refused registration, he may, notwithstanding such refusal, institute proceedings, either for prevention of, or damages for, the infringement of such trade mark, and need not wait till he has got the register rectified." And again he said: "It seems to me that the effect of the Act of 1876 is, that if one who says he is the proprietor of a trade mark wishes to institute proceedings against some one who, as he says, is infringing it, he must first try to have his trade mark registered. If the registration is refused for any reason, he may apply (under § 5 of the Act of 1875) to have the register rectified, and then the Court will have to determine as the principal question whether the reason of the refusal was sufficient. But he may also seek for more speedy redress. He may obtain a certificate of the refusal, and then institute proceedings to prevent the infringement, and then the Court will have to determine whether he was the proprietor of the trade mark." See, also, Malins, V.-C., in *In re Barrows*, 5 Ch. D. 353, 359, and *Twentsche Stoom Bleekery Geor. v. Ellinger & Co.*, 26 W. R. 70. The effect of the present section was, as Fry, L. J., said, in *In re Hudson*, 32 Ch. D. 325, of § 1 of the earlier Act, to "put a fetter upon the right of suing" of the proprietor of a trade mark; and see *Monson & Co. v. Boehm*, 26 Ch. D. 388; *Barlow & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 395, 405; and *Sen-Sen Co. v. Britten*, (1899) 1 Ch. 692; and if the owner of a trade mark for which registration or refusal to register was required was unable, when suing an infringer, to produce a certificate of registration or of refusal to register, his remedy was barred: *Goodfellow v. Prince*, 35 Ch. D. 9; even though he had made application for registration, and had only failed to obtain it because of delay in the office (*Hazzopulo v. Kaufmann*, 23 Sol. J. 819); and where a trade mark was registered in the name of a foreign producer, an importer, even with an exclusive contract for the United Kingdom, could not sue in his own name: *Richards v. Butcher* (1), 7 P. R. 288. In *Hart v. Colley*, 44 Ch. D. 193, North, J., decided that a trade mark which had been registered for some only of the goods in a class could not be protected in respect of other goods in the same class for which it had not been registered, and this decision appears to be in accordance with the spirit of the Act. It was held that where a mark had been properly registered under the Act, persons to whom it had been assigned with the goodwill were not precluded under this section from suing on it before transfer of the registration into their names: *Thlee v. Henshaw*, 31 Ch. D. 323; and see *Revelore v. Gateley*, 89 L. T. (Journal), 314; and the same has been decided in Canada: *Carey v. Goss*, 11 Ont. Rep. 619.

It appears that there was nothing in this section to preclude, in the absence of registration, the granting of an injunction where the get-up of goods had been imitated: *Lover v. Goodwin*, 36 Ch. D. 1 (with which compare the Canadian case of *Smith v. Fair*, 14 Ont. Rep. 729); nor where special words had been imitated, apart from trade mark: *Sanitas Co., Ltd. v. Comdy*, 4 P. R. 530; *Barlow & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 395, 411, per Cotton, L. J.; nor where a distinctive name or mark had been imitated, under which the plaintiff's goods had become known in the market: *In re Sanitas Co., Ltd.*, 4 P. R. 533; *Rodgers & Sons, Ltd. v. Rottgen*, 5 Times L. R. 678; *Jay v. Ludler*, 40 Ch. D. 649; nor where the registered trade mark was usually placed with other matters on a label or wrapper: *Great Tower St. Tea Co. v. Langford & Co.*, 5 P. R. 66; *Ascough v. Johnson & Co.*, 3 Times

L. R. 735; nor where spaces left blank in the trade mark as registered were in practice filled in: *Newman v. Pinto*, 4 P. R. 508, per Kekewich, J.; *Melachrino & Co. v. Melachrino Egyptian Cigarette Co.*, 4 P. R. 215; *M. Melachrino & Co. v. R. Melachrino & Co.*, Chitty, J., May 29th, 1888. The right to bring a passing-off action, irrespective of trade mark, is now expressly preserved by § 45 of the Trade Marks Act, 1905.

By § 1 of the Act of 1875, as amended by § 1 of the Act of 1876, the disability for suing without registration was to begin from July 1st, 1877. The time thus allowed for registration was extended, in the case of marks used in respect of any goods in Classes 23 to 35 ("textiles," by § 1 of the Act of 1877, and Orders in Council of Dec. 12th, 1877, and June 29th, 1878, to Dec. 31st, 1878); and in the case of marks used in respect of cotton piece goods, by further Orders in Council of Nov. 27th, 1878, and May 17th, 1879, to July 31st, 1879. Since the date last mentioned, a certificate of registration or of refusal to register has been a *sim qui non* in all cases within the Acts.

(b) See § 96. See, also, per Chitty, J., in *In re Norm' Co., Ltd.*, 35 Ch. D. 231.

[77A. In an action for infringement of a registered trade mark (a) the Court or a judge may certify that the right to the exclusive use of the trade mark came in question; and if the Court or a judge so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or judge trying the subsequent action certifies that he ought not to have the same.]

Certificate as to exclusive use and costs thereon.

See T. M. A. 1905, s. 46.

This new section was introduced by § 18 of the Act of 1888.

(a) In *B. Edgington, Ltd. v. John Edgington & Co.*, 6 P. R. 513, Kay, J., held that where the right to a trade mark was contested on a motion to rectify, and not actively attacked in the action, a certificate could not be granted. In *J. C. & J. Field & Co. v. Wagel Syndicate*, 1900, 1 Ch. 651, Buckley, J., held that in a case where the action and motion were tried together upon the same oral evidence the Court had power to grant a certificate, notwithstanding that the trade mark had been on the register for more than five years and was not impeachable in an action, and he granted a certificate; and this was followed in *Bertroughs, Wellcome & Co. v. Thompson & Copper*, 21 P. R. 69, but, under apparently similar circumstances, Eady, J., in *Kodak, Ltd. v. London Stereoscopic and Photographic Co.*, 20 P. R. 337, refused a certificate; and where the motion to rectify was abandoned at the hearing a certificate was not granted, *Bourne v. Swan & Edgar*, 1904, 1 Ch. 211. In *Barber & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 395, 411, a certificate was given; also in *Apollonaris Co. v. Snook*, 7 P. R. 474; and in *Pinto v. Badman*, 8 P. R. 181, 186. It seems that a certificate granted under this section was unappealable. See *Pinto v. Badman*, 8 P. R. 181, 188; *Hustam Co. v. Hall*, 20 Q. B. D. 491.

Register of Trade Marks.

78. There shall be kept at the Patent Office a book called the Register of Register of Trade Marks (a), wherein shall be entered the names and trade marks, addresses of proprietors of registered trade marks, notifications of assignments and of transmissions of trade marks, and such other matters as may be from time to time prescribed. See T. M. A. 1905, s. 4.

(a) The register of trade marks was previously kept under the authority of § 1 of the Act of 1875. As to entries in the register, see §§ 87, 91, and 92.

Removal of trade mark after fourteen years unless fee paid.

See T. M. A. 1905, ss. 28—31.

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

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

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

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

(5.) Where a trade mark has been removed from the register for non-payment of the fee or otherwise, such trade mark shall nevertheless, for the purpose of any application (*b*) for registration during *the five years* [one year] next after the date of such removal, be deemed to be a trade mark which is already registered [unless it is shown to the satisfaction of the comptroller that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark].

(*a*) This section came from the old rules. The amendments were made by § 19 of the Act of 1888.

(*b*) The effect of this was that (under § 72) the comptroller could not, for one year after a mark had been removed from the register, place another similar mark on the register for similar goods, except under the circumstances stated in the words added to the sub-section.

Fees.

Fees for registration, &c.

See T. M. A. 1905, s. 61.

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

(*a*) Under § 7 of the Act of 1875, these fees were fixed by the Lord Chancellor, with the assent of the Treasury.

Sheffield Marks.

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

Registration
by Cutlers'
Company of
Sheffield
marks.

See T. M. A.
1905, s. 63.

(1.) The Cutlers' Company shall establish and keep at Sheffield a new register of trade marks (in this Act called the Sheffield register):

(2.) *The Cutlers' Company shall enter (b) in the Sheffield register, in respect of cutlery, edge tools, or raw steel, and the goods mentioned in the next sub-section, all the trade marks entered before the commencement of this Act in respect of cutlery, edge tools, or raw steel and such goods in the register established under the Trade Marks Registration Act, 1875, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade Marks Registration Act, 1875 (c).*

(2.) The Cutlers' Company shall enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade marks entered before the first day of January one thousand eight hundred and eighty-nine, in respect of metal goods, either in the register established under the Trade Marks Registration Act, 1875, or in the register of trade marks under this Act, belonging to persons carrying on business in Hallamshire or within six miles thereof. The Cutlers' Company shall also, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in either of the said registers.]

(3.) An application for registration of a trade mark used *on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge*, [on metal goods] shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company (*d*).

(4.) Every application so made (*e*) to the Cutlers' Company shall be notified to the comptroller in the prescribed manner, and unless the comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:

(5.) If the comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court:

- (6.) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day :
- (7.) *The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark, shall apply in the case of applications and registration in the Sheffield register (f); and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register (g) :*
- [(7.) The provisions of this Act, and of any general rules made under this Act, with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section, apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act, and any such general rules shall, so far as applicable, be construed accordingly, with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the comptroller, the Patent Office, and the register of trade marks respectively; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the comptroller by the Cutlers' Company: provided that this section shall not affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register (h).]
- (8.) Where the comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on *cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge,* [on metal goods] he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company (i) :
- (9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned :
- (10.) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks :

- (11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks :
- (12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner appeal (*k*) to the comptroller, who shall have power to confirm, reverse, or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the Court :
- (13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register (*l*).
- [(14.) For the purposes of this section, the expression "metal goods" means all metals whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal.
- (15.) For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the Master of the Cutlers' Company shall have the same effect as the certificate of the comptroller.]

The amendments in this section were made by § 20 of the Act of 1888.

(*a*) As to the Cutlers' Company, the old Sheffield corporate marks, and the system which prevailed with respect to Sheffield marks under the Trade Marks Registration Act, 1875, see Appendix K., *infra*. The specified goods now form a much wider class than formerly. This section provides for the closing of the old Cutlers' register, and the immediate establishment of a new one, intended to be an exact duplicate of the general register, so far as it related to marks used for the specified goods within the specified limits.

(*b*) Under this sub-section the Cutlers' Company were performing a mere ministerial act in registering marks which came within this sub-section, whether the marks were registered on the Company's own motion or on the application of a party claiming to be the proprietor of the marks, and there was no appeal from their action under sub-s. (12), nor any *locus standi* for an opposition to an application to them to register a mark under this sub-section, and they were directed to register marks within the sub-section for all the goods mentioned in the sub-section, though they might have been used for some only of those goods. And they were authorised to register, under this sub-section, marks which had been assigned by the proprietor on the Sheffield register to another, but which had not been surrendered by him to the Company and re-assigned by them to the assignee: *In re Lambert*, 5 P. R. 542: 6 *ib.* 344.

(*c*) By § 9 (6) of the Act of 1875. Sheffield corporate marks were allowed to be registered in the trade marks register in the same manner and upon the same terms and conditions in and upon which they might have been registered if they were not corporate marks. Under this provision it was held that where a corporate mark had been assigned by its proprietor, but had not been surrendered to the Company and re-assigned by them to the assignee, he must perfect his title with the Company before he could obtain registration under the Act: *In re Rabone*, Dig. 643. There was, however, no requirement for corporate marks to be registered.

(*d*) This sub-section related to new marks not within sub-s. (2), and it appears that applications to register such marks might be opposed by other persons in the trade (*In re Lambert*, 5 P. R. 542, *per North*, J.): and that if the Cutlers' Company

refused to hear such opposition the opponent's proper remedy was by mandamus: *ib.*, 6 P. R. 544, *per* Bowen, L. J.

(*e*) This and the two next sub-sections related to new marks: *In re Lambert*, 5 P. R. 542.

(*f*) It appears that this first part of this sub-section related to new marks only: *In re Lambert*, 5 P. R. 542.

(*g*) This latter part of this sub-section related to all Sheffield marks, new or old: *In re Lambert*, 5 P. R. 542.

(*h*) It has been held that the company ought not to allow the register to be amended upon a change of name of the proprietor of a Sheffield mark without an order of the Court: *In re Burgon & Wilkinson*, 40 Sol. J. 336.

(*i*) In *In re Rosing*, 54 L. J. Ch. 975, the Company opposed the registration of a trade mark on the ground of similarity to a corporate mark, but, the objection failing in the Court of First Instance, were ordered to pay the costs of the motion. On appeal, however, the objection taken by the Company was supported.

(*k*) This sub-section applied to all cases in which the Cutlers' Company had arrived at a decision, but not to cases in which the Company had performed a mere ministerial act—*e.g.*, by registering an old mark under sub-section 2, in which case there was no appeal: *In re Lambert*, 5 P. R. 542.

(*l*) These provisions were, shortly, that a counterfeiter might be fined not exceeding 20*l.* by a justice or justices of the peace, subject to an appeal to Quarter Sessions. See Appendix K., *infra*.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

Patent Office.
See P. & D.
A. 1907,
s. 62.

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

(2.) Until a new Patent Office is provided, the offices of the Commissioners of Patents of inventions and for the registration of designs and trade marks existing at the commencement of this Act (*a*) 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 (*b*), who shall act under the superintendence and direction of the Board of Trade.

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

The words in *italics* were expunged by the Act of 1902, s. 4.

(*a*) This is in Southampton Buildings, Chancery Lane, W.C.

(*b*) Under the Trade Marks Registration Acts the registrar was at the head of the Registry Office. Now under the Trade Marks Act, 1905, the Comptroller-General is again, for trade marks purposes, referred to as the Registrar. (See § 4.)

Officers and
clerks.
See P. & D.
A. 1907,
s. 63.

83.—(1.) The Board of Trade (*a*) may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade marks, and so many examiners and other officers and clerks.

with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

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

(a) The authority given by this section to the Board of Trade was formerly possessed by the Lord Chancellor, under § 7 of the Act of 1875.

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

Seal of Patent Office.

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

See P. & D. A. 1907, s. 64.

(a) This section, so far as it related to trade marks, came from the old Rules. Under this section an order to rectify the register by adding to the registration of a trade mark a note stating that the user was restricted by an agreement of which the date only was given, was varied so that the terms of the agreement should appear on the face of the register (*In re Mitchell & Co.*, 28 Ch. D. 666); and in another case a similar agreement was allowed to be stated in the register so far as it restricted the goods on which a registered trade mark was to be used, but not so far as it regulated the manner of user or the way in which orders were to be executed: *In re De Gidday*, W. N. 1886, p. 177. See now § 20 of the Act of 1905.

Trust not to be entered in registers.

See T. M. A. 1905, s. 5.

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

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

(a) This was a new section. Compare § 73.

