It has also been suggested by the counsel that the word "Durham" is insufficient as a mark, because it does not indicate origin or ownership. That question is definitively set at rest by the decision of the New York Court of Appeals in *Burnett* v. *Phalon* (3 Keyes, 594), which held that the single word "Cocoaine" possessed all the essential elements of a common-law trade-mark.

CONCLUSION.

As facts I find —

First. That the firm of Wesley A. Wright, the assignor to Louis L. Armistead, the applicant, was the first to adopt and use a trade-mark, the essential element of which was the word "Durham," for smoking-tobacco.

Second. That the word "Durham" was not originally adopted as the distinctive name of a locality, or to denote that the tobacco to which it was affixed by him was manufactured or sold at any place named Durham; but that it was purely a fancy designation, adopted as an arbitrary symbol to denote his peculiar product.

Third. That the said symbol has by long use become associated with the particular manufacture of smoking-tobacco described in Wright's *patent*.

Fourth. That the said symbol was never abandoned or dedicated to the public by said Wright.

Fifth. That whatever property said Wright had in the said word "Durham" was transferred by him to said Armistead.

As a conclusion of law, I find that the said Wright had a legal title to the said word "Durham" as a trade-mark for smoking-tobacco, and that the applicant acquired title from him.

Priority is therefore awarded to the said Louis L. Armistead, and his claim of right to registration of said trade-mark is admitted.

§ 658. The foregoing opinion ha ing been filed and entered of record, the Office notified the parties of the result, and

allowed thirty days for appeal, as is usual (although where circumstances render it expedient the period may be lengthened or shortened). The only appeal was, of course, to the Commissioner in person, and not to the Board of Appeal (the Examiners-in-chief), as in patent cases, for section 10 of the Act of July 8, 1870, does not apply to trade-mark cases.

§ 659. This appeal to the Commissioner is in the nature of a rehearing, for there is no statutory provision in regard to a revision of the decision of the Examiner of Trade-marks; his decision being in theory the act of the Commissioner. This explanation is useful as general information, and also to account for one circumstance at the hearing of the appeal, to wit, the introduction of new evidence, not presented to nor considered by the Examiner, as to the geographical import of the word "Durham."[1] The two decisions are thus reconciled, as to the question of fact. The law of the case is concurred in. We will now read the opinion of —

LEGGETT, *Commissioner:*

Blackwell obtained, October 3, 1871, the registry of the following as a trade-mark: "Durham Smoking Tobacco, manufactured by W. T. Blackwell, Durham, North Carolina."

[1] "AN ACT to incorporate the Town of Durham, in the County of Orange.

"*Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same,* That the town of Durham, in the county of Orange, be, and the same is hereby, incorporated by the name and style of the town of Durham, and shall be subject to all the provisions contained in the 111th chapter of the revised code.

"*Be it further enacted,* That the corporate limits of said town shall extend one half-mile in all directions from the warehouse of the North Carolina railroad in said town.

"*Be it further enacted,* That this act shall be in force from and after its ratification.

"In General Assembly read three times, and ratified this 22d day of December, A.D. 1866.

"R. Y. MCADEN, *Speaker House of Com.*

"M. C. MANLY, *Speaker of Senate.*"

The *date* of this act should be noted by the reader, as it has a bearing on the question of Durham being a geographical term or not.

December 6, 1871, Armistead applied for the registry of the following as a trade-mark: "Durham Smoking Tobacco;" and as he claimed the exclusive right to the use of these words, his application was placed in interference with the registered trade-mark of Blackwell for the purpose of determining who first adopted and used on packages of smoking-tobacco the words "Durham Smoking Tobacco."

Blackwell manufactures his tobacco at Durham, North Carolina; Armistead, at Lynchburg, Virginia. Armistead claims the right to use the label-mark under an assignment from one Wesley A. Wright, who formerly manufactured smoking-tobacco at Durham, North Carolina. The evidence shows that Wright invented a flavoring-compound for smoking-tobacco as early as 1860, for which he has since obtained a patent, and in company with one T. B. Morris, under the firm-name of Morris & Wright, manufactured smoking-tobacco at Durham, and that the tobacco obtained some reputation under the name "Best Spanish Flavored Durham Smoking Tobacco." It is by no means clear, however, whether this name was first given use by the manufacturers, or by the merchants who retailed it, or by the consumers who bought and used it. This tobacco, on account of its flavor, has become a favorite, and the distinctive words in the name adopted must have been "Best Spanish Flavored," and not "Durham." In 1861 Morris & Wright seem to have dissolved partnership, and Wright moved about two miles from Durham, where he continued to manufacture smoking-tobacco for a few months, and then gave up his business and went into the rebel army. There is no pretence that he resumed this business before 1869, when he again commenced the manufacture of smoking-tobacco at Liberty, Virginia, using the following brand: "Original Durham, W. A. Wright, Originator," the label also embracing the representation of a bull's head looking to the left. In 1870, said Wright, in company with J. R. Stewart, manufactured smoking-tobacco at Stewartville, Virginia, and branded it "Durham

Smoking Tobacco." After this he assigned the right to manufacture under his patent, and also the right to use the brand "Durham Smoking Tobacco," to Armistead, the applicant. If Wright had an exclusive right to this brand, then Armistead is entitled to have it registered; otherwise, not.

Armistead attempts to fix the origin of this label back as far as 1860, when it was used in connection with the words "Best Spanish Flavored;" but in doing so he shows that it was first used by Morris & Wright, and by proving this he proves that Wright did not have the exclusive title to the label. If this is the origin of the mark claimed, then, to make Armistead's title to the same good, he should be able to show that he holds under Morris as well as under Wright. Wright could not convey to Armistead the exclusive right to use what belonged to Morris & Wright.[1] But there is nothing of record to show that Armistead holds or claims to hold any thing, directly or indirectly, from Morris. An exclusive right to use is necessary, under the statute, to secure registration.

Wright used the word "Durham" upon a small portion of the smoking-tobacco he manufactured during the year 1861 near Durham, North Carolina. This is the utmost that can be claimed, from the testimony, as to any use of the word by him alone before 1869. That such use of the name of a town where he did business should give him the right to carry such name into another State, and to use it to the exclusion of all other people in the United States, even the citizens of the town of Durham, is too preposterous to require more than a simple statement for its refutation.[2]

Blackwell claims under an assignment from one J. R. Green, and proves that Green first used the word "Durham" upon smoking-tobacco in 1865. That Wright used this word to mark packages of smoking-tobacco before Green did the tes-

[1] As partnership assets in hands of the survivor?

[2] If it was, as he claims, an arbitrary symbol, and not the mere designation of a place, why could he not use it exclusively all the world over?

timony does not leave a shadow of doubt: and if the case was a proper one for a judgment of priority I should unhesitatingly give it to Armistead as assignee of Wright. But it is not such a case. The words "Durham Smoking Tobacco" cannot constitute a legal trade-mark, and therefore cannot be registered. Neither would adding the name and place of business of the manufacturer help the matter. There is nothing registerable in either Blackwell's or Armistead's labels, and the Office blundered when it gave a certificate of registration to Blackwell. It should not repeat that blunder by giving a like certificate to Armistead.

The Examiner, it seems, refused to register for Blackwell the words "Durham Smoking Tobacco;" but, when the words "Manufactured by W. T. Blackwell, Durham, N. C.," were added by amendment, registry was admitted. There is nothing in this label except the name "W. T. Blackwell" to which Blackwell had any exclusive right, and this name cannot be regarded as any part of the trade-mark. The parties have evidently been misled as to their rights by misreading some court decisions. Courts of equity have often granted injunctions against the fraudulent use of words which the same courts would not for a moment sustain as trade-marks. An example of this is found in what is known as "the Akron Cement Case," or *Newman* v. *Alvord* (Cox, 417). Newman lived at Akron, and manufactured from the quarries of that neighborhood water-cement, which he put up in barrels and labelled "Akron Water Lime," and added his own name as manufacturer. Many of his neighbors were engaged in the same business, all using the words "Akron Water Lime," or "Akron Cement," but each attaching his own name. This lime, under the brand "Akron Cement," became popular, and one Alvord, living and doing business in Cleveland, commenced branding his water-lime "Akron Cement," adding his name and proper place of manufacture. Newman, one of the manufacturers at Akron, applied for and obtained an injunction enjoining Alvord against

using the word "Akron" as any portion of his label. The court granted the injunction solely on the ground that Alvord used the word "Akron" for the purpose of making the public believe that it was the genuine Akron cement, and thereby obtaining by fraud trade that rightfully belonged to Newman and others in Akron. The learned judge was very careful to say, however, that Newman had no *exclusive* right to the use of the words "Akron Cement," but that the same might be used by any citizen of Akron, thereby holding that while "Akron Cement" was not a legal trade-mark, yet it was within the province of a court of equity to grant an injunction against its fraudulent use.

The same doctrine was held in the case of *The Brooklyn White Lead Co.* v. *Masury*. In this case Masury adopted as a label for his paint "Brooklyn White Lead and Zinc Company." As both did their manufacturing in Brooklyn, the court held that the respondent had a right to use the words "Brooklyn White Lead;" but as the word "Company" was added for the purposes of fraud, a decree was entered enjoining Masury from using the word "Company." No one, however, would hold from this that the word "Company," as attached to a firm or corporation name, could be regarded as a trade-mark. The court enjoined against *fraud*, but with no intention of defining a trade-mark. Many other cases to the same effect might be referred to, but these are enough.

The words "Durham Smoking Tobacco" may be used with impunity by any persons engaged in manufacturing smoking-tobacco at Durham, and for that reason no one person has any exclusive right to their use. By the statute an exclusive right to use the proposed trade-mark must be established before registry can be allowed.

By application of the doctrine held in the "Akron Cement" case any person living at Durham, and engaged in manufacturing smoking-tobacco, might enjoin any person not living there who should fraudulently use the word "Durham" on tobacco-

labels for the purpose of obtaining trade that otherwise would go to Durham. This may be true, and yet the words "Durham Smoking Tobacco" not be a legal trade-mark. These parties have already had adjudicated between them a question involving nearly all of the points here discussed. In the case of *Blackwell* v. *Armistead*, lately decided in the United States District Court for the Western District of Virginia, Justice Rives very fully and ably discusses this whole matter on substantially the same testimony submitted in this case. The trade-marks, as discussed by him, differed from the marks under consideration here in this: One of them had, in addition to the words "Durham Smoking Tobacco," the representation of a bull's head, and the other of the full-size view of a bull. So far as the questions are the same, I believe the holdings in this are substantially the same as held by the learned judge in that case.[1]

As neither party is entitled to registration, the interference must be dissolved, and registration refused to Armistead. If I had power to cancel the certificate granted to Blackwell, I should certainly do so.