See T. M. A. 1905, s. 11.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be (a). The person for the time being entered in the register of patents, designs, or trade marks, as proprietor of a patent, copyright in a design, or trade mark, as the case may be, shall, subject to [the provisions of this Act and to] any rights appearing from such register to be vested in any other person, have power absolutely to assign (b), grant licences (c) as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, licence, 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 (d).

Entry of assignments and transmissions in registers.

See T. M. A. 1905, ss. 33, 38.

The amendment in this section was made by § 21 of the Act of 1888.

(a) Though § 4 of the Act of 1875 is not re-enacted, it seems that a subsequent proprietor will still, as regards his title to the trade mark, be in the same position as if his title were a continuation of the title of the first registered proprietor. In *In re Bryant & May, Ltd.*, 4 Times L. R. 675, a question was raised as to a title by assignment, and it was held that an agreement to assign the goodwill and trade

marks was sufficient. Where a registered proprietor changed his name, the comptroller had power under this section to make the requisite alteration in the register, and it seems that if he refused, the Court might interfere under § 90: *In re New Ormonde Cycle Co.*, (1896) 2 Ch. 520. This is now provided for by § 32 of the Act of 1905.

(b) A trade mark could be assigned only in connection with the goodwill of the business. See § 70, *supra*. Also *In re Wellcome*, 32 Ch. D. 213; and Ch. III. ("Transfer").

(c) The power of granting licences must not be exercised so as to deceive the public, *e.g.*, so as to authorise the use of the mark on inferior goods. Nor does a licence to use a trade mark give any right to the exclusive use of a part only of the mark, which part would not of itself be capable of registration: *Lewis's v. Goodbody*, 67 L. T. N. S. 191. See Ch. VII. The power of granting licences at all seemed, in the case of trade marks, rather to conflict with § 70; the intention of which appeared to be that only the person entitled to the goodwill should have the right of using the trade mark. No such power is given by the Act of 1905.

(d) This proviso prevented the power of licensing from being used so as to defeat an agreement between former partners giving a restricted right to each to use the firm marks, such power being inconsistent with the purpose of the agreement: *Hanson v. Game, Harrison & Larner, Ltd.*, 9 P. R. 186.

Inspection of
and extracts
from registers.
See T. M. A.
1905, s. 7.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to [the provisions of this Act and to] such regulations as may be prescribed (a); 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.

The amendment in this section was made by § 22 of the Act of 1888.

(a) This section was taken from the old Rules.

Sealed copies
to be received
in evidence.
See T. M. A.
1905, s. 50.

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

Rectification
of registers
by Court.
See T. M. A.
1905,
ss. 35, 37.

90.—(1.) The Court may on the application (a) of any person aggrieved (b) by the omission without sufficient cause of the name of any person [or of any other particulars] (c) from any register kept under this Act, or by any entry made without sufficient cause in any such register (d), make such order for making (e), expunging (f), or varying (g) 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 (h).

(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 (i).

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

This section came from § 5 of the Act of 1875, but was in rather different terms. The amendment was made by § 23 of the Act of 1888.

(a) The register could not be rectified on counterclaim, and it seems questionable whether it could be rectified in an action: *Pinto v. Badman*, 8 P. R. 181, 187, 190. See, however, *Pinto v. Trott*, 8 P. R. 173. The Act was silent as to the procedure to be followed upon an application to expunge a mark registered in the name of a person domiciled out of the jurisdiction, and it seems that if sufficient notice of the nature of the application was given to the registered proprietor, the form of the notice was immaterial, but the usual course was to address the notice of motion to the comptroller only, and to send a copy of such notice to the registered proprietor with a letter informing him of the nature of the proceedings: *In re King & Co.*, (1892) 2 Ch. 462; *In re La Compagnie Générale d'Eaux Minérales et de Bains de Mer*, (1891) 3 Ch. 451; *In re Royal Baking Powder Co.*, 14 P. R. 425. It further appears that an application under this section was not subject to all the technical rules which apply to notices of motion, and therefore the alteration of the notice was a matter of detail, so that the striking out the name of the registered proprietor as respondent, or changing the date of the hearing, did not make it a new notice of motion requiring to be re-marked with the name of the judge in rotation. As a general rule the foreign proprietor who desired to appear on a motion for rectification, was not required to give security for costs: *In re La Société Anonyme des Verrières de l'Etoile* (1), 10 P. R. 290; but see *In re La Compagnie Générale d'Eaux Minérales et de Bains de Mer*, (1891) 3 Ch. 451.

Mode of procedure for rectification.

(b) The first question on an application to rectify the register under this section, was whether the applicant was or was not a "person aggrieved." This question usually had to be considered with reference to cases in which it was alleged that a mark which was on the register ought not to be there; and it has been said that in such cases "any person interested in the same trade as the registered proprietor" was a person aggrieved (*Rose v. Evans*, 48 L. J. Ch. 618); and that "the course of decision before the Act of 1883 was passed was that any person interested in the same trade might, without showing any special damage, be treated as a 'person aggrieved' by any improper or inaccurate registration": *In re Hayward & Sons*, 54 L. J. Ch. 1603. This principle was also acted on in *In re Edge*, 8 P. R. 207. That there must be some legal damage was laid down by Lord Selborne, C., in *In re Riviere*, 26 Ch. D. 48, where he pointed out that what was necessary to constitute a "person aggrieved" was that the thing complained of should be one of the grievances mentioned in the section, and that it should tend to his injury, to inflict upon him some damage, in a legal sense. Similarly, on the further hearing of the same case (53 L. T. N. S. 239), it was said by Fry, L. J., that "any person aggrieved" means "every person who will in reasonable probability suffer any injury or loss"—using those words in a legal and not in a sentimental sense—from the other persons claiming to use it": and *per Lindley, L. J. (S. C.)*, that the person must be aggrieved "in the sense of sustaining legal damage, either immediate or prospective." But a person with a merely sentimental grievance was not a person aggrieved, and accordingly the secretary of the Society of Friends who applied for the removal of the word "Quaker" as a trade mark for spirituous liquors was held not to be a person aggrieved: *In re Ellis & Co.*, 21 P. R. 617. The question was much considered in the case of *In re Apollinaris Co.*, (1891) 2 Ch. 186, in which the Vichy Co. sought to expunge certain marks registered by the Apollinaris Co., and Fry, L. J., in delivering the judgment of the Court of Appeal said (p. 221), "Are the Vichy Co. persons aggrieved?" Now we approach this question on the assumption, which is necessary, of course, to answer this question, that the trade mark was wrongly on the register, and further, with these two observations in the first place, that the question is merely one of *locus standi*, and in the second, that the words "person aggrieved" appear to us to have been introduced into the statute to prevent the action of common informers or of persons interfering from merely sentimental motives, but that they must not be so read as to make evidence of great and serious damage a condition precedent to the right to apply. Further, we are of opinion that whenever one trader, by means of his wrongly-registered trade mark, narrows the area of business open to his rivals, and thereby either immediately excludes, or with reasonable probability will in the future exclude, a rival from a portion of that trade into which he desires to enter, that rival is "an aggrieved person." Again, if the effect produced, or likely to be produced, by the wrongful trade mark is not the exclusion, but the hampering, of a rival trader, that rival trader, again, is in our opinion a person aggrieved. A man in the same trade as the one who has wrongfully registered a trade mark, and who desires to deal in

"Person aggrieved."

the article in question, is *prima facie* 'an aggrieved person.' This may be rebutted by showing that, by reason of some circumstances entirely independent of the trade mark, the person complaining never could carry on any trade in the article; but the burden of tendering such proof is on the man who claims the mark, and here that burden has not been discharged." That case was discussed in *In re Powell*, (1893) 2 Ch. 388, in which Bowen, L. J., says "persons who are aggrieved are persons who are in some way or other substantially interested in having the mark removed from the register, or persons who would be substantially damaged if the mark remained. It is very difficult to frame a nearer definition than that. In the *Apollinaris Case*, (1891) 2 Ch. 186, it was pointed out, not as a complete or exhaustive definition, that people would be aggrieved if they were in the same trade and dealt in the same article. To my mind, it is equally true that persons would be aggrieved if they are in the same trade, and might reasonably be expected to deal in the same article, though not prepared to prove at the moment that they had formed a clear determination to do so." *In re Powell* was affirmed by the House of Lords ((1894) A. C. 8), and Lord Herschell there said: "Wherever it can be shown that the applicant is in the same trade as the person who has registered the trade mark, and wherever the trade mark, if remaining on the register, would or might limit the legal rights of the applicant—that, by reason of the existence of the entry upon the register, he could not lawfully do that which, but for the appearance of the mark upon the register, he could lawfully do, it appears to me that he has a *locus standi* to be heard as a person aggrieved." And see *In re Talbot*, 11 P. R. 77; *In re Zonophone Trade Mark*, 20 P. R. 450; *In re Neostyle Manufacturing Co.*, 20 P. R. 803. But an applicant, in order to show that he is a "person aggrieved," must show that in some possible way he may be damaged or injured if the trade mark is allowed to stand, the word "possible" being used in a practical sense and not fantastically: *per* Romer, J. approved by the Court of Appeal in *In re Wright, Crossley & Co.*, 15 P. R. 131; *ib.* 377. And where the mark sought to be removed is the name of the registered proprietor who has for many years carried on business under his own name, it can make no difference to an applicant having no right to the name that the name has been registered as a trade mark: *ib.* Where the grievance of the applicant is not that he can possibly be damaged by the particular entry on the register, but that he may be damaged by the respondent having any mark on the register, he is not a "person aggrieved": *per* Lindley, M. R., in *In re Wright, Crossley & Co.*, 15 P. R. 377. The observations of Lord Herschell in *In re Powell*, (1894) A. C. 8, do not justify the statement that the mere fact that a man is engaged in the same trade is sufficient to make him a person aggrieved. That is contrary to the principle of the decision in the House of Lords: *per* Rigby, L. J., *In re Wright, Crossley & Co.*, 15 P. R. 377. Where a trade mark had been registered which was in its essential particulars the same as an earlier registered mark of the same proprietor it was not removed at the instance of a rival trader, for if the registration is superfluous and adds nothing to the existing rights of the proprietor, the rival trader is not injured thereby and is not a person aggrieved: *In re A. & A. Crompton & Co.*, (1902) 1 Ch. 758. Where a trade mark has been registered for cotton yarn and sewing cotton, and used for cotton yarn only, it seems that a rival trader in cotton yarn is not a person aggrieved; and in any case his proper course would be to apply not to expunge but to restrict the registration. (*Ib.*)

Grievance by use of the trade mark in legal proceedings.

The commonest case is where the proprietor of a registered trade mark brings an action for infringement of it, and the defendant applies to have it removed from the register, on the ground that it never ought to have been placed there. In such cases it has been repeatedly held that the person sued is entitled to apply as a "person aggrieved": *In re Ralph*, 25 Ch. D. 194; *In re Leonard & Ellis*, 26 Ch. D. 288; *Lloyd & Sons v. Bottomley*, 27 Ch. D. 643; *In re Wragg*, 29 Ch. D. 551; *Edwards v. Dennis*, 30 Ch. D. 454; *Wood v. Lambert*, 32 Ch. D. 247; *In re Spencer*, 54 L. T. N. S. 659; *In re Lever*, Chitty, J., Dec. 3rd, 1886; *In re Totygood*, 4 P. R. 67; *In re Ainslie*, 4 P. R. 212; *In re Perry Davis & Son*, 5 P. R. 333; 15 App. Cas. 316; *Baker v. Rawson*, 45 Ch. D. 519, 529; *Richards v. Butcher* (2), (1891) 2 Ch. 522. In *In re Gramelis*, 6 P. R. 467, this was held to be so, though no relief was claimed in the action as for infringement of trade mark, seeing that the registration was set out in detail in the statement of claim, thus showing that it was intended to make some use of it. And in *Thompson v. Montgomery*, 41 Ch. D. 35, words registered as a trade mark were removed from the register on the appli-

cation of a person who was restrained by the same judgment from using them, and Lindley, L. J., said that "it is the duty of the Court, where its attention is called to an improper entry upon the register, to rectify upon an application being made." A similar result was brought about in the Yorkshire Relish case: *Powell v. Birmingham Vinegar Brewery Co.*, (1894) A. C. 8; *Birmingham Vinegar Brewery Co. v. Powell*, (1897) A. C. 710. Somewhat similarly it was held in *In re Ainslie*, 4 P. R. 212, that the fact that the applicants for rectification had contracted with the proprietors of the registered words "Ben Ledi," to sell no whiskey but theirs under that name, did not prevent them from applying as persons aggrieved. Equally a person is aggrieved when the presence of a mark on the register is used by the registered proprietor to support an application for the registration of a fresh mark, which is opposed by the person aggrieved. This was the case in *In re Apollinaris Co.*, (1891) 2 Ch. 186, in which Fry, L. J., said (p. 229): "In our opinion, when one trader uses the fact of his registration as any part of his case against another trader in any legal proceedings, that second trader is aggrieved, and this is not the less so because that trader may have other means of defending himself. If the owner of the registered trade mark says to a defendant in a litigation 'I am the owner of this registered trade mark, and therefore you are doing me a wrong,' the person attacked ought to be at liberty to reply two things: first, 'You ought not to be on the register,' and secondly, 'Even if you ought, I have done you no wrong.' The completeness of the second line of defence ought not to preclude the attacked person from availing himself of the first. If I am assailed with the conclusion of a syllogism, I am at liberty, both in logic and in law, to defend myself by denying both or either of the two propositions which are alleged in support of the conclusion, and I am aggrieved if I am unjustly deprived of that right. This liberty of defence is a matter of great importance to a litigant." In *In re Vignier*, 6 P. R. 490, the applicants were aggrieved, they having registered and used the word "Menopole" for champagne, and the respondents having registered the similar word "Menobrut." But where the alleged grievance consists in registering a mark which is not too similar to an earlier mark, there is no grievance: *In re Lambert*, 6 P. R. 344. In *In re Ball & Co.*, 6 P. R. 493, the applicants had used the word "Brymbo" on iron and steel, and the respondents had registered the words "The Brymbo Special" for the whole of Class 5, having used it only for tin-plates; and although the respondents offered to limit their registration to tin-plates, it was held that the applicants, being aggrieved by the registration as it stood, and the mark being bad in itself, it must come off altogether. There is no ground for thinking that only a person who is himself entitled to registration can be a person aggrieved (*In re Riviere*, 26 Ch. D. 48), and it is not impossible for a person who only carries on a foreign trade to be aggrieved by a wrongful registration. *Ib.* If a registered proprietor becomes insolvent while proceedings to rectify his registration are pending, his representative in bankruptcy may be added as a respondent to the application for rectification: *In re Rowe*, 48 L. T. N. S. 388. And if an applicant for rectification dies, his successor in title may be substituted for him: *Roy v. Leconturier*, 25 P. R. 265; 27 *ib.* 268.