§ 660. Let us now peruse the opinion of his Honor, Judge Rives, who based his opinion upon the identical testimony which was transcribed from the records of his court for the use of the Special Examiner in the Patent Office. The decision will stand upon its own merits, so that the annotations cannot add to nor detract from its wisdom. With the most profound deference for the learning of the Judge, it is with hesitation that any errors of judgment shall be pointed out, — errors as to the law; for with facts we need not trouble our heads. The whole case is a study, from beginning to end, and simply as a study is it so fully set forth.

[1] That is, as to the question of fact of "Durham" being a mere name of a place.

U. S. Circuit Court for the Western District of Virginia, March Term, 1872,

W. T. BLACKWELL, AND J. S. CARR, PARTNERS UNDER THE STYLE OF WM. T. BLACKWELL,
v.
L. L. ARMISTEAD.
} In Chancery.

Bill to enjoin Violation of Trade-mark.

OPINION.

RIVES, J. — The preliminary injunction in this case was founded on the statements of the bill. In pursuance of the notice required by statute, the defendant appeared and contested its emanation upon *ex parte* affidavits assailing the title of the plaintiffs. But in that incipient state of the proceedings it would not have been proper, if at all practicable, to pass upon the merits of this defence; and the only question then was, whether the case, as presented by the bill and affected by this adverse testimony, was still such as to require this *stay* till the merits of the controversy could be developed by further pleading and testimony. The propriety of this interposition by the court will scarcely be now questioned, as these further proceedings have shown the case to be one of perplexity and doubt.

The pleadings have now been perfected. The defendant's answer was duly filed, issue taken upon it, and the cause set down for final hearing. A vast volume of testimony has also been taken, some of it contradictory, and a vast deal of it irrelevant and impertinent. It is to be regretted that the zeal of counsel or the anxiety of parties should have so augmented the bulk of this testimony as to make a needlessly expensive record of it, and to devolve upon all engaged in its examination a wearisome amount of unprofitable reading. Still it is a subject of congratulation that the cause is now fully developed in all its aspects and bearings, and has been argued with a dis-

crim nating force and fulness of research alike masterly and instructive, and calculated to produce settled convictions one way or the other.

Our first task is to acquire accurate and precise ideas of the issues made by the pleadings. If this be done, and then the law be properly applied, it seems to me we can reach a safe conclusion almost without resorting to the voluminous testimony. The plaintiffs [1] claim a trade-mark, designed in 1865 or 1866, and continuously used ever since. It is *exemplified* and made a part of their bill. The descriptive terms are, "Genuine Durham Smoking Tobacco," and the symbol or device is the side view of a *Durham* bull.[2] They assert that this trade-mark has been violated by the defendant in using, under date of January, 1871, this term: "The Durham Smoking Tobacco," and the symbol or device of "a bull's head," [3] with a note of the sale to the defendant of Wright's patent for the manufacture of "Genuine *Durham* Smoking Tobacco." This latter trade-mark of the defendant is also *exemplified* in the bill and placed in juxtaposition and contrast with plaintiffs' trade-mark.[4]

The answer, while calling for full proof of the allegations of the bill, does not directly deny this statement, but rests the defence upon three chief grounds: 1. The prior use of this trade-mark by Wright (under whom the defendant claims), as far back as 1860; 2. That the defendant's trade-mark is not an infringement of the plaintiffs', but is wholly dissimilar; and, 3. That the plaintiffs, by fraudulent representations in the premises, have deprived themselves of all equitable assistance.

[1] This being an equity suit, the term "complainant" should be used. A *lapsus calami*.

[2] This symbol is really the trade-mark. "The descriptive terms" cannot possibly be a mark of commerce. By what magic process is the animal represented shown to be a "Durham bull!" One witness swears that it is a cow.

[3] Is it possible as a matter of fact that a *bull's head* could be mistaken for the side-view of the animal! If not, how could there be infringement?

[4] This recognizes the existence of two distinct marks. If there is piracy, it thence follows that there is but *one* mark.

The main contest is considered by all parties and the counsel in this case to rest upon the *priority* in the use of this disputed trade-mark. The defendant does not pretend that Wright, under whom he claims, ever used the identical trade-mark set up by the plaintiffs. On the contrary, he takes especial pains to show that he placed no particular value on the term "*Durham*," *which he now asserts belonged in common to his and plaintiffs' brands.* The discovery which he had made, and for which he seeks protection, was his preparation for or mode of treating smoking-tobacco, so as to mitigate its noxious qualities and impart to it an agreeable flavor. This is the merit he claims; this the process he has patented. The testimony and the answer concur in proving that the whole merit of this smoking-tobacco, and its celebrity, were due to the use of the *flavoring* he gave his tobacco. He was confessedly the first to commence its manufacture at Durham's Station.[1] There was nothing in the locality he could have reasonably counted upon to commend his manufacture to the public.[2] But, if we are to accredit the defendant's answer and his testimony in this cause, it was his discovery of the flavoring compound on which he plumed himself. Accordingly it was this which he emblazoned on his stencil-plate. Take his own statement for the present, and what was his brand? "*Best Spanish Flavored* Durham Smoking Tobacco." What, in view of the pleadings and evidence in this cause, is the characteristic — the vital element — of this trade-mark?[3] Manifestly, "*Best Spanish Flavored.*" That was the only con-

[1] Observe, that the name of the place was "Durham's Station." It did not become "Durham" until the tobacco business had built it up, about six years thereafter.

[2] That is the very reason why it was a trade-mark. If the locality had power to draw public favor, then the name could not be a fancy designation.

[3] This is an instance of the inadvertent use of the term "trade-mark." The words "Best Spanish Flavored" cannot by any possibility constitute essential elements of what the law recognizes as a trade-mark. This is the test: Could any manufacturer acquire the *exclusive* right to use words so common to our language? No!

spicuous and discriminating element of this trade-mark. "Durham," if indeed a part of it, was, upon the defendant's own showing, subordinate and insignificant. Now, the plaintiffs concede in the fullest manner Wright's superior title to the use and brand of his flavoring compound, and disclaim in their process any infringement of it: nor does it appear there has been any, nor indeed any formal complaint of it.[1]

The pretension of the defendant, then, amounts to this: that because, in 1860, he branded his smoking-tobacco "*Best Spanish Flavored Durham*," wholly because of the mode in which he flavored it, no subsequent manufacturer of the article at Durham, without the use of his process, shall brand his as "*Genuine Durham Smoking Tobacco*" with a symbol which he never used. My reply is that, under the circumstances of his use of the name "Durham," there was nothing in it so descriptive as to restrain succeeding manufacturers at the same place from engrafting it on their brand, so long as they laid no claim to nor made any use of his "*Best Flavored Spanish*" compound, which he indeed appropriated by this first and original use of this only conspicuous term on his stencil-plate in 1860–61.[2] It must be remembered that Wright was only in the infancy of this manufacture at Durham; and that others followed and developed it till the plaintiffs instituted their brand in 1865 and 1866.[3]

[1] Compare this case with that of the Carthusian monks, § 582, where it was held that *Chartreuse* had become a symbol to denote their particular manufacture, possessing all the essential characteristics of a trade-mark.

[2] This is conceding that words in ordinary use in our language — as is this purely-descriptive phrase — may be appropriated by the first person who makes the combination. All the authorities are quite the other way.

[3] Let us suppose that — as was the fact in this suit — the coiner of a new word or symbol, as "Cocoaine" (which we will borrow for the sake of illustration), were to establish a manufactory, around which a large village sprung up, the village of Cocoaine, would he cease to be the owner of the symbol as his trade-mark? Would the name become a *mere* geographical designation which all might use? Certainly not. If the owner of the mark removed to another State, could it be pretended that all who had settled at Cocoaine could use the name, as the denomination of the originator's class of goods? And if the word "Durham" was merely a geographical term, why was it necessary to adopt the representation of

Conceding, then, all the defendant claims by virtue of his purchase from Wright, he fails, in my opinion, to rebut the plaintiffs' title by proving a brand as used by Wright previously, wherein "*Best Flavored Spanish*" was the distinguishing attribute, and "Durham," under the circumstances at that time, a mere unmeaning *incident*.[1] Thus stands this point in the light of the pleadings alone, the allegations of the plaintiffs on the one hand, and the denials and defences of the defendant on the other.

The testimony as to the fact whether the term "*Durham*" was ever upon the stencil-plate of Morris & Wright is contradictory. But in my mind it preponderates against the existence of that name in that brand. Counsel have adroitly insisted that the testimony against it is *negative*, and cannot from its nature, however commanding, overcome clear *affirmative* proofs. The proposition of law involved in the statement is correct; but the whole inquiry is into a fact, namely, What was the stencil used by Morris & Wright? Some, on the one hand, who had used it, declare with emphasis it was "Morris & Wright's *Best Spanish Flavored Smoking Tobacco*;" others, but mainly Wright and his two sons — the latter at the time but boys — stated it as "*Morris & Wright's Best Spanish Flavored* DURHAM *Smoking Tobacco*." The proofs, therefore, on both sides, are equally *affirmative*. If, then, it be left in doubt, we must look to the probabilities of the case to turn the scales. What motive could have existed with Wright, all whose reliance was upon the merits of his flavoring compound, to invoke the name of a small, thriftless station on a railroad, settled by only two or three families, with a store and this factory, — to invoke its name to give celebrity to the *preparation* to which he solely

a side-view of a bull! If it is geographical, so then must be its great original the ox and "Durham" on the label for mustard. (See case of *Harrison* v. *Taylor*, 11 Jur. (N.S.) 408.)

[1] Because it *was* a mere unmeaning incident, a mere arbitrary symbol, having no reference to the place of manufacture, it could be a valid trade-mark.

looked for his reward?[1] It seems to me extremely improbable, upon ordinary grounds of reason and human action, to suppose that he used "*Durham*" on his stencil at all. On comparing and weighing the testimony on both sides, I am constrained to adopt the conclusion that he did not. Neither he nor his vendee, therefore, have any claim to contest, under this state of the evidence, the validity of the plaintiffs' trade-mark and his original and paramount title thereto.

It cannot be denied that it is abundantly proven in this cause, that the manufacture of Morris & Wright, and of those who succeeded them at Durham, was known, called, and distinguished in the market as "*Durham*" smoking-tobacco. It is on this notorious fact in the cause that the able and ingenious argument has been raised that the public, by its voice, may appropriate and consecrate to an individual property in a designation by which he may choose to denote any product of his industry. But I can find no warrant for such proposition in the law on this subject. On the contrary, it is distinctly laid down by the authorities, that it is only *the actual use* of the mark, device, or symbol by the dealer which entitles him to it, and gives him the right to be protected in the enjoyment of it.[2]

The doctrine on this subject has grown with commerce, and has assumed the form and title of a distinct body of law under the moulding hand of able judges, who have sought in their decisions to establish its guiding principles, and of acute commentators and essayists, who have exerted the powers of a superior analysis and discrimination to extricate from doubt the true maxims of this beneficent code of business ethics.

So much of it as is necessary or material for our present inquiry is comprehended in a single proposition. It is the *semi-*

[1] A manufacturer relies upon the reputation of his product. The trade-mark is the index that points to it. It was the patented article, the peculiarly-flavored compound, that was the object of value. The public cared not a rush where it was made.

[2] It was known and distinguished by the name of "Durham." Then the name must have been attached to it.

nal principle of the whole doctrine. The simple statement of it is, that the dealer has *property* in his trade-mark. This is allowed him because of the right which every man has to the rewards of his industry and the fruits of his discovery, and because of the wrong of permitting one man to use as his own that which belongs to another. In regard to the latter, it may be well said, that any imitation of a trade-mark, calculated to deceive the unwary customer, differs from an absolute forgery, not in the nature, but rather in the extent of the injury. The dissimilarity to the expert wholesale dealer may be such as to save him from the imposition, but too slight, and that perhaps by design, to diminish sales to the incautious purchaser. But upon the success of fraud depends, ultimately, the extent of the injury. Let the spurious fabrication meet with the same sale, among private and individual consumers, as the genuine article, and the wholesale dealer loses all motive for the exercise of his skill in detection when he, perhaps, can reap better profits from the spurious, and therefore cheaper, than from the genuine article. In this way a simulated trade-mark may work the same mischief, and to the same extent, as a forgery, defying detection at the hands of the *expert*.

With this brief view of the law, I proceed to examine the *second* ground of defence: that the defendant has not infringed the trade-mark of the plaintiffs. This is scarcely the subject of argument. It must be referred to ocular examination and decision. Place the respective trade-marks side by side, contrast the labels, the words, and the devices, and each one's vision must determine for himself whether the imitation is such as to deceive the unpractised and unwary customer. It matters not that now, in the critical inspection of them, and aided by ingenious counsel, we can clearly discern differences between the two. The true question is, whether, taking the "*tout ensemble*," Armistead's trade-mark might not pass with the unwary for that of Wm. L. Blackwell & Co.; and, if that be so, the wrong is done, and the title of the latter to be protected by

this court is consummated. For my part I do not see how trade-marks so similar could escape being confounded in the market. One reads, "*Genuine Durham Smoking Tobacco*;" the other, "*The Durham Smoking Tobacco*." This use of the definite article makes these phrases equivalent. To remove all doubt, and aid the deception, in the note of sale of the patent to Armistead, it reads, for "*Genuine Durham Smoking Tobacco*."[1] Thus the language, to this extent, of the labels is identical. Now, as to the symbols or devices, one is the side view of the Durham bull; the other, that of his head, on a medallion. The one symbolizes, by a part, the name "*Durham*" as effectually as the other does by the whole. The color of the paper is also the same. Whether this *simulation* be the product of accident or design does not matter.[2] It is the province of this court to suppress it in either case. It is a little curious, however, to note that Wright's first label, at Liberty or in Bedford, was wholly different, and that, after his son had seen plaintiffs' trade-mark in Kentucky, and after his return to his father, the present trade-mark, as transferred to the defendant, was adopted by Wright.

The third and last ground of defence is that the plaintiffs have forfeited their right to relief in this court by reason of their false and fraudulent pretensions. This is upon the ancient and familiar principle that those who do iniquity must not ask nor expect equity. It is worthy of all acceptation. It is a hoary maxim, hallowed by its age, and, unlike some other equally sacred antiquities, it is as yet unassailed by the spirit of change or reckless progress. I adhere to it. But the charges are serious and demand investigation.

[1] The judge having already ruled out the word "Durham" as "subordinate and insignificant," we may discard it. The so-styled trade-mark, then, consists of "The Smoking Tobacco;" and the alleged piracy reads, "Genuine Smoking Tobacco." This is not an error, for the recorded opinion shows it.

[2] Read this again. The representation of the *side-view* of a bovine quadruped is the simulation of another representation of the mere head of a bull! Could one possibly be mistaken for the other? If not, the coexistence of the two pictures could not amount to infringement. This being a question of fact, we will let it go. We are in pursuit of law.

The first is, that the plaintiffs sent out business-envelopes and business-cards, giving the year 1860 as the date of the establishment of their enterprise. In the absence of explanation, this might well impugn the *bona fides* of the plaintiffs, as in their bill they fix it no earlier than 1865. But was this statement by mistake or design? Have the plaintiffs failed to account for it? A junior member of the firm was examined, and showed how it all occurred *innocently*, and without intent to deceive. He ordered the printing and gave the date; soon after the packages were received and opened in the presence of Dr. Blackwell, the latter saw the error of date and corrected it; and the witness stated that he proceeded to correct the misdate by writing the figure (5) over the cipher in 1860, so as to make the date 1865, as corrected by Dr. Blackwell, but that some might have gone out before the correction. The exhibits made by the defendant of these envelopes and cards corroborate, rather than conflict with, the witness. *That* should not be taken for *fraud* which is proved by an unimpeached witness to have been a *mistake* on his part. Besides, there was no reasonable motive for such misrepresentation; the plaintiffs had nothing to gain by it, but much to lose, on the hypothesis of the counsel for the defendant.

The next is a charge of falsehood in representing that the label was secured by copyright. There is not a particle of proof to that effect. Argument and ridicule alone are relied on to show the inapplicability and absurdity of a copyright for such a print. The language of the statute is certainly comprehensive enough to embrace a label of this kind.[1] (Act of July 8, 1870, § 86, U. S. Stats. at Large, vol. xvi. p. 212). The object of such copyright is to secure to "the author, inventor, or designer" of any such "*print*" the sole liberty of printing

[1] This is a misconception of the extent and office of the copyright law. It was never intended to permit a mere label to be copyrighted. See reasonings upon this point in previous sections. The Librarian of Congress has felt himself obliged to issue a circular, to warn applicants for copyrights against this error, and to inform them that trade-marks are not subjects of copyright.

and vending the same. It forbids the surreptitious use and the illegal sale of his labels. This is a perfectly legitimate resort to copyright in such a case and for such a purpose. It would, indeed, be absurd and ridiculous if the object were, as sarcastically portrayed by counsel, to protect the designer against the unlawful multiplication of such *yeleped* works of art. The dealer seeks merely by his copyright to keep the printing and vending of his labels in his own hands and under his control. It has been resorted to in other cases, as for instance in the case of Wolfe *v.* Goulard (Cox's Am. Trade-mark Cases, p. 227), for the label of "*Schiedam Schnapps.*"[1] There is nothing unreasonable or incredible in this claim of the plaintiffs to a *copyright* for their label; nor is there any thing in the testimony or the law to lead us to discredit it and brand it as a falsehood.

It seems to me, therefore, that both these charges are unfounded. They spring from the heat of forensic contests. They pertain to the polemics of the bar. Their effect is to provoke recrimination. Hence, the plaintiffs' counsel retaliate by imputing *falsehood* to the defendant in dating his purchase of Wright 1st of January, when he had stated in his answer he would not buy till he had ascertained his title by certificates; and those very certificates bore the subsequent date of the 6th of that month. The imputation seems plausible; but the transaction is susceptible of a more charitable construction, which I deem it my duty to put upon it. Dates are commonly immaterial, and often misapplied in business transactions. The main fact is doubtless correctly stated by the defendant, though he is made himself to confront it by a *mistaken* date.

I am glad, therefore, to have it in my power to state that there is nothing in this cause to affect the fair fame of the parties, plaintiff or defendant. They are, doubtless, respectable

[1] An unhappy citation. See the case as commented on, and the late case (*ubi supra*) decided by Pratt, J., involving the validity of Wolfe's miscalled trade-mark.

men, and enterprising manufacturers of tobacco in their respective communities. They are engaged, as I believe, in the honest pursuit of their rights as they respectively understand them. The defendant has acted on the information of another, under whom he claims. He has obeyed the order of this court. The only thing I have to regret is, that the same deference was not paid by another manufacturer, who, though no party to this suit, could not have been ignorant of it from his near relation to the defendant. But the plaintiffs have not chosen to bring him before this court, save by proving his acts in the use of the simulated mark, notwithstanding the injunction upon his brother.

I am sure the plaintiffs and the defendant, as enterprising dealers, will find their ultimate interests subserved by the doctrine I have sought to expound and maintain as to their trade-marks. Whoever may now be the loser by it may soon have occasion to invoke it for his own protection; and they, whose rights are now sustained, must learn thereby to respect those of other competitors in their business, at the same time that they take encouragement to themselves from their present success. All intelligent men, engaged in manufactures or other enterprises, must sooner or later become reconciled to losses, in whatever favored quarter they may fall, that may be fairly viewed as penalties for the infraction, however unintentional, of laws, well settled, designed, and calculated to vindicate the honor, advance the morals, and promote the interests of trade.

For these reasons I decree the perpetuation of the injunction, and order an account to be taken by a master, of the profits made by the defendant from his sales under the simulated trade-mark aforesaid.[1]

§ 661. The following decision will give another example of the treatment of a trade-mark interference, and also furnish

[1] This controversy ended in smoke. The parties came together, and spoiled the lawyers' hopes of a determination by the Supreme Court. Moral: much remains to be learned.

points of practice and law which may serve a useful purpose. Attention is particularly invited to the points of counsel, and the concession made by one side, which was sufficient in itself to warrant judgment for the other side without the necessity of recourse to the testimony.

In the U. S. Patent Office.

GEORGE SCHRAUDER, APPLICANT *v.* RICHARD BERESFORD & CO., RESPONDENTS.

Interference — Trade-mark.

BROWNE, *Special Examiner:*

The hearing was had on the 27th day of June, 1872. Knight, Brothers, for the applicant, and Fisher & Duncan, for the respondents. Schrauder's alleged trade-mark, as set out in his specification, consists simply of the word "BOUQUET," which word is printed upon suitable labels, and then applied to barrels, tierces, boxes, wrappers, or other packages or receptacles for containing cured meats. For the purpose of increasing the pictorial effect of the trade-mark, said word "BOUQUET" may be associated with a branch or wreath of flowers, or with other appropriate ornaments; but such flowers or ornaments are not to be considered as forming any part of the mark. — It is for cured meats.

Beresford & Co.'s alleged trade-mark is stated in their specification as consisting of a bouquet, which is thus described: "Two sprigs of leaves, having their stems at the bottom of the lithograph,[1] and fastened together by a ribbon, are bent around the bouquet, so that their ends nearly touch, and so as to form an oval. Within this oval is the bouquet, composed of various-colored flowers, ears of grain, and several varieties of leaves.

[1] The picture is not a *lithograph*, but is an impression from an engraving on type-metal. Accuracy upon all points is desirable.

"The bouquet is supported by an urn-shaped holder. Above the bouquet, and near the top of the oval, upon a colored background, are the words 'Richard Beresford & Co.:' just below this firm title are the words, 'Extra Sugar Cured:' while across the face of the bouquet is the word 'BOUQUET.' Beneath the word 'BOUQUET,' and across the middle of the bouquet-holder, is the word 'Hams.' Under the latter, and across the foot of the bouquet-holder, are the words 'Cincinnati, O.'