(c) These words remove the possibility of any question whether the Court is enabled under this section to direct any other entry than that of a name to be made. It has been decided that the Court has power to direct the correction of any entry which has been improperly made in the register, whether of a name or of a mark: *In re Arboz*, 35 Ch. D. 248.

(d) With reference to the words "entry made without sufficient cause," it was said by Fry, L. J., in *In re Apollinaris Co.*, (1891) 2 Ch. 186, 234, 235, that: "The object of the statute is to protect trade marks, that is, marks placed on goods to indicate their origin, or their selection, or their importation, or some other trade qualification, and thereby to give information with regard to those goods to all persons trading in them. They are marks under which the trader trades. It may well be that in the case of new marks the intention to use as a trade mark may be presumed; but when it is apparent, as it is here, by the evidence and admissions at the bar, that there is no such intention, but that the registration is directed to a different end, then the entry has, within the meaning of § 90, been made without sufficient cause, and ought to be expunged." Further, it has been held by the Court of Appeal that these words ought to be read, not as if they were "made without sufficient cause at the time of registration," but as including any entry at any time on the register without sufficient cause, however it got there: *In re Ball & Co.*,

(1898) 2 Ch. 432. Under the Act of 1905, the Court can expunge "any entry wrongly remaining on the register" (§ 35).

Rectification by registration.

(e) It seems that the Court had no jurisdiction to rectify the register under this section, unless some entry had been made in it; and it could not rectify the register by directing a mark to be registered after it had been refused registration by the comptroller, except upon an appeal from the comptroller to the Board of Trade, referred by the Board to the Court under § 62: *In re Normal Co., Ltd.*, 35 Ch. D. 231. An application to register, which was opposed by another trader, was not an application to rectify under this section, but was governed by § 69: *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278. The jurisdiction to rectify by making an entry was, therefore, confined to small matters of detail.

Rectification by removal.

(f) On an application under this Act to remove a mark from the register, the question whether it was entitled to registration had to be decided as at the date when registration was effected: *Wood v. Lambert*, 32 Ch. D. 247; *Barlow & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 395, 400; *In re Apollinaris Co.*, (1891) 2 Ch. 186, 230; *In re Barril T. M.*, (1896) 2 Ch. 600; *In re Burroughs, Wellcome & Co.* (1904) 1 Ch. 736. See, however, *In re Batt*, (1898) 2 Ch. 432. But under § 36 of the Act of 1905, a mark which is registrable under that Act cannot be removed merely because it was registered under an earlier Act, under which it was not registrable. The burden of proof is upon the applicant for removal, but he may prove his case by the statements in or omissions from the evidence tendered on behalf of the registered proprietor: *In re Leonard & Ellis*, 26 Ch. D. 288; *Pinto v. Badman*, 8 P. R. 189. Consequently, if the mark is one which was inherently capable of being used as a trade mark, and the application for removal is based on an allegation that it was not used as a trade mark, but as a descriptive term, the burden of proving that it was not used as a trade mark is on the applicant. See *per* Cotton, L. J., in *In re Leonard & Ellis*, 26 Ch. D. 288; and *per* Stirling, L. J., in *In re Chesham*, (1902) 2 Ch. 1, 8. And where a word was registered in 1878 as an old mark, and an application was made in 1889 to remove it from the register on the ground that it had not been used as a trade mark before 1875, and the original proprietor and his family were dead, and his successors in business failed to prove user of the word *per se* as a trade mark on the goods before 1875, though they proved user in various other ways before that date, Kay, J., while refusing to receive in evidence the statutory declaration made by the original proprietor on applying for registration, held that the applicants for removal after so great a lapse of time had not discharged the burden which rested on them, and that the mark could not be directed to be removed from the register: *B. Edgington, Ltd. v. J. Edgington & Co.*, 6 P. R. 513. And it has been held that generally in cases of doubt where it was sought under this section to remove a mark which had been on the register for a great many years the benefit should be given to the proprietor: *In re Bass, Ratcliff and Grotton, Ltd.*, 19 P. R. 529, 539; *In re Burroughs, Wellcome & Co.*, (1904) 1 Ch. 736; and see *Boord & Son v. Thom and Cameron, Ltd.*, 24 P. R. 697; and the same principle has been recognized in Victoria (*In re National Starch Co.*, (1906) V. L. R. 244n.), though in that particular case it was held inapplicable. "The Court is not bound, upon the application of an unmeritorious applicant, to displace an entry on the register which, on the face of it, is not illegal, because the original registration might have been opposed on the ground of prior user by a third person who never opposed it on any such ground, and who at the time of the motion to rectify has discontinued such user:" *per* Bowen, L. J., in *In re Paine* (2), (1893) 2 Ch. 567; and see *In re Wright, Crossley & Co.*, 15 P. R. 131, 377; though it seems that if the mark were in itself illegal or improper the Court would expunge the entry in the interests of trade whatever the demerits of the applicant: *In re Paine* (2), (1893) 2 Ch. 567. And see *In re Hill*, 10 P. R. 113; *In re Talbot*, 11 P. R. 77.

Burden of proof.

Comparison of marks.

Where it is sought to remove a trade mark from the register on the ground of its too great similarity to an earlier mark, it is necessary, when comparing the two marks, to take into consideration (1) the manner in which blanks left in the earlier mark as registered are filled in in practice; (2) the manner in which the parts common to the trade are arranged; (3) the opinion of the trade as to the probability of deception: *In re Christiansen*, 3 P. R. 54, in which Lopes, L. J., said, as to the second point: "In dealing with matters which are common to the trade, I think we must look at the combination of those different matters common to the trade, their collocation and arrangement, and if we find things that are common to the trade all inserted in a similar position, in a similar form, and in similar arrange-

ments, so as to make the whole so similar as to be calculated to deceive, I think that is enough." As to the third point, see *Mitchell v. Henry*, 15 Ch. D. 181. It is, however, necessary, when making such a comparison, to deal with the two marks on the footing that both will be fairly used (*In re Lambert*, 6 P. R. 344, per Cotton, L. J.; *In re Haines, Batchelor & Co.*, 5 P. R. 669; *In re Kutnow*, 10 P. R. 401); and it is not a ground for expunging a mark that a fraudulent use might be possible: *In re Wright, Crossley & Co.*, 15 P. R. 131. In considering the probability of deception, the length of time during which a mark has been on the register is material: *In re Talbot*, 11 P. R. 77; *In re Bass, Ratcliff & Gretton, Ltd.*, 19 P. R. 529. And see notes to § 72. In determining whether an application to expunge should not be granted if an opposition to registration would have been successful, two things ought to be considered: (1) What was the reason of the delay in the application to expunge; (2) Has there been any substantial injury caused to the respondent through the application not having been made until after registration: per Romer, J., in *Eastman Photographic Materials Co. v. Griffiths Cycle Co.*, 15 P. R. 165, in which case a mark identical with a previous mark but registered in another class was ordered to be removed from the register on the ground that an opposition to registration would have been successful according to the principles laid down in *Eno v. Dunn*, 15 App. Cas. 252. And see *Bourne v. Swan & Edgar*, (1903) 1 Ch. 211, as to the effect of delay in moving to rectify.

The cases in which marks have been removed from the register are numerous, and the grounds of removal may be classified as follows:—

Cases of removal.

- i. Name not printed in a distinctive manner (§ 64 (1) (a)): *In re Giannacis*, 6 P. R. 467 ("Giannacis Cigarettes"); *In re Hannay*, 7 P. R. 46 ("Hannay's Electroid Anti-fouling Composition"); *In re Edge*, 8 P. R. 207 ("Edge's Filtered Blue"). *Pirie v. Goodall*, (1892) 1 Ch. 42 ("Pirie's Parchment Bank" note-paper).
- ii. Signature not the signature of applicant's firm (§ 64 (1) (b)): *Macmillan v. Ehrmann Bros., Ltd.*, 21 P. R. 357.
- iii. Device not distinctive, being in common use in the trade (§ 64 (1) (c)): *In re Wragg*, 29 Ch. D. 551 (Syphon, hand and glass); *Louis & Co., Ltd. v. Gainsborough*, 20 P. R. 61 (Gainsborough's "Duchess of Devonshire," for millinery); *Angl.-Swiss Condensed Milk Co. v. Pearks, Gunston & Ter.*, 20 P. R. 509; 21 P. R. 261 (Milk-maid for dairy produce).
- iv. Words not distinctive or fancy words, being in common use in the trade (§ 64 (1) (c), § 64 (3)): *In re Hyde & Co.*, 7 Ch. D. 724 ("Bank of England" sealing-wax); *In re Lloyd & Sons*, 27 Ch. D. 646 ("La Minerva Habana" cigars); *Great Tower St. Tea Co. v. Smith*, 6 P. R. 165 ("Tower Tea"); *In re Knapton*, 24 P. R. 550 ("Sugar soap" as applied to a detergent powder).
- v. Words not distinctive or fancy words, being descriptive (§ 64 (1) (c), § 64 (3)): *In re Palmer* (3), 24 Ch. D. 504 ("Braided Fixed Stars" cigar-lights); *In re Harden Star, &c. Co., Ltd.*, 3 P. R. 132 ("Hand Grenade Fire Extinguisher"); *In re Stock*, 52 L. T. N. S. 123 ("Strathmore" whiskey); *In re Lever, Chitty, J.*, Dec. 3rd, 1886, following *Lever v. Goodwin*, 36 Ch. D. 1 ("The Self Washer" soap); *In re Vaughan-Jones, North, J.*, June 21st, 1884 ("Glenlivet" whiskey); *In re Fourgood Bros.*, 4 P. R. 67 ("The Jubilee" note-paper); *In re Ainslie*, 4 P. R. 212 ("Ben-Ledi" whiskey); *In re Laing*, L. J. N. of C. 1887, p. 102 ("Glengowrie Blend of fine old Highland Whiskey"); *In re Arbenz*, 35 Ch. D. 248 ("Gem" air-guns); *In re Waterman*, 39 Ch. D. 29 ("Reversi" game); *In re Perry Davis & Son*, 5 P. R. 333; 15 App. Cas. 316 ("Pain-Killer" medicine); *In re Davis & Co.*, 6 P. R. 207 ("Boköl" beer); *Humphries v. Taylor Drug Co.* (2), 5 P. R. 687 ("Herbalin" medicine); *Great Tower St. Tea Co. v. Smith*, 6 P. R. 165 ("Tower Tea"); *Burland & Co. v. Broxburn Oil Co., Ltd.* (2), 42 Ch. D. 274 ("Washerine" soap); *In re Vignier*, 6 P. R. 490 ("Monobrut" champagne); *In re Ball & Co.*, 6 P. R. 493 ("The Brymbo Special" metal goods); *In re Hannay*, 7 P. R. 46 ("Electroid" anti-fouling composition); *In re Apollinaris Co.*, (1891) 2 Ch. 186, 231 ("Apollinaris," "Friedrichshall" and "Hunyadi Janos" mineral waters and products); *In re Edge*, 8 P. R. 207 ("Filtered Blue"); *Pirie v. Goodall*, (1892) 1 Ch. 42 ("Parchment Bank" note-paper); *In re Lloyd*, 10 P. R. 281

- ("Carnival" cigarettes); *In re Talbot*, 11 P. R. 77 ("Emolliolorum" saddle paste); *In re Banks & James*, 44 W. R. 32 ("Shuksporo" cigars); *In re Davis*, 14 P. R. 903 ("Compactum" umbrellas); *Meaby & Co. v. Triticine, Ltd.*, 15 P. R. 1 ("Triticumina" food); *In re Magnolia Metal Co.*, (1897) 2 Ch. 371, 391 ("Magnolia" metal); *In re Gestetner*, (1907) 2 Ch. 478; (1908) 1 Ch. 513 ("Cyclostyle" pens).
- (vi.) Words not being invented words (§ 64 (1) (d)): *Christy & Co. v. Tipper & Son*, (1904) 1 Ch. 696; (1905) 1 Ch. 1 ("Absorbine" embrocation); *Warwick Trading Co. v. Urban*, 21 P. R. 240 ("Bioscope" Cinematograph); *Hommel v. Gebrüder Bauer & Co.*, 21 P. R. 576; 22 P. R. 43 ("Hemutogen" drug).
- (vii.) Words not being words having no reference to the character or quality of the goods (§ 64 (1) (c)): *In re Edge*, 8 P. R. 207 ("Filtered Blue"); *In re Talbot*, 11 P. R. 77 ("Emolliolorum" saddle paste); *In re Magnolia Metal Co.*, (1897) 2 Ch. 371 ("Magnolia" metal); *In re Kodak, Ltd.*, 20 P. R. 337 ("Panoram" photographic films).
- (viii.) Words registered as old mark, but not used as a trade mark *per se* on the goods before 1875 (§ 64 (3)): *In re Palmer* (3), 24 Ch. D. 504 ("Braided Fixed Stars" cigar-lights); *In re Spencer*, 3 P. R. 73 ("Diamond Cast Steel"); *In re Hayward & Sons*, 51 L. J. Ch. 1003 ("Hayward's Coker Canvas"); *In re Perry Davis & Son*, 5 P. R. 333; 15 App. Cas. 316 ("Pain-Killer Medicine"); *In re Eno*, 41 Ch. D. 439 ("Fruit Salt" medicine); *Thompson v. Montgomery*, 41 Ch. D. 35 ("Stone Ale"); *In re Powell* (2), (1893) 2 Ch. 388; (1894) A. C. 8 ("Yorkshire Relish"); *In re Gordon & Dilworth*, 13 P. R. 629 ("Tomato Catsup"); *In re Royal Baking Powder Co.*, 14 P. R. 425 (a label containing the words "Royal Baking Powder").
- (ix.) Device registered as old mark but not used as a trade mark *per se* on the goods before 1875 (§ 64 (3)): *Baker v. Rawson*, 45 Ch. D. 519, 528. In *In re Huet*, Kekewich, J., Dec. 6th, 1898, the mark was registered with a claim of user of 183 years, instead of three years or less, before 1875, and was expunged on that account.
- (x.) Words registered as old mark, but used descriptively and not as a trade mark (§ 64 (3)): *In re Leonard & Ellis*, 26 Ch. D. 288 ("Valvoline" oil); *In re Harrison, McGregor & Co.*, 42 Ch. D. 691 ("Albion" tools); *Richards v. Butcher* (2), (1891) 2 Ch. 522 ("Monopole" champagne); *In re Powell* (2), (1894) A. C. 8 ("Yorkshire Relish"); *Day v. Riley*, 17 P. R. 517 ("Day & Sons' Black Drink"); *Bourne v. Swan & Edgar*, (1903) 1 Ch. 211 ("Swan bill" corsets).
- (xi.) A mark registered for goods for which it was not used or intended to be used (§ 65): *Edwards v. Dennis*, 30 Ch. D. 454 ("Neptune" brand metal goods); *In re Apollinaris Co.*, (1891) 2 Ch. 186 (mark for Fried. chshall water); *In re Ball & Co.* (2), (1898) 2 Ch. 432; (1899) A. C. 428 (device of butterfly for food substances); *In re Valentine Extract Co., Ltd.*, 18 P. R. 175 ("Valtine" for drugs and fermented liquors); *In re Hart*, 19 P. R. 569 (device of red rose for food substances); *In re Suter, Hartmann & Rahitjen's Composition Co.*, 19 P. R. 42 (device of a hand for chemical substances); *Anglo-Swiss Condensed Milk Co. v. Pearks, Gunston & Tee*, 20 P. R. 509; 21 P. R. 261 (device of milk-maid for butter); *In re Hare*, 24 P. R. 263.
- (xii.) Registered proprietor carrying on no business (Rules of 1876, now repealed): *In re Ralph*, 25 Ch. D. 194 ("Homewasher" machine).
- (xiii.) Mark registered without necessary disclaimer (§§ 64 (2), 74): *In re Faudler & Co.*, (1902) 1 Ch. 125.
- (xiv.) Mark assigned without goodwill (§ 70): *Edwards v. Dennis*, 30 Ch. D. 454; *In re Harness*, 17 P. R. 40 ("Koptica"); *In re Johnson*, 26 P. R. 195.
- (xv.) Mark abandoned (§ 70): *In re Ashton*, 48 W. R. 389.
- (xvi.) Marks registered, though too similar to earlier marks (§§ 69, 72): *In re Barker & Son*, 53 L. T. N. S. 23 (a sporting scene in each case); *In re Christiansen*, 3 P. R. 54 (match-box labels); *In re Hayward & Sons*, 51 L. J. Ch. 1003 ("Hayward's Coker Canvas"); *In re Motcalf*, 31 Ch. D.

- 454 ("Milkmaid" brand and "Dairymaid" brand condensed milk); *In re Biegel*, 4 P. R. 625 (three-triangle devices for beer); *In re Vignier*, 6 P. R. 490 ("Monopole" and "Monobrut" champagne); *In re Batt & Co.*, 6 P. R. 493 ("Brymbo" and "The Brymbo Special" metal goods); *In re La Société Anonyme des Ferreries de l'Etoile*, (1894) 2 Ch. 26 (the device of a star and the words "Red Star Brand"); *In re Valentine Extract Co.*, 18 P. R. 175 ("Valtine").
- (xvii.) A mark identical with previous mark, but registered in another class, it being proved that the later mark was calculated to deceive (§§ 65, 69, 72): *Eastman Photographic Materials Co. v. Griffiths Cycle Co.*, 15 P. R. 105 ("Kodak" for cameras and for cycles).
- (xviii.) Marks inherently deceptive (§ 73): *In re Hayward & Sons*, 54 L. J. Ch. 1003 ("Sole Makers Extra Coker" canvas); *Wood v. Lambert*, 32 Ch. D. 247 ("Eton" cigarettes, made in London, but used with addresses in St. Petersburg and Constantinople); *In re Apollinaris Co.*, (1891) 2 Ch. 186, 233; *In re Wills* (2), (1893) 2 Ch. 262; *Day v. Riley*, 17 P. R. 517 (words "Trade Mark" used deceptively); (but see *In re Bass, Ratcliff & Gretton, Ltd.*, 19 P. R. 529); *In re Hill*, 10 P. R. 113 ("Forrest" watches registered by a person having no connection with "Forrest" a London watchmaker).
- (xix.) Mark registered by servant of owner (*Ex parte Lawrence Bros.*, 44 L. T. N. S. 98 (mark for printers' rollers), or other person not entitled to it: *In re "Zonophone,"* 20 P. R. 450 (name for recording apparatus); *In re North Shore Mill Co., Ltd.*, 22 P. R. 599 (marks for flour).
- (xx.) Marks belonging to foreign producer registered by importer: *In re Apollinaris Co.*, (1891) 2 Ch. 186 (marks for Apollinaris, Friedrichshall and Hunyadi Janos mineral waters and products); *In re European Blair Camera Co.*, 13 P. R. 600 ("Bull's-Eye" cameras); *In re Neostyle Manufacturing Co.*, 20 P. R. 803 ("Neostyle" stationery).

In some of the above cases the marks were not absolutely expunged, but some lesser step was taken: but in *In re Hill*, 10 P. R. 113, Chitty, J., considering the mark as a whole to be dishonest, ordered the whole mark to be expunged, although part of it was not objected to. In *In re Wills* (2), (1893) 2 Ch. 262, the Court ordered that the mark should be expunged unless an application to amend it was made within a reasonable time, but in *Day v. Riley*, 17 P. R. 517, this course was not followed. In *In re A. & A. Crompton & Co., Ltd.*, (1902) 1 Ch. 758, it was held that where the registration was too wide, the proper remedy was restriction not removal, and a motion to expunge was refused. Where a word was registered for nearly the whole of Class 1, but was used only for paints, and the registered proprietor refused to consent to the registration of the same word by a trader who had acquired a reputation under that word for photographic plates, he was ordered to pay the costs of a motion to rectify by excluding from the registration photographic plates: *In re Hare*, 24 P. R. 263. Where a trade mark has been wrongly registered, it may be expunged forthwith, without waiting for the trial of an action to meet which the application is made: *In re Giannolis*, 6 P. R. 467. There is no established practice at the Patent Office that a mark ordered to be removed shall not be physically expunged from the register pending an appeal: *In re Neostyle Manufacturing Co.*, 20 P. R. 803. Five years' registration was no bar to the removal of the mark: *Edwards v. Dennis*, 30 Ch. D. 454; *In re Verity*, 19 P. R. 58. And see cases in note to § 76. But now see § 41 of the Act of 1905.

Applications for rectification were refused on various grounds in the following cases: *In re Riviere*, 53 L. T. N. S. 237; *Manson & Co. v. Bachm.*, 26 Ch. D. 398; *In re Charlton and Dugdale*, 53 L. T. N. S. 337; *In re James*, 33 Ch. D. 392; *In re Talbot*, 3 P. R. 276; *In re Lambert*, 6 P. R. 344; *In re B. Edington, Ltd.*, 6 P. R. 513; *Barber & Jones, Ltd. v. Johnson & Co.*, 7 P. R. 395; *In re Densham*, (1895) 2 Ch. 176; *In re Holt*, (1896) 1 Ch. 711; *In re Barril T. M.*, (1896) 2 Ch. 600; *Rochland v. Mitchell*, (1897) 1 Ch. 71; *Cowie v. Herbert*, 14 P. R. 136; *In re Wright, Crossley & Co.*, 15 P. R. 131, 377; *In re Clement & Co.*, 16 P. R. 173; *Freeman Bros. v. Sharp Bros. & Co.*, 16 P. R. 205; *In re Hedley*, 17 P. R. 719; *In re Verity*, 19 P. R. 58; *In re A. A. Crompton & Co., Ltd.*, (1902) 1 Ch. 58; *In re Cheesborough*, (1902) 2 Ch. 1; *In re Bass, Ratcliff & Gretton, Ltd.*, (1902) 2 Ch. 579; *In re Kodak, Ltd.*, 20 P. R. 337; *In re Ellis*, 21 P. R. 617; *In re Burroughs, Wellcome & Co.*, (1904) 1 Ch. 736.

In *In re Palmer* (2), 22 Ch. D. 88, when the Court of Appeal had decided that the fact of five years' registration was not a legal bar to an application to expunge a mark, they refused to stay the hearing of the case with the evidence till after the determination by the House of Lords of an appeal from their decision on the point of law. In *Rey v. Lecouturier*, 25 P. R. 265, the Court of Appeal refused to stay the order for removal pending an appeal to the House of Lords. It seems that an appeal from a decision upon an application for the removal of a trade mark from the register will not be treated as an interlocutory appeal, but that the case must be heard by three judges: *In re Riviere & Co.*, 26 Ch. D. 48; *In re Leonard & Ellis*, *ib.* 288. Where a mark is registered in the name of a domiciled Scotchman, it has been held in Scotland that the Scotch Courts have jurisdiction to order its removal: *Cowie v. Herbert*, 14 P. R. 436; but this has been doubted, see *John Dewar & Sons, Ltd. v. Dewar*, 17 P. R. 341. It has been held in Ireland that the Irish Courts have no jurisdiction to order any alteration or rectification of the register of trade marks, that being a special jurisdiction conferred on the High Court in England: *Bayer v. Connell*, (1897) 1 I. R. 544. And see note to § 111.

For Australian cases of removal from the register, see *In re Rowley & Pyne*, 9 V. L. R. (L.) 307, in which R. & P. had used a device of a horse and groom for twenty years, and D. and his predecessor in business had used a device of a horse alone for twelve years, and then R. & P. adopted and registered a device of a horse alone, and it was removed from the Victorian register on D.'s application: *Harris v. Ogg*, 5 N. S. W. Rep. (E.) 114, in which a mark which had been registered by a person who had not used it, was removed from the New South Wales register on the application of a person who had long done so: *Blogg v. Anderson*, 21 N. S. W. L. R. 149, a similar case; *In re Hicks*, 22 V. L. R. 636, in which a trade mark was removed from the Victorian register upon similar grounds; *Lever v. Mowling*, 6 C. L. R. 136, where a number of marks which had been registered for soap and candles, but only used for soap, were limited to soap; *National Starch Manufacturing Co. v. Munn's Patent Maizena & Starch Co.*, 13 N. S. W. R. (E.) 101; (1894) A. C. 275, in which the name "Maizena" was removed from the New South Wales register on the ground that it had become *publici juris* at the date of registration; *In re National Starch Co.* (1906), V. L. R. 244, where the same name was removed from the Victorian register; *In re Webendorfer Bros.*, 23 V. L. R. 34, where a mark for cartridge cases was removed as calculated to deceive by reason of the existence of a similar mark for gunpowder; *In re Remfrey*, 23 V. L. R. 44, where "Hovis" for bread was removed on the ground of the reputation acquired by the same name in England for the same class of goods; *In re Tilley*, 26 V. L. R. 203, where "Curato" was removed on the ground of its similarity to "Cuticura" for soap; *In re Weingarten Bros.*, 29 V. L. R. 965, where a composite mark for corsets was removed because not distinctive; *John Lysaght, Ltd. v. Reid & Russell Proprietary, Ltd.* (1907), V. L. R. 432, where a mark was removed as calculated to deceive. In Cape Colony, the following words have been removed from the register as being descriptive: "Café noir" as applied to biscuits: *Peck, Frean & Co. v. Carr*, Cape Good Hope, 15 S. C. R. 172; "Club" as applied to soda water: *Wardon & Pegram v. Cantrell & Cochrane*, Cape Good Hope, 18 S. C. R. 142; "Irish Crown" as applied to soap: *Legg v. Finlay*, Cape Good Hope, 18 S. C. R. 107; "Lightfoot" as applied to boots: *Southall & Co. v. Cuthbert & Co.*, Cape Good Hope, 19 S. C. R. 453. In *Chas. Bayer & Co. v. Strauss, Adler & Co.*, Cape Good Hope, 24 S. C. R. 27, the letters C. B. as applied to corsets were removed on the ground that their registration as an old mark was not justified by user. In *Ershaw & Co. v. Van Ryn Wine & Spirit Co.*, Cape Good Hope, 21 S. C. R. 267, rectification on the ground of deception was refused on proof of concurrent user of the mark by the two firms for many years without deception.

Rectification
by varying.

- (g) The register has been rectified by varying an entry in the following ways:—
- (i.) By restricting the goods for which the mark is registered: *Edwards v. Dennis*, 30 Ch. D. 454; *In re Metcalf*, 31 Ch. D. 454; *In re Banks & James*, 12 P. R. 333; *In re Batt & Co.* (2), (1898) 2 Ch. 432; *In re Suter, Hartmann & Rahtjen's Composition Co., Ltd.*, 19 P. R. 42; *In re Hart*, 19 P. R. 569; *In re Hare*, 24 P. R. 263.
 - (ii.) By striking some part of the mark out of it: *In re Stock*, 52 L. T. N. S. 123 (word "Strathmore" struck out of a whiskey mark); *In re Vaughan-Jones*, North, J., June 21st, 1884 (word "Glenlivet" struck out of a whiskey mark); *In re Biegel*, 4 P. R. 525 (three-triangle device struck

out of a beer mark). And see *Burland & Co. v. Broxburn Oil Co., Ltd.* (2), 42 Ch. D. 274.

- (iii.) By causing a partial disclaimer to be entered on the register, as in *In re Leonardt*, Dig. 610; *In re Mitchell* (2), Dig. 611; *In re Hubbuck*, Jessel, M. R., June 20th, 1879; *In re Kuhn & Co.*, 53 L. J. Ch. 238; *In re Johnson, Philpott & Co.*, North, J., Feb. 21st, 1888; *Humphries & Co. v. Taylor Drug Co.* (2), 59 L. T. N. S. 820; *Burland & Co. v. Broxburn Oil Co., Ltd.* (2), 42 Ch. D. 274; *Baker v. Rawson*, 45 Ch. D. 519, 534; *In re Edge*, 8 P. R. 207; *In re Steel*, Chitty, J., Jan. 12th, 1893; *In re Thompson*, 13 P. R. 35. See notes to §§ 72 and 74.
- (iv.) By directing an alteration in the name of the registered proprietor. It is, however, very questionable whether this can be done, and when registration has been effected in accordance with the application, but the application was wrong in some respect, it seems that the Court will amend the register by expunging the entry, but not by varying it so as to make the registration stand in another name. Thus Hall, V.-C., said, in *In re Ward, Sturt & Sharp*, 50 L. J. Ch. 347: "I cannot rectify the register where no error has been committed. The term 'rectification' is only applicable to cases in which there has been some mistake or error in the registration. In other cases the applicant must follow the course laid down for cases of assignment or transmission." So in *Ex parte Lawrence Bros.*, 44 L. T. N. S. 98, Jessel, M. R., expunged the entry, and left the rightful owners of the mark to make a fresh application in their own names. So in *In re Farina* (4), 44 L. T. N. S. 99, he directed administration to be taken out to the estate of the deceased registered proprietor, and the administrator, when appointed, to assign to the rightful proprietor. In *In re Rust & Co.*, 44 L. T. N. S. 98, however, the same learned judge allowed a mark to be transferred from the name of an individual member of a firm, stated to be trading under the name of the firm, into the names of all the partners trading under the name of the firm. It appears to have been thought by Jessel, M. R., in *Ex parte Lawrence Bros.*, 44 L. T. N. S. 98, that it might not be impossible for the Court to transfer a registration from one name into another, if the registered proprietor had registered another's trade mark in his own name when he was actually employed by the true owner to register it for him, and was so the agent and trustee for the other. In that case there was no agency, and no such order was made; but in *In re Australian Wine Co., Ltd.*, 61 L. T. N. S. 427, where the sole consignee in England of the wine from certain Australian vineyards had registered the name of the vineyards as his own trade mark, but intending it to be for the benefit of the owner of the vineyards, an order transferring the mark into the name of the owner of the vineyards was made. In *In re Riviere*, 53 L. T. N. S. 237, however, the Court of Appeal seems to have been decidedly of opinion that such an order could not be made, and Cotton, L. J., said: "In my opinion, whatever might be the result of the application to strike the name of the French firm off the register, the other application ought not to be granted. Without saying that it is impossible to grant such an application as this in any case where one person is improperly on the register, and another person who is entitled to the trade mark wishes to be put on, yet, as a rule (and I do not know a case where there would be an exception), when any one applies in the first instance to be publicly registered as the proprietor of a trade mark, the requirements of the Act and Rules as to issuing advertisements and otherwise ought to be complied with. For there may be cases—and I can imagine them—where, although the person applying to strike a name off the register may be entitled to say, as against the person on the register, that he is improperly registered as owner of the trade mark, yet there may be persons, not present at the litigation, who have a right, as against the applicant, to rectify the register, and to say that such applicant is not himself entitled to be there so as to prevent such third person from using the mark. I have thought it right to express my opinion on that part of the case at once." And Lindley, L. J., added: "If the applicants had succeeded in making out a case to remove the name of Riviere & Co., I do not think they would have been entitled to have themselves registered in respect of this mark.