"The enclosing sprigs may be dispensed with; also the words above mentioned be changed; also the holder of the bouquet be dropped; also the coloring of the bouquet, &c., be varied, or dispensed with, without materially altering the character of our trade-mark, the essential feature of which is the bouquet."

This mark is for hams and breakfast-bacon.

It must be observed that the mark claimed in one case consists of nothing but the single word "Bouquet;" and in the other consists of the representation or picture of a bouquet.

The question that arises in this instance is *sui generis*. It is believed that the precise point here suggested has not been decided by any tribunal. The *name* of an object is brought into conflict with a *picture* of the object. The former addresses itself more particularly to the ear, the latter to the eye. Schrauder entirely dispenses with the pictorial illustration, and still retains a word which, as an arbitrary symbol, is susceptible of constituting a valid trade-mark; but to Beresford & Co. the picture is indispensable. It is necessary to decide, at the very entrance of the discussion, whether the two things can be brought into antagonistic relations.

Section 79 of the Act of Congress of July 8, 1870, in regard to trade-marks, prohibits the registration of any proposed trade-mark which is not, and cannot become, a lawful trade-mark; and, like the common law, its spirit is to deny protection to any mark which is calculated to deceive the public, and to lead to the purchase of one man's product for that of another. Although there is not the slightest ground for imputing bad faith

to either of the parties hereto, still the probable effect upon the minds of purchasers must be anticipated and guarded against. The Office must withhold that which may possibly be turned into an instrument of wrong, or even of annoyance in trade.

As an aid to solution, let us take a hypothetical case. A customer inquires thus: "Have you the 'Bouquet' brand of hams?" "We have." He is satisfied with the bare assertion, and gives his order. He does not particularize the bouquet as a picture, or the article marked with the word "bouquet." Confusion arises, to the injury of some one. Now, it is one of the characteristics of a trade-mark that it possess a distinctive individuality, so that it may not be confounded with any other, whether by means of vision or of sound. The very possibility of such a mistake is sufficient. That decides the question. The two things conflict, — the word "Bouquet" and the bunch of flowers, called a bouquet. This is the doctrine of the case of *Seixo* v. *Provezende*, 12 Jur. (N.S.) pt. i. p. 215.

Another preliminary question arises. Do both parties apply their marks to the same class of merchandise, and the same particular description of goods? If not, then the claims do not conflict. Schrauder's is for "cured meats;" Beresford & Co.'s for "hams and breakfast-bacon." The evidence settles that question in the affirmative. Both parties mean the same kind of merchandise, although employing different modes of expression.

In applying the evidence, the parties have proceeded upon two widely-different theories as to the law of the case. The applicant, Schrauder, has regarded the symbol only in its concrete relation, *i.e.*, as an emblem affixed to merchandise; while the respondents, Beresford & Co., have wandered into the domain of authorship and invention, and claim the proprietorship of the design as an abstraction. This is best shown by the points presented for consideration, as follows: —

For SCHRAUDER.

1.

Under the common law of trade-marks, the mark itself is nothing — has no intrinsic value at all — its value is only after some protracted [1] connection with a particular article of manufacture or merchandise, as an index or badge of genuineness. It had no legal force or intrinsic value, until its use with a given article of merchandise had given it such, and then not of itself separately, but only as and when attached to such an article.

2.

In this respect it differs radically from even a design-patent, which is presumed to possess some artistic quality or merit. Not so a trade-mark, which may be a word, a line, — any mark not expressing quality.

3.

Another expressive evidence of its radical difference from even a design-patent is that, whereas in such patent the recipient must be either the designer, or hold by assignment from him, ownership in a trade-mark is created by simple adoption and use, — and in fact in the present case neither party claims to have taken any part in getting up the design.

4.

(This is principally a commentary on the evidence, and need not be quoted.)

5.

As far as appears, the adoption of the mark by each party was spontaneous. We know that Schrauder's was, and impute no other origin to Beresford & Co.'s, although it is impossible to overlook the singular delay in uttering Beresford & Co.'s., — Beresford & Co.'s being a cheap, poor concern in type-metal. If Schrauder's was not used in getting it up, at least they had

[1] Not strictly correct. The title may vest *eo instanti*, by affixing the mark. See §§ 52, 129.

good opportunity to so use it; but, as before said, this point we regard as not in the controversy; and we also regard it as not a material point.

6.

The great and material point for Schrauder, we consider, is the *use* of the bouquet brand on heavy shipments of his choice sugar-cured meats, far in advance of use by any one else, and by which *alone* the mere form of words acquired any value or significance whatever.

7.

(Comments upon testimony.)

8.

Schrauder was the first to take steps to protect his mark by registration, and would have been the first on record in the Office, had he employed a solicitor; but, as before intimated, our strong, only, and sufficient point is, that Schrauder was, by many months, the first to *use* the mark as a brand on goods.

9.

It is understood that the Office is guided in adjudicating such interferences as the present by modes of procedure, and rules of action, established in interferences between applications for patents, so far as the same are applicable. The radically-different nature and ground of claim for trade-marks have an important bearing on this; for whereas, in applications for patents, the invention or design *per se* is presumed to be new and valuable in itself, no such presumption accompanies a claim for a trade-mark. It does not need to be new or meritorious in itself, — that question is of no import in the slightest degree, and does not arise. James, who claims to have gotten up or suggested the mark for his employers (Beresford & Co.), admits that he took the idea from a perfume-bottle of X Bazin, so marked.

10.

Schrauder has gone to great outlay, and has fully identified his goods with the mark, and would be a serious sufferer to be now deprived of its use, after being the one to give it force and value in the only way in which it could be given, namely, by attaching it to goods. There is no evidence that Beresford & Co. would suffer any serious loss from any cause. [1]

For BERESFORD & CO.:

1.

Theodore H. James, agent of your applicants, *conceived*[2] of this trade-mark, and studied out its details, before George Schrauder, or his lithographer, or any other person had thought of it. James not only conceived of the trade-mark first, but in May, full a month before Schrauder, he very fully and completely described his bouquet-brand to William Porter: said that the flowers should be in the form of a bouquet in a holder: stipulated that the bouquet should be of various colors; specified that the word "bouquet" should be placed on the trade-mark: inquired about the probable cost of getting up a lithograph of the trade-mark; stated clearly that this trade-mark of a bouquet of flowers was to be applied to hams; and finally ordered Porter to get up such a lithograph. This transaction took place in the month of May, 1871, and from four to six weeks earlier than the first conception of the application of flowers to a brand for hams, &c., for Schrauder. . . . While it may be true that Schrauder's lithographer, so far as appears from the testimony, first reduced the design of a bunch of flowers for a ham-brand to a sketch, and pasted it as his trade-mark on hams, yet the present case is one of those cases in which the question who first reduced the trade-mark to a sketch does not enter.

[1] This point is rather inartificial in construction. The question is purely one of right, independent of all consequences to the interest of the parties.

[2] The idea of conception or invention cannot enter into a trade-mark case.

2.

Because first James, in May, described his trade-mark [1] fully. He had thoroughly conceived it, and he so described it to Porter that any man of common sense could understand and use his design. 1. He mentioned then to Porter a bunch of flowers; 2. He described their shape: they were to *form* a bouquet; 3. He mentioned their support; 4. They were to be put in a holder, and the flowers were to be of a variety of colors; 5. The word "BOUQUET" was to be added to the trade-mark: 6. The article to which the trade-mark was to be applied was mentioned: that article was hams; 7. The name of the parties for whom the trade-mark was intended — *i.e.*, Richard Beresford & Co. — was added. Thus it will be seen that all the main features of the trade-mark, with the details, were stated by James to Porter, when he ordered the latter, in May, 1871, to get up the lithograph for the trade-mark he, James, had described.

3.

Here was the trade-mark *invented* [2] and described by James in May, 1871, in such clear and accurate language, and in such full details, that any man of ordinary intelligence and sense could understand and use his trade-mark.

4.

The rule is, that where the substance of an invention [3] consists in the application of a device, &c., for a specific purpose, the person suggesting the device and its application is the inventor, though some one else puts the invention into practice. (See *Thomas* v. *Weeks*, 2 Paine, C. C. 92.) No negligence can be imputed to your applicants. They are "winter-curers," and proved this by their own and their opponents' witnesses,

[1] It never was James' *trade-mark*, as he had never reduced it to possession by adoption. The proper word is *design*.

[2] See above note on this point, and title "Invention."

[3] This is a natural mistake of patent solicitors. They fall into the error of confounding an attribute of commerce with the subject of invention.

that, having *invented*, through James, their trade-mark in May, 1871, they, being "winter-curers," and not curing their hams until the succeeding fall and winter, would not need their trade-mark labels until that time.[1] Your applicants, then, submit that said James was the first and original inventor of the trade-mark now in controversy; and that, as the assignees[2] of said James, they are entitled to the exclusive use of said trade-mark for ham and breakfast-bacon, &c.

It is obvious at a glance that the respondents, Beresford & Co., have not only mistaken the real issue, but have also based their case upon an inapplicable theory.

By reference to the specifications, — which serve the same purpose in this interference as do pleadings in courts, — it must be seen that Schrauder claims nothing but the word "Bouquet," although for pictorial effect he chooses to associate that word with a nosegay, bouquet, or bunch of flowers, call it by what name one may. The essential part of the respondents' mark is the bouquet itself. Inquiry and comment should therefore have been directed by them, not only to the date of adoption of the bunch of flowers, but also to the adoption of the word which is its proper designation. It is because either the eye or the ear might mislead a would-be purchaser that the claims of the parties have come into collision. But the evidence, as to facts, is so clear that the error of counsel, in points and argument, cannot prejudice the rights of a party.

The law of the case has been mistaken. They have treated the mark, the emblem, the symbol of commerce, as an invention, and have attempted to apply principles which are utterly inconsistent with the idea of a trade-mark. If the bouquet in controversy be regarded as a design, the subject of a patent, then it would be proper to treat of the conception of the thing, and of the perfecting of the invention; but it is only the wildest

[1] This admits their adversary's case. See, also, point 1, conceding that Schrauder first pasted the mark on hams.

[2] The application was not filed by Beresford & Co., as *assignees*. If assignees, they would have had to deduce their title from James.

flight of fancy that could possibly conceive of a trade-mark as a patentable design. It is true, that the copy of something patented as a design may possibly be adopted as a trade-mark, as may the representation of an infinite number of objects in nature and art; but the ideas of æsthetics and trafficking have not ever been associated in the manner supposed by the counsel.

It is hardly necessary for the present purpose to assert the truth that a design, as contemplated by the patent laws, means an artistic or useful conformation or delineation, which is intended to be incorporated with an article of manufacture, and is inseparable from it. In no legal sense could the emblematic picture of the respondents be deemed a design. And if it were a design, as understood by the law in relation to patents for inventions, it could not possibly have any bearing upon a case of trade-mark law.