I think Mr. Stirling's observation is conclusive—that they could not have registered anew in respect of the old mark without advertising and taking the other steps required by the Act and Rules. I say that on behalf of the public." The same view was taken independently by Kay, J., in *In re Kingsford & Son*, 6 P. R. 413. The most expedient course to adopt in such cases, where the parties are friendly, is indicated by the case of *In re Wellcome*, 32 Ch. D. 213, where an agent had registered his foreign principal's mark in his own name, but for the benefit of the principal, and subsequently assigned the trade mark to the principal, and it was held that the assignment was an assignment in connection with the goodwill, within § 70, and ought to be registered. A similar course was directed by Stirling, J. (following *In re Farina* (4), 44 L. T. N. S. 99, and distinguishing *In re Rust & Co.*, 44 L. T. N. S. 98) in *In re Greenlees*, 9 P. R. 93, where a member of a firm had erroneously registered the mark of the firm in his own name, the Court expressing its opinion that the comptroller ought to register the assignment. A very special order was made in *In re Avril*, Stirling, J., April 20th, 1888, in which persons to whom the registered proprietor of a trade mark had assigned her business and goodwill, with the right to use the trade mark, all for a limited period of six-and-a-quarter years, at the end of which period those rights were to revert to her, procured themselves to be registered as the proprietors of the trade mark in succession to their assignor; but, on her making complaint, they applied to the Court to restore the register to its previous condition, and it was accordingly ordered that the register should be rectified by removing their names as subsequent proprietors of the mark and re-entering the name of the original proprietor. In *In re Patent Plumbago Crucible Co.* (2), 7 P. R. 282, two trade marks were registered in 1879 as the property of the Patent Plumbago Crucible Co., an unregistered company. In 1882 the Company assumed the name of "The Morgan Crucible Co.," and in 1890 the marks were allowed to be transferred into the name of "The Morgan Crucible Co., formerly trading as the Patent Plumbago Crucible Co." And this case was followed by Kekewich, J., in *In re Burgon & Wilkinson*, 40 Sol. J. 336; but the proprietor being in that case a registered company, the learned judge held that the words "originally called" should be substituted for the words "formerly trading as." The decision of Stirling, J., was, however, questioned by North, J., in *In re New Ormonde Cycle Co.*, 13 P. R. 475, from which it seems that where a registered proprietor changed his name the application ought to be made under § 87. See now T. M. A. 1905, § 32. In *Rey v. Lecouturier*, 25 P. R. 265, 27 *ib.* 268, the entry of the name of a subsequent proprietor was ordered to be expunged, so as to replace the marks in the name of the former owner.

Under the Acts prior to 1905 it was held that once a trade mark had been improperly registered, the register could be rectified on an application by a person aggrieved, even though, by reason of a change in the circumstances, or by the coming into operation of a new Act of Parliament, the registration might be immediately renewed, seeing that the public must have an opportunity of opposing the new application: *In re Apollinaris Co.*, (1891) 2 Ch. 186, 231. Compare *In re Riviere*, 53 L. T. N. S. 237. See now T. M. A. 1905, § 36.

(h) It was held that opposed applications for the registration of trade marks were not within this section, and that the Court had no jurisdiction to give a successful opponent his costs of the proceedings in the Registry Office: *In re Australian Wine Importers, Ltd.*, 41 Ch. D. 278; following *In re Brandreth*, 9 Ch. D. 618. As to the costs of applications to remove marks, see Chap. VII. *sub fine*.

(i) The question of a claim for damages occasioned by a wrongful registration was considered in Scotland in *Reid v. Thomson & Co.*, 22 P. R. 376; 25 *ib.* 153, but the provision as to damages does not now reappear in sect. 35 of the Act of 1905.

(k) Where the respondent to a motion for rectification consented to an order for the removal of his mark, subject to an agreement being entered into by which the future use of the marks was to be regulated, the Court required notice to be given to the comptroller of the appointment before the Registrar to settle the order: *In re Golding*, 19 P. R. 375; and when the registration authorities are not represented on a motion to rectify, it is usual to require such notice to be given.

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

Power for
comptroller
to correct
clerical errors.
See T. M. A.
1905, s. 32.

(a.) Correct any clerical error in or in connection 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 (a): 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.

[(d.) Permit an applicant for registration of a design or trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design or trade mark to be registered.]

The amendment in this section was made by § 24 of the Act of 1888.

(a) This came from the old rules. In *In re Lysaght*, Dig. 623, a registration for all the goods in Class 5 was, on application by the proprietor, corrected by limitation to galvanized sheet iron only. In *Ex parte Sales, Pollard & Co.*, Dig. 620, the registered proprietors of a trade mark for snuff, consisting of the letters "S. P.," the initials of their firm, discovered that that mark had been for many years in common use in the snuff trade, though used originally by themselves, and procured the cancellation of the registration.

92.—(1.) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter (a) such mark in any particular, not being an essential particular (b) 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.
See T. M. A.
1905, s. 34.

(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.

(a) This section is taken from the old rules.

(b) For what was an "essential particular," see § 64, *supra*. The alteration of a mark in non-essential respects did not deprive a mark of the benefit of the period of user before the alteration: *In re Bryant & May, Ltd.*, 4 Times L. R. 675.

Alteration of
trade marks.

An important question which was raised for the first time in 1891, after the registration system had been in operation for sixteen years or thereabouts, and after many orders had been made by the Court by which alterations of various kinds in old marks, *i.e.*, marks originally used before the date of the Act of 1875, were allowed, was how far, if at all, the provisions of this section authorized the alteration of old marks. In *In re Phillips*, (1891) 3 Ch. 139, it seems to have been suggested by Chitty, J., that old marks ought to remain on the register in the precise form in which they had been originally used; and in *In re Adams*, 9 P. R. 174, and *In re Henry Clay & Bock & Co.*, (1892) 3 Ch. 540, the same view was taken by Kekewich, J. It is, however, to be noticed that the nature of the alteration desired in these cases, or, at all events, in the first two of them, was very serious, and might have had the effect of making a good mark out of a bad one, while, in the first case, it certainly would have resulted in depriving the public of the indication of a restricted claim which previously existed, and this was pointed out by Chitty, J., in the case

Old Marks.

referred to. From the list of orders given below it will be seen that Chitty, J., allowed alterations of old marks in many cases, and Kekewich, J., in a few, so that it may perhaps be considered that the observations made in the cases above cited were intended to have special reference to the cases then before the Court, in which the alteration would have materially altered the marks there in question. This much is clear, that neither in § 92 itself, nor in Rule 35 of the Rules under the Act of 1875, from which this section was taken, was the power of the Court to permit alterations restricted in any way to new marks, that the great bulk of the marks to which the rule was applicable when it was made in 1875 were old marks, and that, as a matter of fact, the majority of the instances in which alterations were allowed, at all events for many years, occurred with reference to old marks. The old mark must, no doubt, be registered precisely as used, but when the mark had once been properly registered the Court had full power to permit it to be altered in non-essential particulars if the case appeared to be a proper one for such an indulgence. The true principle seems to have been that no mark, whether old or new, should be allowed to be altered where the alteration, whether in a technically "essential particular" or not, would materially alter the nature or appearance of the mark, or make a good mark out of a bad, or possibly bad, one; but that when the proposed alteration was not open to such an objection there was no reason why the Court should not allow the alteration if it thought fit, whether the mark was old or new. The language of § 9 (5) of the Trade Marks Act, 1905, relating to the registration of old marks, seems to support this view for the future.

Classes of alterations.

The Trade Marks Journal contains numerous instances of announcements of alterations in registered trade marks authorized by the Court, and a list of them is given at pp. 646—652, distinguishing them as they refer to old and new marks respectively. In two or three cases the orders referred to do not appear to have been advertised in the Trade Marks Journal, the reason being that the applicants remained content with obtaining their orders and omitted to notify them to the office, so that the register has *de facto* continued unaltered. In the earlier years the registrar or comptroller was not represented on these applications, but it ought hardly to be assumed that the orders were made without proper consideration on that account.

It seems convenient to classify the orders made under the headings: (1) Alterations in the name or initials appearing on the mark; (2) alterations in respect of the word "limited" or abbreviations of it; (3) alterations in respect of the words "patent" or "trade mark" on the mark; (4) other alterations in respect of wording, type, &c., appearing on the mark; to which may be added (5) alterations made, not in the mark itself, but in the name of the registered proprietor of the mark.

Alterations in name on mark.

In several cases it has happened that a registered mark has contained the name of the proprietor of the mark, but that, on account of a subsequent change of ownership, it has become desirable that the name in the mark should be changed so as to correspond with the altered circumstances, and in such cases the Court has usually allowed the change to be made. Thus, in *In re Dewhurst*, February 23rd, 1878, March 19th, 1880, and July 9th, 1880, Jessel, M. R., allowed a number of marks in the cotton classes to be altered by substituting the names of the new proprietors for the names of the former proprietors, "Alexander Collie & Co." and "Balfour, Heugh & Co." But in one of these cases, in which the name of the former proprietor was printed in the form of a signature, so as to constitute an essential particular, the Master of the Rolls refused to allow the alteration. See also *In re Murphy & Co.*, 7 P. R. 163, and *In re Hammond & Stow, Ltd.*, 22 P. R. 299. In *In re Boord*, Mar. 25th, 1881, Jessel, M. R., allowed the registered proprietors of a mark for beer which contained a former name of their firm, "Swaine, Boord & Co." in ordinary type, to remove the name from the mark, leaving the space vacant, and to add a note to the registration stating that the name of the person or firm for the time being entitled to the mark might, in practice, be inserted in the blank space. See, however, *In re Brown*, 11 P. R. 365. Again, in *In re Bass, Ratcliff & Gretton, Ltd.*, July 21st, 1882, Chitty, J., allowed the name of the above company to be substituted for "Bass & Co.," and in *In re Moeller & Schreiber*, Mar. 7th, 1888, Kay, J., allowed the initials of the existing firm, "M. & S.," to be substituted for other initials. The above were all old marks, and the same was the case in *In re Kirkpatrick*, Chitty, J., Feb. 21st, 1890; *In re Brown*, Stirling, J., 11 P. R. 365; and *In re Maw, Son & Thompson*, Buckley, J., 19 P. R. 260, where the name of the firm had been changed to "Maw, Son & Sons," and the name of the old firm in the trade mark was altered accordingly by substituting "Sons" for "Thompson." In

In re Henry Clay & Bock & Co., (1892) 3 Ch. 540, however, an old mark was not allowed to be altered by substituting the name of the new proprietors for the initials of the former owners. In the case of new marks alterations have also, in various instances, been authorized to be made in the name or initials on the mark. Thus, by substituting "N. W. T. S. A., Ld." for "A. J. S. & Co., Ld.": *In re National Wholesale Tea Supply Association, Ld.*, 10 P. R. 164; "Stockowners' Meat Company," for "Graziers' Meat Export Company": *In re Stockowners' Meat Company of New South Wales*, 14 P. R. 733. And see list below.

In *In re Guinness, Son & Co., Ld.*, 5 P. R. 316, the firm of Arthur Guinness, Son & Co. had registered an oval label bearing, with other words and a device of an Irish harp, the printed signature "Arthur Guinness, Son & Co.," and the goodwill having been subsequently assigned to a limited company called "Arthur Guinness, Son & Co., Ld.," leave was given to alter the registered trade mark, which was an old one, by adding the word "Limited" in ordinary type, beneath the signature. The addition of the word "Limited" has in many similar cases been since permitted, the addition being sometimes made to a printed signature, as in *In re Burke*, W. N. 1891, p. 2, but more frequently to a name in ordinary print; and in *In re Bryant & May, Ld.*, 4 Times L. R. 675, Stirling, J., said that such leave would be given as a matter of course; and see *In re J. T. Davenport, Ld.*, 21 P. R. 726. But where the sole essential of the trade mark was a written signature, the name was allowed to be repeated in ordinary type underneath the signature with the addition of the word "Limited," instead of adding that word to the signature: *In re Hammond & Stow, Ld.*, 22 P. R. 299. In *In re Adshead*, Kekewich, J., Nov. 25th, 1892, the addition permitted was "& Co., Ld.," and in several cases the abbreviation "Ltd." or "Ld." has been sanctioned, e.g., *In re Ind, Coope & Co., Ld.*, Stirling, J., June 22nd, 1888; *In re Younger*, Stirling, J., June 22nd, 1888; *In re Macintosh*, Stirling, J., Nov. 29th, 1889; *In re Foster*, Chitty, J., July 25th, 1890, but more recently Stirling, J., expressed himself unwilling to allow the addition of the word "Limited" in the form of any abbreviation, preferring that it should be printed at full length: *In re Robert Porter & Co.*, W. N. 1895, p. 102; *In re Hayward*, 13 P. R. 729; and this was followed by Cozens-Hardy, J., in *In re Holbrook's, Ld.*, 18 P. R. 447. The objection seems to have been founded on the supposition that the wish for the addition proceeded from a desire to comply with the provisions of § 42 of the Companies Act, 1862, which did not provide for the use of any abbreviation of the word. It seems, however, reasonably clear that this section of the Companies Act had no application to the case of a trade mark, and if a company was desirous of using a trade mark which had been used by the firm which preceded it in business, but with the addition of "Ld.," there seems to have been no reason in law why it should not do so. Then, if it wished to have the registration altered so as to correspond with the actual form in which the mark was lawfully used, it is not very easy to see what substantial objection there could be to it. See now Companies (Consolidation) Act, 1908. On the occasions of the alteration of the marks in *In re Ind, Coope & Co., Ld.*, Stirling, J., June 22nd, 1888; *In re Younger*, Stirling, J., June 22nd, 1888; and *In re Orlando Jones & Co.*, 12 P. R. 278, the further addition was permitted of the words "This label is issued only by 'Ind, Coope & Company, Limited,' or 'Wm. Younger & Co., Limited, Brewers, Edinburgh,' or 'Orlando Jones & Co., Lim.'" In *In re Jones & Co.*, Chitty, J., July 20th, 1883, on the other hand, the word "Limited," which had been inserted by mistake, was allowed to be expunged.

Alterations
in respect
of word
"Limited."

After the decision of the Court of Appeal in *In re Apollinaris Co.*, (1891) 2 Ch. 186, 233—235, that the presence in a trade mark of the words "trade mark," so placed as to be likely to mislead the public into the belief that a part only of the trade mark, and not the whole, was registered and claimed, was sufficient to vitiate the registration, an application was made by Messrs. Colman (*In re Colman*, (1891) 2 Ch. 403) for leave to alter, under § 92, a considerable number of trade marks registered by them, by striking out of each mark the words "trade mark," except in one case in which the mark was intended for use in France, and the words sought to be removed were "marque de fabrique." Kekewich, J., acceded to the application, making it a condition that the applicants should undertake to endorse on their original applications for registration, and enter on the register, a statement of the essential particulars of each mark, and a disclaimer of the exclusive right to the added matter, if any, to the satisfaction of the comptroller, with liberty to apply to the Court in case of difference. All the marks had been registered under the Act of 1883, so that the effect of the order was to place them on the same footing as if they

Alterations
in respect of
"Trade
Mark."
"Patent."

had been registered under the Act of 1888, in which case the conditions imposed by the Court would have been enforceable by virtue of the amended § 64. No further application was made to the Court in the matter, the terms of the claims and disclaimers being arranged between the applicants and the comptroller. The terms so arranged were advertised in Vol. 16 of the Trade Marks Journal, at p. 813 (August 16th, 1891). In this case all the marks sought to be altered were, with two exceptions only, registered as new marks, *i.e.*, as not having been in use prior to the Act of 1875. In the case of the two old marks no conditions were imposed. The words "trade mark" were again allowed to be removed from new trade marks in which they appeared, by Stirling, J., in *In re Badische Anilin & Soda Fabrik*, July 3rd, 1891, and by Romer, J., in *In re Franklyn, Morgan & Davey*, July 17th, 1891. When the same application, however, was made in *In re Phillips*, (1891) 3 Ch. 139, Chitty, J., refused leave to remove the words "trade mark" on various grounds, one of which was that the trade and the public were entitled to have on the register the same indication of a restricted claim as previously. He also expressed the view that the mark, being an old mark, ought not to be altered; but, for the reasons stated in an earlier part of this note, it seems reasonable to suppose that this was only intended to apply to alterations of so serious a character as that here sought. The question as to the position of the words "trade mark" in the mark is not now of much importance, having regard to the decision of the Court of Appeal in *In re Bass, Ratcliff & Gretton, Ltd.*, 19 P. R. 529.

In two comparatively early cases—*In re Muntz*, Kay, J., Dec. 13th, 1883, and *In re Beanes*, Chitty, J., May 15th, 1884—the word "Patent" was allowed to be removed from trade marks, the vacant space being filled up in the first instance by the introduction of the words "Yellow Metal." The presence in a trade mark of the word "Patent" seems, however, to be even more material than that of the words "Trade Mark," and the decision of Kekewich, J., in *In re Adams*, 9 P. R. 174, in which he refused to allow the alteration of an old mark by striking out the word "Patent," which had been improperly used, does not seem to be open to question. In fact, it would seem that the application should have met the same fate even if the mark had been a new one.

Alterations in addresses.

In numerous other cases, some of old marks, some of new marks, as may be seen by the list below, alterations of various kinds have been allowed to be introduced into registered trade marks. Frequently such alterations have consisted in varying the address given on the mark, *e.g.*, *In re Walker*, Dig. 624, where a trade mark consisting of the letter "W," a crown, and the word "Netherton," was allowed to be altered by substituting "Dudley" for "Netherton." So, in *In re Dunn*, Hall, V.-C., Dec. 20th, 1880, "Middlesboro'" was substituted for "Wolsingham." In *In re Hargreaves*, Stirling, J., Jan. 11th, 1890, the address, "Heywood, Manchester," was struck out, and in *In re Kinahan*, North, J., Dec. 16th, 1891, "Guildford Street, York Road, Lambeth, London, S.E.," was substituted for "20, Great Titchfield Street, Oxford Street, W." See also *In re J. T. Davenport, Ltd.*, 21 P. R. 727, and *In re Cockle*, 20 P. R. 353, where the address was altered. Other cases will be found in the list. It is usual for an exhibit to be prepared, showing how the mark will appear after the proposed alterations, and for the order to be made with reference to this exhibit: *In re Cockle*, 20 P. R. 353.

Alterations in wording.

In some cases descriptive words have been struck out of a composite mark, *e.g.*, *In re Skinner*, Jessel, M. R., Aug. 3rd, 1881; *In re Burke*, North, J., Jan. 13th, 1891; but in *In re Orlando Jones & Co.*, 12 P. R. 278, Stirling, J., while allowing the words "superior quality" to be added to a new mark, in which they had always in practice been used, only did so upon condition that the applicants should disclaim, not merely the added words, but all the common words in the mark, as in *In re Colman*, (1891) 2 Ch. 403. So, prices of goods have been removed: *In re Clarkson & Fin'ay*, Kay, J., April 5th, 1889; *In re Scott & Bowne*, Stirling, J., May 4th, 1896. In *In re British Tea & Trading Association, Ltd.*, North, J., Oct. 26th, 1886, the registered trade mark, which was an old mark, consisted of three sides of a wrapper for packets of tea, of which those on the right and left consisted of arrangements of Chinese words, and that in the centre of the head of a mandarin, with the words "The British Tea Association" above it, and below it the words "Imperial Mandarin Tea, imported direct from the Imperial district in China," and leave was given to alter it by substituting for the words "imported direct from the Imperial district in China" (which had never been used by the applicants themselves, and not by their predecessors in business since 1877) the words "This label is protected by registration as a trade mark." In *In re Reiss Brothers*, 5 P. R. 291, the

registered mark consisted of a combination mark for cotton piece goods, which comprised various words and devices, including the applicants' name and address, "Reiss Brothers, Manchester," and the words "Grass Bleach, Best Quality." "Grass Bleach" was the name of a description of bleaching which had gone out of use, and leave was given to alter the word "Grass" to "Reiss," notwithstanding that another firm's combination mark, registered for similar goods, bore the name "Reiss & Co., Batavia," the remainder of the latter mark being quite dissimilar from the applicant's mark. In one case—*In re Read, Hall, V.-C.*, July 7th, 1881—the words "Dog's Head Bottling" were allowed to be substituted for "Bull Dog Bottling"; and in another case—*In re Smith, Kay, J.*, Aug. 3rd, 1882—the whole of the mark, except the word "Glenlivet," was struck out, leaving that word to stand alone as the trade mark. But these two cases would hardly be followed now; e.g., in *In re Orlando Jones & Co., Ltd.*, 12 P. R. 278, Stirling, J., refused to alter a pictorial label by removing two curved lines common to the trade, but this was without prejudice to an application for the separate registration of the remaining portion of the label. However, in *In re Scott & Bowne*, May 4th, 1896, Stirling, J., allowed two side panels, in French and German, of a tripartite label to be struck out. In some cases, the size and arrangement of the printed matter on the label, or of some of it, have been altered, e.g., *In re Lazenby, Malins, V.-C.*, Feb. 26th, 1880; *In re Burham Brick, Lime & Cement Co.*, 9 P. R. 422. See also *In re J. T. Davenport, Ltd.*, 21 P. R. 726.

In *In re Ermen & Roby*, 4 P. R. 70, leave was given to alter a new mark on which were words in Russian, by changing a capital F from the English into the Russian character, and inserting the Russian word meaning "of" between "Roby" and "Manchester." Again, in *In re Le Coq* (Stirling, J., Dec. 19th, 1890), Russian words meaning "Deposited at the Department of Commerce and Manufactures," were allowed to be added between two circles which formed part of the mark, and a rim of two circular lines to be added to the outer circle. (But in *In re Orlando Jones & Co., Ltd.*, 12 P. R. 278, as stated above, two oval lines were not allowed to be removed from a new mark.) On the other hand, where an old trade mark contained words partly in Russian and partly in English characters, North, J., refused to allow the mark to be altered by turning the bulk of the words into Russian characters, and making certain additions to and omissions from the name and place of business of the proprietor, on the ground that the alterations, whether in essential particulars or not, were in very material respects as regarded the appearance of the marks: *In re Savin*, 13 P. R. 21.

In various instances the name entered in the register as that of the registered proprietor has been allowed to be altered under this section, usually on account of the name of the proprietor having been altered. Thus, in *In re Moët & Chandon, Bacon, V.-C.*, Aug. 19th, 1882, "Chandon et C^{ie}, successors to Moët & Chandon," was substituted for "Moët & Chandon"; in *In re Booth, Kay, J.*, Dec. 21st, 1882, "Booth Cotton Mills" was substituted for "Booth Manufacturing Company"; in *In re Porous Plaster Co.*, Pearson, J., Feb. 6th, 1885, the words "trading as the Porous Plaster Co." were struck out; in *In re Patent Plumbago Crucible Co.*, 7 P. R. 282, "The Morgan Crucible Co., formerly trading as the Patent Plumbago Crucible Co." was substituted for "The Patent Plumbago Crucible Co."; in *In re Milne & Co.*, Kekewich, J., April 15th, 1890, "James Virtue McEntire" was substituted for "Milne & Co."; in *In re Birmingham Wagon Co., Ltd.*, Chitty, J., Nov. 22nd, 1890, "The Birmingham Railway Carriage and Wagon Company, Limited," for "The Birmingham Wagon Co., Ltd."; in *In re National Wholesale Tea Supply Association, Ltd.*, 10 P. R. 164, the new name of the company for "Albert John Slaney, Ltd."; in *In re W. Wilkinson & Sons, Ltd.*, Kekewich, J., March 6th, 1896; 40 Sol. J. 336, "Burgess & Wilkinson, Limited," originally called "W. Wilkinson & Sons, Ltd.," for "W. Wilkinson & Sons, Ltd."; in *In re Findlater, Mackie & Co.*, North, J., April 24th, 1896, "Findlater Gumble & Co." for "Findlater, Mackie & Co." But in *In re New Ormonde Cycle Co.*, (1896) 2 Ch. 520, North, J., pointed out that the language of § 92 only referred to leave being given to add to or alter a mark, and the alteration of the name of the proprietor not being an alteration in the mark, he did not consider that he would be justified in treating the section as enabling him to sanction the alteration proposed, but he suggested that the comptroller might make the alteration under § 87. See now § 32 of the Act of 1905.

For List of Cases, see next page.

Alterations in Russian inscriptions.

Alterations in name of proprietor.

List of Alterations of the Register sanctioned by the Court under Sect. 92.

I.—MARKS IN USE BEFORE THE 13TH AUGUST, 1875 (OLD MARKS).

(1) *Alterations in the Name or Initials appearing on the Mark.*

Name.	Date.	Judge.	Length of user before August, 1875.	Nature of order.
Re Dewhurst	Feb. 23, '78.	Jessel, M.R.	{ 9½ yrs. }	"G. & R. Dewhurst" substituted for "Alex ^r Collie & Co."
Re Dewhurst	Mar. 19, '80.	Jessel, M.R.	{ 5½ yrs. }	
Re Dewhurst	Mar. 19, '80.	Jessel, M.R.	{ 9½ yrs. }	"G. & R. Dewhurst" substituted for "Alex ^r Collie & Co."
Re Dewhurst	July 9, '80.	Jessel, M.R.	{ 17 yrs. }	
Re Dewhurst	July 9, '80.	Jessel, M.R.	26 yrs.	"G. & R. Dewhurst" substituted for "Balfour, Heugh & Co."
Re Boord	Mar. 25, '81.	Jessel, M.R.	21 yrs.	"Swaine, Boord & Co." removed from mark, and note added to the registration that the mark may be used with the name of the person or firm entitled inserted in the place left vacant.
Re Bass, Ratcliff & Gretton, Ld.	July 21, '82.	Chitty, J. . .	{ 20 yrs. }	"Bass, Ratcliff & Gretton, Ld." substituted for "Bass & Co."
Re Moeller & Schreiber	Mar. 7, '88.	Key, J.	{ 18 yrs. }	
Re Kirkpatrick	Feb. 21, '90.	Chitty, J. . .	1½ yrs.	"M. & S." substituted for "D. G. F. H."
Re Kirkpatrick	Feb. 21, '90.	Chitty, J. . .	3 yrs.	"& Sons" added after "Thomas Kirkpatrick."
Re Brown	May 25, '94.	Stirling, J. . .	{ 30 yrs. }	"and Son" added after "E. Brown."
(11 P. R. 365.)	May 25, '94.	Stirling, J. . .	{ 5 yrs. }	
Re Joseph Rodgers & Sons	June 9, '02.	Farwell, J. . .	38 yrs.	"E" substituted for "V" and "His" for "Her."
Re Allcock Manufacturing Co.	Jan. 20, '05.	Joyce, J. . .	10 yrs.	"Allcock M'f'g Company" substituted for "Porous Plaster Co. of the Village of Sing Sing, N.Y."
Re Greg & Co.	Feb. 26, '05.	Kekewich, J.	25 yrs.	"R. Greg & Co., Stockport," substituted for "R. H. Greg & Co., Manchester."

(2) *Alterations in respect of the Word "Limited," or Abbreviations of it.*

Re Jones	July 20, '83.	Chitty, J. . .	1 yr.	"Limited" struck out.
Re Guinness	May 11, '88.	Chitty, J. . .	13 yrs.	"Limited" added to signature.
(5 P. R. 316.)	May 11, '88.	Chitty, J. . .	13 yrs.	"Limited" added to signature.
Re Ind, Coope & Co., Ld.	June 22, '88.	Stirling, J. . .	{ 6 yrs. }	"Limited" added in some cases. "Ltd." in others. "This label is issued only by Ind, Coope and Company, Limited," in others.
Re Ind, Coope & Co., Ld.	June 22, '88.	Stirling, J. . .	{ 9 yrs. }	
Re Ind, Coope & Co., Ld.	June 22, '88.	Stirling, J. . .	{ 12 yrs. }	
Re Younger	June 22, '88.	Stirling, J. . .	20 yrs.	Same as in <i>Re Ind, Coope & Co., Ld.</i>
Re Allsopp	July 6, '88.	Chitty, J. . .	13 yrs.	"Limited" added after name.
Re Schweitzer	Mar. 25, '89.	North, J.	7 yrs.	"Limited" added after name.
Re Macintosh	Nov. 29, '89.	Stirling, J. . .	10 yrs.	"Ld." added after name.

LIST OF ALTERATIONS OF THE REGISTER—continued.