We must utterly repudiate the idea of a right of property in the symbols constituting a trade-mark, apart from the use or application of them to a vendible commodity. (*Leather Cloth Co.* v. *American Leather Cloth Co.*, House of Lords, 1865, 11 Jur. (N.S.) 513; *Perry* v. *Truefitt*, 6 Beav. 66; *Congress & Empire Spring Co.* v. *High Rock Congress Spring Co.*, 57 Barb. 526; and all the authorities.)

For the purposes of this discussion, it is not of the slightest avail to inquire who first sketched, drew, or invented the design now claimed as a trade-mark. Other irrelevant matters must also be ruled out; the only important question is this: Who first applied the symbol to the vendible commodities dealt in by the parties hereto? Upon the determination of that single question of fact rests the whole of the case. Let us resort to the testimony.

The witness Moers is positive that he saw Schrauder 'abels affixed to packages of cured meats three or four weeks prior to September 8, 1871, and the witness Millholland says that shipments of meats bearing said labels were made by Schrauder

a few days after the 10th day of August, 1871. The labels are clearly identified, and all bear the trade-mark described by Schrauder in his specification. All the evidence corroborates the statements of these witnesses. It is undoubtedly true that Schrauder had appropriated the mark in August, 1871, and that he from that time continued to affix it to his merchandise. It is proven that he was doing a large business in the sale of cured meats. The lithographer Strobridge, who furnished the lithographed labels, testifies that he supplied Schrauder with 500 labels for tierces of his meats; with 10,000 labels of another size; and with 500 labels for boxes. The said labels all bore the trade-mark described and claimed by Schrauder; and all were used in his place of business until the supply was exhausted, and more were required. He, then, had the ownership of the mark claimed by him, unless some other person or persons had adopted it before he had.

When did Beresford & Co. adopt the bouquet? Their printer testifies that he delivered their labels to them either in September or October, 1871, the charge for them having been made on the 7th day of November following. Their clerk, James, testifies that the first time he saw the bouquet-brand used was in January, 1872, when he saw it affixed to a ham bought from Schrauder. There is no pretence on the part of Beresford & Co. that they affixed the mark to their merchandise before that time; and indeed they account for their delay in its use by the fact that they were "winter-packers," while their adversary Schrauder was a "summer-packer:" *i.e.*, the latter worked in the warm season, while they could only work during the cool season. They relied upon the adoption of the abstract symbol, and did not make it a trade-mark. Schrauder's earlier business compelled him to use it in August; and by his act, in affixing it to the goods sold by him,— to wit, cured meats, consisting of hams, &c.,— he did all that the law requires to reduce the emblem to possession, and thus he made it a trade-mark.

There seems to have been a confusion of ideas in the minds of Beresford & Co. as to the real nature of their device, the representation of a bouquet. By the testimony of James, their clerk, it appears that in September or October, 1871, they, through him, applied to the Librarian of Congress for a copyright of the picture, — although the thing had not the slightest claim to be a literary or artistic production, and was not intended to be sold as such, — and that a copyright was issued, bearing date the 26th or the 29th of October.

Whatever may have been their intention as to securing to themselves any possible property in the picture, it is manifest that the thing could no more be copyrighted than it could be patented: for the designer of the picture was neither an author nor an inventor, within the meaning of subsection 8 of section 8 of article 1 of the Constitution. Says Lord Cranworth, in the "Leather Co." case before cited: "The word 'property,' when used with respect to an author's right to the production of his brain, is used in a sense very different from what is meant by it when applied to a house or a watch. It means no more than that the author has the sole right of printing or otherwise multiplying copies of his work. The right which a manufacturer has in his trade-mark is the exclusive right to use it for the purpose of indicating where, or by whom, or at what manufactory, the article to which it is affixed was manufactured."

So, in the Supreme Court of the United States, in the case of *The President, &c., of the Del. & Hud. Canal Co.* v. *Clark* (Official Gazette, March 26, 1872), the court said that "Property in a trade-mark, or rather in the use of a trade-mark or name, has very little analogy to that which exists in copyrights, or in patents for inventions." This is the received doctrine of all the courts. Inventive or literary genius has nothing to do with the index of proprietorship termed a trade-mark.

Even if the respondents, Beresford & Co., had "originated the trade-mark for which they . . . seek protection," as stated in their sworn application, they did not perfect it by actual use

— *Ignorantia legis neminem excusat.* But it seems that on the naked question of moral right, they were not the designers of it; but either James, or the engraver, or Schrauder's lithographer, was the first designer of it. But this is outside of the law of the case, and is touched upon only for the reason that counsel of experience and acknowledged ability in patent law have misconceived the theory of trade-mark law, and made it necessary that some notice be taken of it.

Schrauder's counsel made a point that their client was the first to take steps to protect the mark by registration. The fact is, as appears by the records, both parties filed their applications on the same day, February 26, 1872; but Schrauder's papers were incomplete, and had not been prepared with as much care as had those of Beresford & Co., and therefore the case of the latter was first examined. But the fact of priority of filing cannot affect the title, its advantage consisting but in the circumstance of throwing the *onus probandi* on the junior applicant, *i.e.*, he who had been the latest to complete his papers.

The evidence being clear that George Schrauder, the applicant, was the first adoptor of the trade-mark in controversy, judgment of priority is accordingly awarded to him.

§ 662. A multiplicity of legal questions arise upon the trial of an interference before the Patent Office. The following case of *Walch, Brooks, & Kellogg* v. *M. J. Cole & Co.*, involves a number of nice points worthy of notice. Any matter affecting the title to the thing in controversy may be shown, subject, of course, to the established rules of evidence. — After reciting certain facts not necessary now to be considered, the decision of BROWNE, *Special Examiner*, proceeds: —

§ 663. **Motion to allow a New Party to come in.** — After the declaration of interference, a motion was made for the substitution of one John H. Farwell as a party in place of M. J. Cole & Co. It is in evidence that the latter had upon their

own petition been declared bankrupt, and one Henry D. Hyde had been appointed assignee. Farwell filed an instrument purporting to be an assignment and transfer of the trade-mark in controversy. There is no evidence of the authenticity of said instrument; and, indeed, it is not perceived what legal right the assignee in bankruptcy of the individual and partnership estates of M. J. Cole & Co. had to make the transfer; for the trade-mark had not been included in the schedule of assets. (See case of *Bradley* v. *Norton*, 33 Conn. 157.) If there had been the formality of including it among the assets, the evidence warrants the conclusion that, in contemplation of law, the bankrupts had really no trade-mark property to convey. As Farwell took nothing by his so-called assignment, his motion to be permitted to come in as a party litigant was necessarily denied.

§ 664. **The Essential Part of the Mark.** — It was assumed, for the purposes of this interference, that the name "Paul Jones," the conspicuous element in the mark, was that by which the whiskey would be bought and sold, and known in the market. The evidence shows that it was the prominent, essential, and vital feature of their mark, as it is also of that of their opponents. (See *Filley* v. *Fassett*, 44 Mo. 173.) The inquiry was therefore directed to those words, without which, as a component part of the mark, neither party would have desired to make a contest.

§ 665. **As to Title to Trade-mark.** — The first question to be settled is this: Did M. J. Cole & Co. have any property in those words, as a portion of a trade-mark to be affixed to whiskey? The testimony of Cole, of Gilmore the clerk, and of Hunt, the partner, established as a fact beyond any reasonable doubt that Cole & Co. devised the symbol for their own benefit, although one of their present opponents assisted therein. The mark was to be used in connection with whiskey, which M. Murphy & Co., the predecessors of Walch, Brooks, & Kellogg, were to manufacture in Cincinnati, Ohio, and of which

M. J. Cole & Co. were to have the exclusive sale in Boston, Mass. The title was clearly understood to be in M. J. Cole & Co., notwithstanding the fact that, for the sake of convenience, the branding-tool was made in Cincinnati, at the expense of M. Murphy & Co.

§ 666. **Good Faith.** — The *bona fides* of the latter firm and their successors may well be doubted, in connection with the possession of the branding-tool. It was used upon whiskey sold to other persons in the West and South; and, contrary to the contract, expressed or implied, made with M. J. Cole & Co. To the latter-named firm, if to anybody, belonged the mark. But there is one material fact disclosed by the evidence which determines all their title. The words "Paul Jones" were used as a portion of a brand, the other part of which was "Paris, Kentucky, Bourbon." Cole says (155, 158 X ans.), "If anybody bought the whiskey supposing that it was made in Paris, Kentucky, he would have been deceived." He says that it was thought that that brand would take better with the trade. (173 X ans.)

§ 667. **Imposition upon the Public.** — But one conclusion can be deduced from the evidence in regard to the *bona fides* of M. J. Cole & Co. in adopting that which they allege to be their trade-mark. Their intent was manifestly to impose upon the credulity of the whiskey-drinking public, by inducing them to purchase as genuine "Kentucky Bourbon Co. Whiskey" an article manufactured at Cincinnati, Ohio. The device had its inception in fraud, and therefore was worthless for the legitimate purposes of a trade-mark, even if the Cincinnati whiskey were proven to be as valuable as that made in Kentucky. Numerous judicial decisions support this view of the law. The public have a right to the genuine thing. M. J. Cole & Co., therefore, never had any legal property in the words composing the alleged trade-mark.

§ 668. **No Title in Assignee.** — As they had no trade-mark to assign when going into bankruptcy, it follows that their assignee took no such property with the assets.

§ 669. **Could an Abstract Symbol be assigned?** — It is not necessary to discuss the question of the possibility of such an incorporeal interest being conveyed, unless as an incident to the transfer of the good-will of the business; for there is no evidence to act upon, in relation to the transfer of the good-will.

§ 670. **Good Faith of Respondents.** — How does the case stand, as regards Walch, Brooks, & Kellogg? They claim as a trade-mark the words "Paul Jones, Paris, Kentucky, Bourbon," &c. The said mark is intended to be applied to whiskey manufactured by them at Cincinnati, Ohio. Their own testimony is conclusive upon that point. Indeed, they do not make the slightest pretence that the whiskey manufactured by them is distilled in the State of Kentucky.

§ 671. **Want of Equity.** — There is no more equity on their side than on the other. The argument of their counsel at the hearing, That the words constitute a mere arbitrary symbol, and that no deception was intended by them, does not require long consideration. The only meaning that general purchasers would be likely to attach to the words would be that the whiskey was distilled at Paris, Bourbon County, Kentucky.

§ 672. **Conclusion.** — Walch, Brooks, & Kellogg have not presented a lawful trade-mark for registration.

§ 673. **Judgment.** — The interference is therefore dissolved, and both applications rejected.

CHAPTER XV.

ABANDONMENT.

How Question may arise. — Error in arguing from Supposed Analogies. — When Symbol is discarded by one Person, any other may adopt it. — If Symbol becomes Free to the Public, its Technical Trade-mark Existence is extinguished. — Distinction between Abandonment of Trade-mark and that of other kinds of Property. — What amounts to Abandonment. — Difficulty of laying down Rule. — Intention is a Necessary Element. — Evidence thereof must be Clear. — Forbearance to prosecute is not Fatal. — Abandonment in one Country is Abandonment in all Countries. — Conclusion.