Name.	Date.	Judge.	Length of user before August, 1875.	Nature of order.
Re Foster	July 25, '90.	Chitty, J. ...	13 yrs. } 1 yr. }	"Limited" added in some cases, "Ltd." in others.
Re Burke..... (W. N. 1891, p. 2.)	Jan. 13, '91.	North, J. ...	11 yrs. } 7 yrs. }	"Limited" added after signature.
Re Adshead	Nov. 25, '92.	Kekewich, J.	17 yrs.	"& Co., Ltd.," added after name.
Re Oakey.....	Aug. 26, '93.	North, J. ...	20 yrs. } 15 yrs. } 12 yrs. } 10 yrs. } 4 yrs. }	"Limited" added after name.
Re Day & Martin, Ld.	Aug. 2, '94.	Stirling, J. ...	75 yrs. } 20 yrs. } 5 yrs. }	"Limited" added in some cases, "Ltd." in others.
Re Jones (12 P. R. 278.)	Apr. 23, '95.	Stirling, J. ...	20 yrs. } 10 yrs. }	"This label is issued only by Orlando, Jones, & Co., Ld." added on marks.
Re Hayward	July 24, '96.	Stirling, J. ...	86 yrs. } 43 yrs. }	"Limited" added after name.
Re Joule & Sons, Ld.	June 14, '01.	Kekewich, J.	27 yrs.	"Limited" and "this label is issued only by John Joule & Sons, Ltd." added.
Re Colman	July 10, '03.	Byrne, J. ...	8 yrs.	"Ltd." in some cases, and "Limi- ted" in others, added after signature.
Re Davenport	Aug. 12, '04.	Joyce, J. ...	12 yrs.	"Limited" added after name.

(3) Alterations in respect of Words "Patent" or "Trade Mark" on Mark.

Re Muntz	Dec. 13, '83.	Kay, J.	10 yrs.	"Yellow metal" substituted for word "Patent."
Re Beanes	May 16, '84.	Chitty, J. ...	6 yrs. } 5 yrs. }	"Patent" struck out.
Re Colman	April 11, '91.	Kekewich, J.	13 yrs.	"Trade mark" struck out.

(4) Other Alterations in respect of Wording, Type, &c. appearing on Mark.

Re Walker	Aug. 6, '79.	Malins, V.-C.	3 mos.	"Dudley" substituted for "Nether- ton."
Re Lazenby..... (Dig. 624.)	Feb. 26, '80.	Malins, V.-C.	15 yrs.	"Manufactory" and "Prepared by" struck out, and alterations made in type.
Re Smith.....	Aug. 3, '82.	Kay, J.	50 yrs.	The two circles and the plaid pat- tern on the inner circle struck out, leaving the word "Glen- livet" alone.
Re Hanson	June 2, '85.	Bacon, V.-C.	3 yrs.	Words "and Parisian relevé," also "et de relevé Parisien" and "agents" struck out.

LIST OF ALTERATIONS OF THE REGISTEE—*continued.*

Name.	Date.	Judge.	Length of user before August, 1875.	Nature of order.
Re British Tea & Trading Association.	Oct. 26, '86.	North, J....	4 yrs.	Words "This label is protected by registration as a trade mark" substituted for words "Imported direct from the Imperial District in China."
Re Bloxwich Iron & Steel Co., Ltd.	Nov. 24, '87.	Chitty, J. ...	2 yrs.	"Bloxwich" substituted for "Birchills Hall."
Re Reiss (5 P. R. 291.)	Apr. 11, '88.	North, J....	5 yrs.	"Reiss" substituted for "Grass."
Re Harris	Jan. 11, '89.	Stirling, J..	3 yrs.	"Charles" and "& Co." struck out, and position of word "Calne" altered.
Re Schweitzer	Mar. 25, '89.	North, J....	7 yrs.	"10, Adam St., Adelphi," struck out.
Re Clarkson & Finlay.	Apr. 5, '89.	Kay, J.	24 yrs.	Prices of goods struck out of marks.
Re Kirkpatrick	Feb. 21, '90.	Chitty, J. ...	3 yrs.	"& Hindley Green n ^r Wigan" added after "Tyldesley, Manchester."
Re Lincoln, Bennett & Co.	Apr. 18, '90.	Chitty, J. ...	12 yrs.	"London" added.
Re Melton & Co.....	May 23, '90.	North, J. ...	8 yrs.	"& Co." added after name, "to the Queen" struck out, "the late" inserted before "Napoleon," "London" substituted for "194, Regent St.," and "Trade mark" substituted for "London."
Re Le Coq	Dec. 19, '90.	Stirling, J..	40 yrs.	Russian words meaning "Deposited at the Department of Commerce and Manufactures" added between the two circles, and a rim of two circular lines added to the outer circle.
Re Burham Brick, Lime & Cement Co. (9 P. R. 422.)	July 22, '92.	Stirling, J..	{ 9 yrs. 3 yrs. }	{ "Works" omitted after "Burham," also "Murston," and type of remaining words expanded.
Re Brown	May 25, '94.	Stirling, J..	{ 30 yrs. 5 yrs. }	{ Numerous alterations in addresses.
Re Day & Martin, Ltd.	Aug. 2, '94.	Stirling, J..	{ 75 yrs. 20 yrs. }	{ "Late" inserted before the address "High Holborn."
Re Foster	Mar. 22, '95.	North, J. ...	{ 13 yrs. 4 mos. }	{ "London" substituted for "27, Brook St., Bond St., London."
Re Cockle & Co. (22 P. R. 353.)	Feb. 6, '03.	Farwell, J..	70 yrs.	"18, New Ormond Street" substituted for "18, New Ormond Str." and "Great Britain" added.

Name.	Date.	Judge.	Length of use before August, 1875.	Nature of order.
Re Colman	July 10, '03.	Byrne, J. ..	{ 8 yrs. 7 yrs. 1 yr. }	"By special appointment to the King" substituted for "Manufacturers to the Queen" in some cases, "late" inserted before "Queen" in others, "by special appointment to His Majesty the King" substituted for "Mustard Manufacturers to Her Majesty the Queen," and "Purveyors to His Majesty the King, to the King of Italy, The Queen of Holland, and to H.R.H. The Prince of Wales" substituted for: "Manufacturers to Her Majesty the Queen, to the King of Italy and The Queen of Holland, and Purveyor to H.R.H. The Prince of Wales," "Bull's Head" shifted to left of circle round device.
Re Davenport	Aug. 12, '04.	Joyce, J. ..	12 yrs.	"Manufacturers, Chemists, Pharmacentists" substituted for "Manufacturer, Chemist, Pharmaceutist," "17, Union Street, London, S.E., England" substituted for address on label, "the late" inserted before "Duke of Cambridge," and "Government" omitted.

(5) Alterations in Name of Proprietor of Mark.

Re Moet & Chandon ..	Aug. 19, '82.	Bacon, V.-C.	{ 40 yrs. 9 yrs. 4 yrs. }	"Chandon et Cie, successors to Moet & Chandon" substituted for "Moet & Chandon."
Re Booth	Dec. 21, '82.	Kay, J.	30 yrs.	"Booth Cotton Mills" substituted for "Booth Manufs Co."
Re Australian Wine Co. (61 L. T. N. S. 427.)	Jan. 23, '85.	Chitty, J. ...	3 yrs.	"J. H. Symon and E. V. Joyner" substituted for "The Australian Wine Co."
Re Avril	Apr. 20, '88.	Stirling, J. ..	3 yrs.	Names of Thomas Monckton and others, subsequent proprietors, removed, and name of "Louise Avril, widow," proprietor, restored.
Re Birmingham Wagon Co., Ltd.	Nov. 22, '90.	Chitty, J. ...	19 yrs.	"Birmingham Railway Carriage and Wagon Company, Limited," substituted for "Birmingham Wagon Company, Limited."
Re Wilkinson	Mar. 6, '96.	Kekewich, J.	100 yrs.	"Burgon and Wilkinson, Limited," substituted for "William Wilkinson and Sons, Limited."
Re Findlater	Apr. 24, '96.	North, J. ...	2 yrs.	"Findlater, Gamble & Co." substituted for "Findlater, Mackie & Co."

LIST OF ALTERATIONS OF THE REGISTER—continued.

II.—MARKS NOT IN USE BEFORE THE 13TH AUGUST, 1875 (NEW MARKS).

(1) Alterations in the Name or Initials appearing on the Mark.

Name.	Date.	Judge.	Nature of order.
Re Bass, Ratcliff & Gretton, Ltd.	July 21, '82.	Chitty, J. . .	"Bass, Ratcliff & Gretton, Ltd." substituted for "Bass & Co."
Re May & Baker, Ltd.	May 1, '91.	North, J. . .	"W. G. Baker," "R. C. Heath," "T. Tyrer," and "W. E. B. Blenkinsop," struck out.
Re National Wholesale Tea Supply Association, Ltd. (10 P. R. 164.)	Apr. 11, '93.	Chitty, J. . .	"N. W. T. S. A., Ltd." substituted for "A. J. S. & Co."
Re Explosives Co., Ltd.	July 31, '96.	North, J. . .	"Explosives" substituted for "E. C. Powder."
Re Stock Owners' Meat Co. of N. S. W. (14 P. R. 733.)	July 9, '97.	Romer, J. . .	"Stock Owners' Meat" substituted for "Graziers' Meat Export."
Re Maw, Son & Sons (19 P. R. 260.)	Apr. 11, '02.	Buckley, J.	"Sons" substituted for "Thompson."
Re Hammond & Stow, Ltd. (22 P. R. 299.)	Feb. 24, '05.	Farwell, J.	"Hammond & Stow, Ltd.," added.
Re Taddy	May 19, '05.	Eady, J. . .	"Taddy's" substituted for "Peacock's."

(2) Alterations in respect of the Word "Limited," or Abbreviations of it.

Re Allsopp	July 6, '88.	Chitty, J. . .	"Limited" added after name.
Re Foster	July 25, '90.	Chitty, J. . .	"Limited" added in some cases, "Ltd." in others.
Re Burke (W. N. 1891, p. 2.)	Jan. 13, '91.	North, J. . .	"Limited" added after signature.
Re May & Baker, Ltd.	May 1, '91.	North, J. . .	"Limited" added after name.
Re Day & Martin, Ltd.	Aug. 2, '94.	Stirling, J. . .	Do.
Re Salt	Nov. 23, '94.	North, J. . .	Do.
Re London Chemical Co., Ltd.	Mar. 22, '95.	North, J. . .	Do.
Re Porter (W. N. 1895, p. 102.)	June 12, '95.	Stirling, J. . .	Do.
Re Scott & Bowne	May 4, '96.	Stirling, J. . .	Do.
Re Hayward (13 P. R. 729.)	July 24, '96.	Stirling, J. . .	Do.
Re Thwaites	Dec. 10, '97.	Kekewich, J.	Do.
Re Hoe & Co., Ltd.	Jan. 19, '98.	Stirling, J. . .	Do.
Re Colman	July 10, '03.	Byrne, J. . .	"Limited" substituted for "Ltd." in some cases, "Limited" added in other cases, and "Ltd." in others.
Re Bush & Co., Ltd.	July 28, '05.	Kekewich, J.	"Limited" added after name.

LIST OF ALTERATIONS OF THE REGISTER—*continued.*

(3) *Alterations in respect of Words "Trade Mark" on Mark.*

Name.	Date.	Judge.	Nature of order.
Re Colman (1891) 2 Ch. 403.)	Apr. 11, '91.	Kekewich, J.	"Trade mark" and "Marque de Fabrique" struck out.
Re Badische Anilin & Soda Fabrik.	July 3, '91.	Stirling, J.	"Trade mark" struck out.
Re Franklyn, Morgan & Davey.	July 17, '91.	Romer, J...	Do.

(4) *Other Alterations in respect of Wording, Type, &c. appearing on Mark.*

Re Dunn	Dec. 20, '80.	Hall, V.-C.	"Middlesboro'" substituted for "Wolsingham."
Re Read	July 7, '81.	Hall, V.-C.	"Dog's Head Bottling" substituted for "Bull Dog Bottling."
Re Skinner.....	Aug. 3, '81.	Jessel, M.R.	Words "containing phosphates of iron, lime, soda, &c., for nourishing and invigorating the brain and nerves" struck out.
Re Ermen & Roby.... (4 P. R. 70.)	Dec. 21, '86.	Chitty, J. . .	A capital E altered from the English into the Russian character, and the word "of" in Russian inserted between "Roby" and "Manchester."
Re Hargreaves	Jan. 11, '90.	Stirling, J. .	Address "Heywood, Manchester," struck out.
Re Burke	Jan. 13, '91.	North, J. . .	Words "Refreshing, invigorating, and constituting an appetising tonic, whilst slightly stimulating. Easy of digestion. Specially selected and shipped only by" struck out.
Re Badische Anilin & Soda Fabrik.	July 3, '91.	Stirling, J. .	"Fabrik Zeichen" struck out.
Re Kinahan	Dec. 16, '91.	North, J. . .	"Guildford Street, York Road, Lambeth, London, S.E.," substituted for "20, Great Titchfield Street, Oxford Street, W."
Re Day & Martin, Ld.	Aug. 2, '94.	Stirling, J. .	"Late" inserted before "High Holborn, London," and "Commercial Road, Liverpool."
Re Foster	Mar. 22, '95.	North, J. . .	"London" substituted for "27, Brook Street, Bond Street, London."
Re Scott & Bowne....	May 4, '96.	Stirling, J. .	Words "A reliable remedy for pulmonary diseases, coughs, colds, and general debility; contains the tonic and nutritive properties of these popular remedies in their fullest form, very pleasing to the taste, and easily digested, and is highly recommended by the medical faculty," substituted for words "A nutritive chemical food, contains all the tonic and nutritive properties of these valuable reconstructive agents, pleasing to the taste, easily digested, and is recommended and prescribed by physicians generally." "Price 2/6" struck out. Also two side panels in French and German struck out.

LIST OF ALTERATIONS OF THE REGISTER—*continued.*

Name.	Date.	Judge.	Nature of order.
Re Colman	July 10, '03.	Byrne, J. . .	"By special appointment to the King" substituted for "manufacturers by Special Warrant to the Queen" and "By Special Warrant Manufacturers to the Queen," "Bull's" transposed from right to left of device, "late" inserted before "Queen" in some cases, "Acts 1875-99" substituted for "Act 38 & 39 Vic. ch. 63," "Purveyors of Mustard and Starch by special appointment to the King" substituted for "Mustard Manufacturers to the Queen" in others, and "Sale of Food and Drugs Acts, 1875-1899" substituted for "Act 38 & 39 Vic. ch. 63" in others.
Re Taddy	May 19, '05.	Eady, J. . .	"Tobacco" substituted for "Tobaccos, Cigars and Cigarettes."
Re Midland Vinegar Co.	May 26, '05.	Kekewich, J.	"H. P." omitted and "is a combination of the choicest Oriental fruits, spices and pure malt vinegar blended with the utmost care to ensure a digestive relish even for the most fickle appetite, this object having been attained by years of practical experience in the Sauce Trade. Manufactured by Sole Proprietors, Midland Vinegar Co., Birmingham, England," substituted for "is a combination of the choicest Oriental fruits and spices judiciously blended to please the most fastidious epicure and to ensure a digestive relish to the most fickle appetite, these objects having been obtained by the Firm's years of practical experience in the Sauce Trade. 6d. per bottle. Manufactured by F. G. Garton & Co., Nottingham."
Re Bush & Co., Ltd. . .	July 28, '05.	Kekewich, J.	"28, Ash Grove, Hackney, London, N.E." substituted for "20, 21, 22, 23, Artillery Lane, Bishopsgate, London," "28" for "Works" and "London, N.E.," for "20-23, Artillery Lane, Bishopsgate, London."