§ 674. **Abandonment** sometimes is alleged as an affirmative defence, while it may incidentally be drawn into question in *ex parte* proceedings upon application for registration. It is advisable, therefore, to ascertain the import of the term, as applied to a trade-mark case, and to consider the facts that may constitute it. But, at the very threshold of the investigation, we must be on our guard not to fall into error in attempting to reason from wrong premises or false analogies.

§ 675. A common mistake is this: in confusing notions of other kinds of rights with that right which consists in property in a certain emblem or device, with which a manufacturer or merchant stamps his wares and merchandise. A trade-mark differs essentially from all other matters of property. For that reason, we cannot hope to arrive at an intelligent understanding of the subject, unless we sedulously keep several points in view. Those are distinctions between the dedication or dereliction of tangible property, deliberately yielded into the common stock of the community or of the world, and the forsaking of a claim to the exclusive use of a mere shadow of incorporeal property, as is the emblem or device which is to become a

trade-mark. We have a clear idea of the utter forsaking of lands, and of the casting of a jewel or coin into the sea, or upon the highway; and we can clearly conceive the idea of an abandonment of the right to a patent for an invention, or an exclusive claim to the product of a person's literary labor; but the subject of cession, actual or tacit, of the right to prohibit all other persons from marking goods in a certain mode, or with a peculiar symbol, is a matter that is somewhat more difficult of comprehension. Let us inspect the lines of demarcation.

§ 676. Property belongs to him who first makes declaration of an intention to appropriate it to his own use; and the title remains in him, by the principle of universal law, till he does some other act which shows an intention to abandon it; for then it becomes, naturally speaking, *publici juris* once more, and is liable to be again appropriated by the next occupant.[1] Thus a valuable thing deliberately cast away is an express abandonment of private claim to its possession, and the finder becomes its owner. So a conveyance of land by deed, or a long-suffered adverse possession, is conclusive evidence that the former owner intended to divest himself of title, in favor of the party who shall have succeeded to the possession. So, also, if an inventor from a motive of patriotism, generosity, despair, or any other cause, acquiesce in the public use of his invention for two years, he is debarred from subsequently obtaining a patent therefor;[2] or he may abandon his claim to a monopoly at any instant, and the right to the invention passes at once into the public stock. In all such cases, whether of tangible property or of incorporeal rights emanating therefrom, there is something to affect the senses, and the land, or jewel, or invention embodied in a machine or composition of matter, can be seen and felt; and property in the object or thing may truly be said to exist. Not so with the symbol that a trader has made the peculiar mark of his goods. We have seen heretofore that

[1] 2 Blackst. Com. 9.

[2] Adams & Hammond *v.* Edwards *et al.*, 1 Fish. 1.

there cannot be property in an abstract symbol, whether that be an original design, or word, or emblem; for it is only an index to a certain article of merchandise. That undeniable truth being conceded, how can we draw a parallel between the relinquishment of a hold upon something which in itself is property, and another thing which until actually affixed to a vendible commodity is purely ideal! The land and jewel continue to be property under all circumstances; but a trade-mark ceases to be property the moment that its exclusive use ceases, and it resumes its ideal state. Its conjunction with a corporeal thing is like the union of soul and body.

§ 677. The thing abandoned may be instantly and simultaneously seized by a large number of persons, and that either in fact or by operation of law, as in case of a right of common, or a right to use an invention; and when the original owner's grasp is once released, the exclusive right is gone from him for ever. He cannot regain it, as in the case of a coin tossed by him into the public street, and which he may be the first to again pick up. A trade-mark may be discarded and be resumed, unless in the mean time it be taken possession of by another individual, or by a number of persons with united interests, or by the community in general. In the latter case, the thing may truly be said to be extinguished, for when all may use there is lacking the essential element of an exclusive right. We are supposing that the mark is one that is not personal in its nature, but one which is associated rather with an object of commerce than with a certain person. Yet we read of instances in which courts have held that a man's name may lose all idea of personality, and become merely a generic designation.[1] But we will not stop to discuss exceptional cases.

§ 678. Now, as to the extinguishment of a trade-mark. Suppose, for the sake of illustration, that a word that has been coined by a manufacturer to indicate a peculiar product be intentionally disused by said manufacturer, and that all other

[1] See §§ 178–181, *ante*.

persons in the same line of business by common consent adopt the word as the most suitable name for the thing, — as was the case as to the word "Lucilene," a name given to purified petroleum,[1] — then that name falls into the domain of commerce, and is not susceptible of reappropriation by him who first used it, as a fanciful denomination for his article of manufacture. But suppose, again, that, after having deliberately abandoned the mark, the late owner change his intention, while the title is still in abeyance, he may repossess himself of it, just as he might upon reflection recover the jewel flung into the sea or upon the highway. The case of the inventor is quite different. He has no right to his invention at common law. The right which he derives is a creature of the statute and of grant, and is subject to certain conditions incorporated in the statutes and the grant. He does not get his right to a patent on the ground of any inherent natural right which he has.[2]

§ 679. Hereby we see the impropriety of arguing upon decisions made under allegations of abandonment of an invention; for as the idea of invention does not enter into the contemplation of the law applicable to trade-mark property,[3] we must dismiss the false analogy from mind. To complete and perpetuate the act of abandonment, there must be a tender, an acceptance, and an adoption. The only mode by which a trade-mark can be adopted is by user in the actual affixing of the mark to merchandise.[4] How is it with an invention? If the first inventor choose to abandon the result of his genius, after perfecting it so as to be applicable to a practical useful purpose, and another and later inventor obtain a patent therefor, he fails to obtain any benefit, not being the first inventor of the particular thing. Why? Because the title to the invention passed to the public, the instant that the only person who had a right

[1] See § 252, *ante*.

[2] American Hide and Leather, &c., Co. *v.* American Tool, &c., Co., 4 Fish. 284.

[3] §§ 346, 347, *ante*.

[4] §§ 52, 382–384.

to a patent dedicated his invention to the common stock of property. But in the case of discontinuance of the use of a trade-mark the public gain nothing thereby, except the negative benefit of precluding an individual from profiting by the exclusive use of it as a sign. Thus in a case[1] in the Court of Paris, in 1870, when the plaintiff's claim to the exclusive use of the representation of a golden bee, as a trade-mark for hats, was rejected, what did the public gain by the decision that the emblem was not a private mark? The court said, among other things, that, whether as an emblem, or as an ornament, the bee is common property. Any person might therefore use it as an ornament for a hatter's label or in any other mode; but the plaintiff had no exclusive right to "a bee in his bonnet." There is no advantage to the public in the liberty of adorning their furniture or hats with golden bees; but there is always presumed to be benefit in the use of an invention, of which benefit the use is the strongest kind of evidence. If the right of everybody to use an emblem, name, or word, were to exempt him from the annoyance of litigation, that might be deemed a positive benefit, but that such is not the truth must be evident to all. We have seen many proofs to the contrary in the foregoing chapters of this book. As evidences of our right to call a thing by its true name, we might cite authorities by the score. The name may originally have been the coinage of a manufacturer to designate his peculiar product; but it may have instantly become the only true and proper denomination of the article, wherefore all might use it.

§ 680. **What amounts to Abandonment** of a trade-mark? It is more difficult to lay down a rule in this matter than in the case of corporeal property. The latter we may see and handle. The product of invention affects the perceptive faculties. We cannot see a trade-mark unless it is in full vigor. We may see a perfect *representation* of a signature or of an emblem of commerce, but the trade-mark itself is visible only as an affix of

[1] Hérold *v.* Gerbeau, Annales de la Prop., tome xvi. p. 76.

some corporeal vendible object. Hence one difficulty in determining the exact moment when one must be held to have abandoned a trade-mark. A manufacturer or merchant may discontinue the stamping or branding of his products for many years before he discontinues the sale of the goods marked by him, and may destroy his dies, brands, or stencil-plates; for he may have laid up a large stock of his wares or products, or he may have launched them upon the ocean of commerce. Our Government employs a fac-simile of the very peculiar autograph of Mr. Treasurer Spinner, as a proprietary mark for national securities, to be sold or exchanged for gold or other valuables. The printing of bonds and notes bearing that trade-mark may for ever cease, but the paper evidences of debt remain afloat, and the mark continues to be constructively, if not actually, in use. The nation will not have abandoned the mark by discontinuing the printing of it. By a parity of reasoning, a private owner of a trade-mark does not necessarily abandon it by ceasing to stamp it on goods as his sign-manual or peculiar emblem.

§ 681. The criterion manifestly is this: Was there an *intention* to abandon? Without such intention there could not be abandonment, although it is equally true that the intention may be inferred from circumstances of neglect as well as of positive dereliction, and the party would be concluded thereby. A person may temporarily lay aside his mark, and resume it, without having in the mean time lost his property in the right of user. Abandonment, being in the nature of a forfeiture, must be strictly proven. For example, if the proprietor of the word-symbol "Cocoaine" should be met in a suit with the allegation that he had lost all exclusive right to the use of that trade-mark, it would be incumbent on the party making that defence to show that he had, by clear and unmistakable signs, relinquished his claim to it as a trade-mark, so that other manufacturers or vendors of preparations of cocoa-nut oil had actually employed it as a generic term. If that point were

established, it would be manifest that the trade-mark had expired. That is what is meant in French-speaking countries by the expression, "to let fall into the public domain" (*laisser tomber dans le domaine public*). We must examine the surroundings of each case of imputed surrender, to be enabled to settle such question of deliberate yielding up.

§ 682. Would it constitute abandonment for the proprietor of a trade-mark to calmly look on while another files a claim in the Patent Office for the identical mark? No. Wherefore? For the reason that assertion of title and the recording thereof do not create any thing beyond a rebuttable presumption of property. So said the Court of Cassation of France, in 1864, in affirming a decision of the Court of Paris.[1] PER CUR.: The deposit does not constitute an exclusive property in the mark. That is necessary only for the purpose of enabling the owner to obtain redress for infringement. It is necessary to inquire always if the right existed previous to the deposit, and if the depositor has not renounced it. — This ruling is simply an enunciation of a doctrine that is universally maintained. It is the law of common sense. No one can obtain a title to lands by placing a forged paper upon record; for, although having all the external appearance of truth, it may have been forged, or never delivered, and therefore not be a deed in law. So of a symbol previously appropriated by another as his trade-mark. The registrant takes nothing by his stealthy motion, and the true owner is not despoiled thereby; although the attempt at fraud may furnish grist for the judicial mill. In an analogous case,[2] Clifford, J., held that actual abandonment must be proven, and that it is not possible to hold that the use of an invention without the consent of the inventor, while his application was pending in the Patent Office, could defeat the operation of the letters-patent afterwards duly granted. It may be that the owner of the trade-mark was under a disability to register, as

[1] Leroy *c.* Calmel, Annales de la Prop., tome x. p. 193.
[2] Dental Vulcanite Co. *v.* Wetherbee, 3 Fish. 87.

in the case of a resident of France previously to the making of the late convention of 1869. Yet his title was perfectly valid at common law. Section 82 of the statute of July 8, 1870, clearly recognizes this truth, for it makes it penal for any person to "procure the registry of any trade-mark or of himself as the owner thereof . . . by making any false or fraudulent representations or declarations, verbally (*i.e.* orally) or in writing, or by any fraudulent means," &c. Now, it is obvious that if one, by mere registration, could divest another of a common-law right, said section could never have been written. Section 83 of the same statute carefully preserves all common-law remedies for a wrongful use of even unregistered trade-marks. We see, therefore, that it is not abandonment for an honest trader, through inability or indisposition, to lie on his oars while another person attempts to commit an act of piracy. The wrong-doer is "hoist by his own petard." It must, however, be conceded that a long-continued neglect to attack a trespasser may be a circumstance tending to prove an intention to abandon. In one case,[1] after the commencement of a suit based upon infringement, the real defendants (although concealed behind others) made an attempt to appropriate the infringed trade-mark, by going through the form of registering it as theirs, under the Missouri statute of March, 1866. The court, by Currier, J., scouted the idea that the law could be made available for such a nefarious purpose, and said, as to that statute: "It was not designed to weaken or abridge any existing rights, or any future right to a trade-mark which might be acquired in the usual way, or to legalize, in any form or measure, piracy in trade-marks." Shepley, J., instructed the jury in a patent case[2] that "abandonment means a general abandonment to the public, and must be shown affirmatively and positively, as affecting the interest of the party; . . . it is dedication to the public; a giving up of the claim to the

[1] Filley *v.* Fassett, 44 Mo. 173.

[2] Am. Hide, &c., Co. *v.* Am. Tool, &c., Co., 4 Fish. 305.

monopoly in the invention." In the case of an easement,[1] the court said "the presumption of abandonment cannot be made from the mere fact of non-user. There must be other circumstances in the case to raise that presumption. The right is acquired by adverse enjoyment. The non-user, therefore, must be the consequence of something which is adverse to the user." This point of non-user calls up a case that requires comment.

§ 683. In the New York Common Pleas Court, in 1854,[2] Ingraham, First J., charged the jury that the defendant was liable for the sale of leather stamped with a *former* trade-mark of the plaintiff's, although at the time of said sale the plaintiff employed exclusively a mark of a different device; and that his property in the original trade-mark was not divested by discontinuing its use. It may possibly be that the reporter of the case, although a respectable member of the legal profession, may have misunderstood the language of the judge. On appeal to the court, *in banc*, Daly, J., in delivering the opinion of the court, said, more correctly: "The fact that the plaintiff had discontinued the use of this trade-mark for three years would not deprive him of a right of action against the defendant, for selling leather which was not manufactured by the plaintiff, but stamped in the same manner in which the plaintiff had formerly designated the leather manufactured by him, thus purporting to be of his manufacture, and declared by the defendant at the time of sale to be the genuine Lemoine calfskins." If we were to stop here, it might be with the erroneous impression that the learned judge meant that the mark had not been abandoned by a non-user for three years. He continued: "The wrong and injury to the plaintiff consisted in the sale of calfskins falsely purporting and declared to be of his manufacture; and it makes no difference whether that object was effected by counterfeiting the trade-mark which he uses at present, or one that he formerly used. An injury results to him in either

[1] Ward *v.* Ward, 7 Exch. 738.

[2] Lemoine *v.* Ganton, 2 E. D. Smith, 343.

case." This, then, was not an action for infringement of a trade-mark; but was an action for fraudulent competition and deceit, by means of a certain device that had formerly been a trade-mark. Lemoine had abandoned that device, and it had ceased to be a trade-mark. The act of abandonment was completed the instant that he intentionally discontinued its use — three years before.

§ 684. **Laches.** — What may be considered such remissness, carelessness, or neglect, as shall work a forfeiture of right to a trade-mark? It has sometimes been contended that a forbearance to prosecute infringers amounted to abandonment. But this view has not received the sanction of our courts. To be sure, we find in the "Official Gazette" of the Patent Office of January 10, 1872, an opinion of Wylie, J., of the Supreme Court of the District of Columbia, which, taken just as it appears in print, affirms that such forbearance does amount to abandonment. It would be a piece of gross injustice to the judge to omit to state that he receded from the position first assumed by him, and made all the amends in his power by granting a decree in direct opposition to his published opinion.[1] From the published report, it seems that the complainants are an incorporated company at Sheffield, England, engaged in the manufacture of fine cutlery, and are the successors of Joseph Rodgers & Sons, by whom the business was first established more than a hundred years ago. They alleged that their name and mark — a star and a Maltese cross — had been infringed. The defendants are respectable booksellers and stationers in Washington, D. C., and are dealers in fine penknives, scissors, and other cutlery. An injunction was asked for. The judge said, *inter alia*: "I am of opinion that this suit cannot be maintained by these complainants. . . . These goods have been manufactured in Germany, and sold extensively in this country under this spurious trade-mark, for nearly if not quite a quarter of a century. These facts must have been known to the complainants

[1] Rodgers & Sons *v.* Philp & Solomons, Off. Gaz. vol. i. p. 29.

almost from the beginning. One of the affiants states that he himself gave verbal notice of them to a clerk of the complainants, at Sheffield, in 1865, and was informed that his employers were perfectly aware of all that had been done. And yet, in all this period, the complainants have taken no measures, either in this country or in Germany, to vindicate the exclusiveness of their title to the trade-mark in question. They have seen, looked on, and permitted these German manufacturers to employ a similitude of their own trade-mark, and under it to make extensive sales to the people of this country. This long acquiescence might not possibly debar the complainants from remedy for their injury as against the German manufacturers. . . . It tended to encourage, and did encourage, our own people to part with their money in exchange for these goods. It was in violation of no law or contract, nor was it a wrong done to Rodgers & Sons, of Sheffield, when the goods in question were bought by the defendants in the city of New York. The neglect of these English manufacturers to arrest within a reasonable period, by legal measures, the violation of their rights in their own trade-mark by the Germans, amounted in law to a license to the world to buy the goods from the latter under the imitation trade-mark. All that can be expected of them is to take care that they are not cheated themselves, and that they defraud no one in their turn. It could not be tolerated that manufacturers, like patentees, should have the right as long as they should have a trade-mark — it might be for a hundred years, as in the case of these complainants — to send agents all over the country, and interfere with the business of every man who happened to have bought goods manufactured by other companies, and sold under an imitation trade-mark." Excellent! a title to roguery by prescription. Plea of a pirate that he and his ancestors had been so long engaged in the business of plundering foreign craft, that his right in the premises had become perfect, and a prayer that the indictment be quashed! We might regard this opinion of the judge as a

gleam of judicial pleasantry, were it not for the solemn style of the document as a whole. By consulting a previous part of this same opinion, we find that the defendants say in their answer that the goods were purchased with the knowledge that they were manufactured in Germany; "that goods of this manufacture, and stamped with this trade-mark, have been well-known to persons engaged in the business for nearly if not quite twenty-five years, as being different from those made by the English house of Joseph Rodgers & Sons; that they are of equally good quality with those produced by the English firm, and can be sold for thirty-three *per cent* less than these." We are all well aware by this time that it is no defence that the spurious wares are as good as the genuine.[1] If that could be received as a defence to a prosecution for infringement, farewell to protection! Nor is it a valid answer that the trespass is of long-continuance. There is, therefore, no just defence to the bill filed in the case under discussion. So, upon reflection, thought Judge Wylie. Out of a feeling of tenderness for the reputation of a judge, as well as to demolish a false authority, let us now place in print the sequel, which by some fatality has never found its way into the "Official Gazette," or (it is believed) any other legal periodical or book of reports. On the 5th day of February, 1872, the cause came on to be heard before the same judge. He decreed a perpetual injunction against the defendants, their servants, agents, or employés, restraining them from passing, putting up, selling, or offering for sale, penknives, pocket-knives, or other articles of cutlery other than those manufactured by the complainants, having imprinted, stamped, or in any wise marked thereon a star and Maltese cross, or any device substantially similar to, or in any manner imitating, said device of a star and a Maltese cross adopted and used by the complainants, Joseph Rodgers & Sons, as their trade-mark, &c., &c. In consideration of the honorable conduct of the defendants, in accepting the situation with good

[1] See authorities cited in note to § 336, *ante*.

grace, while not throwing any obstacles in the way of a righteous result, the complainants remitted the costs. Let us now learn what other judges have said upon the matter of abandonment of trade-marks.

§ 685. Story, J., once spoke thus:[1] "Again it has been said that other persons have imitated the same spools and labels of the plaintiffs, and sold the manufacture. But this rather aggravates than excuses the misconduct, unless done with the consent or acquiescence of the plaintiffs, which there is not the slightest evidence to establish; or that the plaintiffs ever intended to surrender their rights to the public at large, or to the invaders thereof in particular." The circumstances of this case are very similar to those in the Rodgers & Sons suit; and the defence therein made set forth infringements by others upon the plaintiffs, an English house. — And now comes another witness upon the same side of the question. As to the pretence of right in plundering foreigners, Woodbury, J., said:[2] "I am not aware of any principle by which a usage in this or a foreign country is competent evidence in defence of a wrong. . . . The defendant now argues that this evidence was competent to show an acquiescence by the plaintiff in the use of his marks, or to show a dedication of them to the public, as he knew that marks of theirs as well as of others were used in this way, and without redress, in this country as well as abroad. . . . But I am not aware that a neglect to prosecute, because one believed he had no rights, or from mere procrastination, is any defence at law, whatever it may be in equity (1 Story, 282), except under the statute of limitations pleaded and relied on, or under some positive statute, like that as to patents, which avoids the right if the inventor permits the public to use the patent some time before taking out letters. . . . There is something very abhorrent in allowing such a defence to a wrong, which consists in counterfeiting others' marks or stamps, defrauding

[1] Taylor *v.* Carpenter, 3 Story, 458.
[2] Taylor *v.* Carpenter, 2 Wood. & M. 1.

others of what had been gained by their industry and skill, and robbing them of the fruits of their 'good name,' merely because they have shown forbearance and kindness. . . . It is rather an aggravation to the plaintiffs that many others have injured them." — Lest the false doctrine be not sufficiently exploded, we may cite further authorities, powerful enough to pulverize the absurdity. When discussing the idea of acquiescence operating as an absolute surrender of an exclusive right, Duer, J., said:[1] "The consent of a manufacturer to the use or imitation of his trade-mark by another may, perhaps, be justly inferred from his knowledge and silence; but such a consent, whether expressed or implied, when purely gratuitous, may certainly be withdrawn; and, when implied, it lasts no longer than the silence from which it springs. It is, in reality, no more than a revocable license." Potter, J., eighteen years later used substantially the same language,[2] and held that it is no defence that the fraud has been multiplied, and further held that acquiescence cannot be inferred, and is revocable if it could be. Upon appeal to the general term, two of the judges held that it was no acquiescence in the plaintiff, where it did not appear that he had discovered any individual whom he could attack as an offender, although the plaintiff knew that persons were trespassing upon him. The third judge thought that the knowledge of the fact of such infringement for more than twenty years would be treated as an acquiescence by him. But not one of the members of the court hinted that such acquiescence could amount to entire abandonment. Currier, J., in speaking for the whole court,[3] took the same position that had been before maintained, and said that the infringement of the plaintiff's mark by others in no way aided the defence. Said he: "The depredations of others on plaintiff's rights furnish no excuse to the defendants for similar acts on their part.