(5) *Alterations in Name of Proprietor of Mark.*

Re Porous Plaster Co.	Feb. 6, '85.	Pearson, J. .	Words "trading as the Porous Plaster Co." struck out.
Re Patent Plumbago Crucible Co. (7 P. R. 282.)	Mar. 21, '90.	Stirling, J. .	"The Morgan Crucible Company, lately trading as" inserted before "The Patent Plumbago Crucible Co."
Re Milne.....	Apr. 15, '90.	Kekewich, J.	"James Virtue M'Entire" substituted for "Milne & Co."
Re National Wholesale Tea Supply Association. (10 P. R. 164.)	Apr. 11, '93.	Chitty, J. . .	"National Wholesale Tea Supply Association, Ltd.," substituted for "Albert John Slaney and Co., Ltd."

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

Falsification of entries in registers.
See T. M. A. 1905, s. 66.
Also P. & D. A. 1907, s. 89.

94. 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.

Exercise of discretionary power by comptroller.

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

See T. M. A. 1905, s. 53.

(a) The Attorney-General or Solicitor-General for England, See § 117.

Power of comptroller to take directions of law officers.

96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *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 (a).

See T. M. A. 1905, s. 56.

Certificate of comptroller to be evidence.

(a) This section was somewhat modified from § 8 of the Act of 1875, by which the certificate of the registrar was made evidence. Under this section the certificate was to be *prima facie* evidence only.

See T. M. A. 1905, s. 51.

97.—(1.) Any application, notice or other document authorised or required to be left, made, or given at the Patent Office or to the comptroller, or to any other person under this Act, 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.

Applications and notices by post.

See P. & D. A. 1907, s. 81.

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

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

Provision as to days for leaving documents at office.

See P. & D. A. 1907, s. 82.

99. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing

Declaration by infant, lunatic, &c.

See P. & D. A. 1907, s. 83.

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 (*a*).

(*a*) This section, so far as it related to trade marks, came from the old rules.

Transmission of certified printed copies of specifications, &c.

See P. & D. A. 1907, s. 80.

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

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

See T. M. A. 1905, s. 60.

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

- (*a*.) For regulating the practice of registration under this Act :
- (*b*.) For classifying goods for the purposes of designs and trade marks :
- (*c*.) For making or requiring duplicates of specifications, amendments, drawings, and other documents :
- (*d*.) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, amendments, and other documents :
- (*e*.) For securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents :
- (*f*.) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad :
- (*g*.) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the comptroller or of the Board of Trade.

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

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

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

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

(a) The power of making rules was formerly, by § 7 of the Act of 1875, vested in the Lord Chancellor.

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

Annual reports of comptroller. See *T. M. A.* 1905, s. 57. Also *P. & D. A.* 1907, s. 76.

[102A.—(1.) All things required or authorised under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

Proceedings of Board of Trade.

(2.) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

See *T. M. A.* 1905, ss. 52, 58.

(3.) A certificate signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.]

This section was introduced by § 25 of the Act of 1888.

International and Colonial Arrangements.

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

International arrangements for protection of inventions, designs, and trade marks.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four

See *T. M. A.* 1905, s. 65. Also *P. & D. A.* 1907, ss. 91, 88.

months (*b*), from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

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

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

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

(*a*) This section was new in 1883. The amendment in it was made by § 6 of the Act of 1885. In the case of trade marks used by aliens, the existence of a convention between the state to which the alien belonged and the British Government was not a necessary condition precedent to his registration here. The Act did not say that to obtain priority the application for registration in a foreign state with which there was a convention must have been made by a subject of that state. That was apparently the intention of the section ; but there is nothing to say that the same priority was to be refused to a subject of a different state, with which there might possibly be no convention, or even to a British subject, who had applied in a country with which there was a convention. On the other hand, in the proviso in sub-s. (3) the term "country of origin" was employed. Again, in sub-s. (3) the words were "has been *duly* applied for," whereas in sub-s. (1) there was nothing about "duly," and for all that appeared the application might be one which could not possibly succeed in the foreign country. The object of this section was to enable effect to be given to the International Convention of 1883. The exceptional rights of foreigners in respect of the registration of trade marks in the United Kingdom depended exclusively upon the terms of this Act, and the Court could not have reference to the terms of the International Convention, 1883 : *In re Californian Fig Syrup Co.*, 40 Ch. D. 620. Similarly, in the United States, the Courts cannot give effect to the convention without legislation. See opinion of the Attorney-General of the United States in 47 U. S. Pat. Gaz. 397.

(*b*) The application within four months was imperative, and if application was made after that time all special rights under this section were gone. And this was so though the foreign registration was effected before this section was made applicable to the particular foreign country : *In re Californian Fig Syrup Co.*, 40 Ch. D. 620. If a subject or citizen of a foreign state which was a party to the convention had registered in England a mark which was of doubtful validity according to English law, and was desirous of obtaining for it the benefits of this section (particularly sub-s. (3)), it seems that his proper course was to obtain its removal from the English register, and then to make an application for protection in his own country. Upon this being

done, he would be in a position to apply again (within the four months) for registration in England under this section. See, *per* Kay, J., in *In re Vignier*, 6 P. R. 490.

(c) The proviso in this sub-section was construed by North, J., as though the words "may be registered" were "may be the subject of an application for registration," and it seems that no trade mark would be registered under this section unless it was within the definition of a registrable trade mark in § 64: *In re Carter Medicine Co.*, (1892) 3 Ch. 472. See *In re Californian Fig Syrup Co.*, 40 Ch. D. 620. The proviso gave no independent right of registration, but had to be read with sub-s. (1), which required application within four months.

(d) For list of Orders in Council, see Appendix D.

104.—(1.) Where it is made to appear to her Majesty that the legislature of any British possession (a) has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to her Majesty in Council may seem fit, to such British possession (b).

Provision for Colonies and India.

See T. M. A. 1905, s. 65.

Also P. & D. A. 1907, ss. 91, 88.

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

(a) See the definition of "British possession" in § 117, *infra*.

(b) For list of Orders in Council, see Appendix D.

Offences.

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

Penalty on falsely representing articles to be patented.

See T. M. A. 1905, s. 67.

Also P. & D. A. 1907, s. 89.

(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 (d).

(a) This section, so far as it relates to an untrue representation as to the existence of a patent, was in substance a re-enactment of § 7 of 5 & 6 Will. IV. c. 83. In that case, however, the penalty of £50 was imposed, recoverable in an action, and a fraudulent intention was of the essence of the offence. See *Myers v. Baker*, 3 H. & N. 802. This section appears to have followed that in not imposing a penalty where there had been a patent, though it might have expired. But it was an offence to represent that an article was patented, after application had been made for a patent and provisional protection had been obtained, but before the actual grant (*R. v. Wallis*, 3 P. R. 1; *R. v. Crampton*, 3 P. R. 367); but not after the complete specification had been accepted by the comptroller and before the statutory time for giving notice of opposition had expired (*R. v. Townsend*, 13 P. R. 265), but a false representation by a trader in his price list that a label had been registered, such false representation being due to a *bona fide* mistake, has been held to be no bar to an application to register the label. *In re Lyle & Kinahan, Ltd.*, 24 P. R. 249.

See § 3 (1) (e) of the Merchandise Marks Act, 1887.

(b) Previously no penalty was recoverable for untruly representing that a trade mark was registered. An offence was committed if a trade mark was represented to be registered before it actually was so, even though application for registration had been made and advertised: *R. v. Morris*, Great Marlborough Street Police Court, Dec. 16th, 1886. In *Wright, Crossley & Co. v. William Dobbin & Co.*, 15 P. R. 21, the Irish Queen's Bench Division held that it was an offence within the section for an Irish trader to sell the goods of an American manufacturer under a label bearing the word "Registered" after the label had been expunged from the English register, although the label was still registered in America. And this decision was followed in the English Queen's Bench Division in a similar case: *MacSymons' Stores, Ltd. v. Shuttleworth*, 15 P. R. 748. The use of the words "trade mark" was not necessarily a representation that the trade mark was registered so as to constitute an offence under this sub-section: *Sen-Sen Co. v. Britten*, (1899) 1 Ch. 692.

(c) As to "summary conviction" in Ireland, see § 117.

(d) See Ch. 7, *ante*.

Penalty on unauthorised assumption of Royal Arms. See T. M. A. 1905, s. 68. Also P. & D. A. 1907, s. 90.

106. Any person who, without the authority of her Majesty, or any of the Royal Family, or of any Government department, assumes or uses in 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 (a), shall be liable on summary conviction (b) to a fine not exceeding twenty pounds (c).

(a) This section was new. For an offence against it to be committed it was not sufficient to prove that a person was using the Royal Arms without authority, or that what he was doing was calculated to lead to the belief that the user of the arms was authorised; but it must be proved that that user was calculated to lead to the belief that the trader *was carrying on his business* by Royal or Governmental authority. However, in *R. v. Cameron*, Times, Jan. 13th, 1900, it was held that the statement "Late Contractor to Her Majesty's Government" did not prevent the unauthorised use of the Royal Arms from being calculated to deceive. Convictions were also obtained under this section in *R. v. Crisp*, Times, Feb. 2nd, 1897, and *R. v. Edmondson*, Times, May 14th, 1903. But where the royal arms were cut into the stone wall of a house leased from the Crown, and the respondent could not obliterate them without a breach of covenant, it was held that this was not a user in connection with the business. *R. v. Glare*, Times, May 8th, 1903. And where the Royal Arms had for 70 years formed part of the defendant's trade mark in combination with mythical figures engaged in mechanical arts, a summons for the wrongful assumption of the Royal Arms was dismissed. *R. v. Milner's Safe Co.*, Times, July 26, 1900.

(b) As to "summary conviction" in Ireland, see § 117.

(c) The following notice was published in the *London Gazette* :—

“ FRIDAY, FEB. 22ND, 1884.

“ BOARD OF GREEN CLOTH, BUCKINGHAM PALACE, FEB. 19TH.

“ Notice is hereby given that by section 106 of the Patents, Designs, and Trade Marks Act, 1883 (16 & 47 Victoria, cap. 57) a penalty of £20 is incurred by any persons who, without proper authority, assume the Royal Arms with a view to lead other persons to believe that they are employed under any department of Her Majesty's Household. “ SYDNEY, Lord Steward.”

It will be observed that the above notice treated fraudulent intention as of the essence of the offence; but this does not appear to be in accordance with the provisions of the section.

See § 20 of Merchandise Marks Act, 1887, as to false representations with reference to holding a Royal warrant.

Scotland, Ireland, &c.

107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the Court shall otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the Courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those Courts. For the purposes of this section "Court of Appeal" shall mean any Court to which such action is appealed.

Saving for Courts in Scotland. See P. & D. A. 1907, s. 94.

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

Summary proceedings in Scotland.

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

See T. M. A. 1905, s. 72. Also P. & D. A. 1907, s. 94.

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

Proceedings for revocation of patent in Scotland.

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

See P. & D. A. 1907, s. 94.

111.—(1.) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such 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 "Court of Appeal" respectively mean the High Court of Justice in Ireland and her Majesty's Court of Appeal in Ireland (a).

Reservation of remedies in Ireland.

See P. & D. A. 1907, s. 95.

(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.

General saving for jurisdiction of Courts.

See T. M. A. 1905, s. 69. Also P. & D. A. 1907, ss. 94, 95.

(a) This provision did not exclude the jurisdiction of the High Court of Justice in England to expunge from the register a mark registered in the name of a domiciled Scotchman or Irishman: *In re King & Co.*, (1892) 2 Ch. 462. The question whether the Scotch and Irish Courts had a concurrent jurisdiction was there left open. The question was decided by the Court of Session in the affirmative as to Scotland (*Cowie v. Herbert*, 14 P. R. 436), but in the more recent case of *John Dewar & Sons, Ltd. v. Dewar*, 17 P. R. 341, the matter was left in doubt. It was, however, there decided that, whether this were so or not, it did not affect the jurisdiction of the Court to make a declaration that the entry of the trade mark was made without sufficient cause and ought to be expunged. In Ireland it was held by the Master of the Rolls that the Court had no jurisdiction to expunge a mark wrongly registered: *Bayer v. Connell*, (1897) 1 I. R. 514.

Isle of Man.

See T. M. A.
1905, s. 70.

Also P. &
D. A. 1907,
s. 96.

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

- (1.) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those Courts;
- (2.) The punishment for a misdemeanour under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the Court;
- (3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Jurisdiction
of Lancashire
Palatine
Court.

See T. M. A.
1905, s. 71.

[112A. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks, the registration whereof is applied for in the Manchester Office, have the like jurisdiction under this Act as her Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly.

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster, in pursuance of this section, shall be subject to the like appeal as decisions of that Court in other cases.]

This section was introduced by § 26 of the Act of 1888.

Repeal ; Transitional Provisions ; Savings.

Repeal and
saving for
past operation
of repealed
enactments,
&c.

See T. M. A.
1905, s. 73.

Also P. &
D. A. 1907,
s. 98.

113. 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 (*a*), 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.

(*a*) Applications under the Act of 1875 had to be decided under that Act: *In re Hudson*, 32 Ch. D. 311. But § 63 applied to applications pending at the date of the passing of this Act, and not completed within twelve months by the applicants' default: *In re Hayward & Co.*, 54 L. J. Ch. 1003.

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

Former registers to be deemed continued.

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

See T. M. A. 1905, s. 6.

(a) The register of trade marks was previously to this Act kept under the authority of the Trade Marks Registration Act, 1875 (38 & 39 Vict. c. 91, by § 1 of which it was established), and the amending Acts (39 & 40 Vict. c. 33, and 40 & 41 Vict. c. 37). Those Acts placed the register under the superintendence of the then Commissioners of Patents, now abolished. See *In re Meikle*, 24 W. R. 1067; *In re Burrows*, 5 Ch. D. 353, 351; *In re Rotherham*, 11 Ch. D. 250; 14 Ch. D. 585.

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

Saving for existing rules. See T. M. A. 1905, s. 73.

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

Saving for prerogative. See P. & D. A. 1907, s. 97.

General Definitions.

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

General definitions.

“Person” includes a body corporate;

See T. M. A. 1905, s. 3.

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

Also P. & D. A. 1907, ss. 92, 93.

“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