[1] Amoskeag Manuf. Co. *v.* Spear, 2 Sand. S. C. 599.
[2] Gillott *v.* Esterbrook, 47 Barb. 455.
[3] Filley *v.* Fassett, 44 Mo. 173.

It is rather an aggravation to the plaintiff that others have also injured him. And courts have not shown any disposition to encourage that line of defence." We hardly need to pursue the theme, for the weight of judicial authorities all tend the same way, in vindication of the venerable maxim,— *Jus et fraus nunquam cohabitant.*

§ 686. Yet a sense of truth compels us to cite two French cases which *seem* to assert that right and fraud may not only inhabit the same house, but may dwell together in harmony. The first is a judgment of the Court of Cassation.[1] It has such an air of moral obliquity about it as almost justifies the animadversions of the eminent jurists who have criticised and condemned it. If we carefully scan all the facts, we may possibly come to the conclusion that the judgment is reconcilable with the maxim above quoted, and also with that cited and relied upon by the demandants' counsel,— *Contra non valentem agere non currit præscriptio.* It was admitted by the tribunal of first instance, that, for more than half a century, the files made and sold by the house of Spencer & Stubs, now Spencer & Sons, of Sheffield, England, had enjoyed an incontestable industrial renown; and that for many years — thanks to the immunities given on the Continent to the counterfeiting of foreign products — the manufactures of the demanders had been imitated in innumerable quantities, with the mark and name of the genuine house, all of which was done without the acquiescence of the demanders. By long usage, continued the mouth-piece of the tribunal, the name and mark had come to be the characteristic indication of a product; and therefore the owners had lost all right to the exclusive use by the effect of a sort of prescription of fact, *longi temporis*, for the name and mark had ceased to indicate origin or ownership. The advocate-general Bédarrides asks, on appeal, "Of what prescription do they speak? The tolerance of usurpation, can that serve to found a right?" The Court of Paris, on appeal, dis-

[1] Spencer & Son *v.* Peigney, Annales de la Prop., tome x. p. 197.

coursed thus: Considering that, for more than fifty years, the mark composed of a crescent, a Z reversed. and the name of Spencer has been adopted by French industry in the fabrication of a species of files; that this mark does not designate the origin, nor even the nature, of the fabric; that the French fabricants have rendered it common in France, and have given to it a just celebrity: considering that Spencer & Son, in availing themselves of article 12 of the treaty of commerce between France and England of the 10th of March, 1860, had not the power to take a mark which had become the property of French industry; that for the purpose of distinguishing their products they could only take a mark peculiarly their own, and that what they really did deposit with the clerk of the Tribunal of Commerce of the Seine is a mark composed of a crescent, a Z reversed, the name of Spencer, and the name of their place of manufacture,—*Sheffield:* considering that it is only to the last mark that Spencer & Son have an exclusive right; that Peigney has respected their property on this point, and in placing on the files made by him the mark which for long years had become proper to French commerce, he has committed no tort; and adopting in full the reasons of the judges below, let the appeal go for naught, and order that the judgment appealed from have full and entire effect, and condemn Spencer & Son to the costs of appeal.

§ 687. We must constantly bear in mind that this decision of law is based upon the question of fact determined in the tribunal below. The mark had lost its pristine integrity. Its individuality was annihilated. It might be likened to a ship decoyed by false lights and dashed into fragments on the rocks, to become a common prey. The mischief had been done beyond redress. The mark had lost all power to distinguish the manufacture of any particular person or company. It had become, through an unfortunate concurrence of circumstances, the mere sign of a class of goods. We perceive, therefore, that this cannot be deemed, even in theory, to be a case of abandonment.

The law will protect a man's life, but it cannot restore vitality. A dead man must remain dead.[1] The tribunal of last resort, the Court of Cassation, was bound by the fact established below. It said, *inter alia:* Inasmuch as Spencer & Son have deposited in France *another* mark, differenced from the preceding by the addition of the name of their place of manufacture,—Sheffield,—they have an incontestable exclusive right of property in that; but as this latter mark has not been usurped, the judgment must be affirmed.—Our wrath subsides, when thus reaching the inevitable conclusion, that the demanders were virtually conquerors. The Supreme Court had not the power to overturn a *fact* found. It did the best it could by intimating in clear language that the trivial addition of the name of a place made a new mark.—As the house of Spencer & Son never *intended* to abandon their trade-mark, it had not been abandoned.

§ 688. The case of *Stubs* v. *Astier et als.*,[2] in the Court of Paris, in 1864, on appeal from the Tribunal Civ. of the Seine, involved the same principle. The Tribunal condemned the defendants, confiscated the spurious goods, consisting of cutlery, and imposed a fine. Hence the appeal. The appellate court said that the mark claimed by the complainant as his peculiar property had long been in France the index of a product of superior quality, and had ceased to be an indication of the origin of manufacture, but had become the very designation of the nature of the product of which it is the denomination. That a mark so long known to the public to cover products of a superior quality would operate to the exclusion of all others was manifest, and it would cause considerable damage to French industry to deprive it of the fruit of labor, to enrich Peter Stubs; that such a result would, in effect, extinguish the just stipulations of reciprocity, contained in the treaty of commerce made March 10, 1860. It must also be

[1] *Medicina mortuorum sera est.* (Quintil.)

[2] Annales de la Prop., tome x. p. 212.

considered that Peter Stubs can assure his rights, in the wise limits that the law has traced, by giving to the mark used by him in France a peculiarity of appearance that can suffice to prevent confusion between his products and those of other persons. He will then have obtained all the advantages that the said treaty intended for foreigners. — When we reflect upon this judgment and that one immediately preceding it, we come to the conclusion that the courts did not desire to countenance fraud in the slightest degree. The originally trustworthy marks had, through misfortune, — brought on indeed by piracy, — lost all power to indicate origin or ownership. By a slight modification of the device, a perfectly-valid trade-mark could be established. The public would know whose products they were purchasing, and the foreign manufacturers would reap the advantages legitimately belonging to them. We reach another conclusion: these two cases do not militate against the generally-accepted rules in abandonment cases.

§ 689. **Abandonment in one Country is Abandonment in all Countries.** — Commerce is not bounded by territorial limits. The whole of the habitable Globe is hers. It is true that the owner of a counterfeit mark may not have the means of pursuing pirates in foreign lands, but his rights remain undiminished. It is only the *remedy* that is lacking. Reprisals upon trade must continue in most countries until reciprocity of protection is guaranteed by treaties or conventions; but certainly it cannot be pretended that there is an abandonment when one has no possible opportunity of attack or defence. Our Government does not forfeit its exclusive right to certain proprietary marks, because they are counterfeited in Europe. It is a well-known fact that when an American merchant visits certain Belgian, German, and Swiss manufactories, he is asked what English maker's trade-mark he desires to have stamped upon his purchases. Doors, similar to those used by vendors of paper-hangings, are swung open, and all the trade-marks of British manufacturers are displayed by the shameless depredators.

The victims are well aware of this practice; but their hands are tied. They are strangers and foreigners, and have no standing in court, until enfranchised by treaty stipulations. Do they forfeit their rights by reason of mere lapse of time? No. There not being any intention to abandon their marks, it follows that their marks are not abandoned. Abandonment must be as broad as the domain of commerce. The converse of this proposition is that if one retain his right to a trade-mark in one country he retains it in all. If the trader were compelled to repel every assault upon his property, under pain of forfeiture of title to it, what would be the consequence? He would have to constantly be in a belligerent attitude, and to be ubiquitous. He would soon fall into the "Slough of Despond." Might would inevitably usurp the place of Right. Is he, then, not compellable to assert his right? Certainly he is, but only within reasonable limits. The law does not demand the performance of impossibilities. The wisdom of all nations attests the correctness of this idea.

§ 690. **Conclusion deduced from the Foregoing.** — The phrase "abandonment of a trade-mark" means an *intentional* discontinuance of it. The original proprietor may readopt it, unless in the mean time another person shall have lawfully possessed himself thereof; or unless the device shall have become a mere designation of quality or kind of product. In the latter case, the trade-mark is extinguished. If readopted, it has all its original force and vigor. If a trade-mark be purely personal in its nature, it cannot be appropriated by another by virtue of abandonment; for otherwise a false credit might be gained thereby.

§ 691. It may now be said of the subject of Abandonment, as of other matters preceding it in this book, — the natural resting-place has been reached. But the writer does not intend to abandon the study of this interesting branch of jurisprudence, — the Law of Trade-marks. The same inquiring spirit which has impelled his pen will watch the gradual completion of a

system that is yet in its infancy, the foundation of which is laid in the doctrines collected in these pages. At every step he has been cheered by additional light. Even Japan, by the lips and pen of one of her representatives, has furnished valuable information upon cognate subjects, although not in a shape available for our present purpose. From clear indications, we are justified in the belief that all civilized nations will soon unite in a harmonious code for the protection of the trade-mark, as the surest guaranty of universal commercial faith. In the mean time, beneath the touch of able jurists throughout the domain of Commerce, rough stones shall become as polished corners of the Temple, and present theories be permanently established in the intellectual superstructure.

APPENDIX.

TREATIES AND CONVENTIONS.

CONVENTION *between the United States and the Austro-Hungarian Empire. Proclaimed June* 1, 1872.

ARTICLE I.

Every reproduction of trade-marks which, in the countries or territories of the one of the contracting parties, are affixed to certain merchandise to prove its origin and quality, is forbidden in the countries or territories of the other of the contracting parties, and shall give to the injured party ground for such action or proceedings to prevent such reproduction, and to recover damages for the same, as may be authorized by the laws of the country in which the counterfeit is proven, just as if the plaintiff were a citizen of that country.

The exclusive right to use a trade-mark for the benefit of citizens of the United States in the Austro-Hungarian Empire, or of citizens of the Austro-Hungarian Monarchy in the territory of the United States, cannot exist for a longer period than that fixed by the law of the country for its own citizens. If the trade-mark has become public property in the country of its origin, it shall be equally free to all in the countries or territories of the other of the two contracting parties.

ARTICLE II.

If the owners of trade-marks, residing in the countries or territories of the one of the contracting parties, wish to secure their rights in the countries or territories of the other of the contracting parties, they must deposit duplicate copies of those marks in the Patent Office at Washington, and in the Chambers of Commerce and Trade in Vienna and Pesth.[1]

[1] See the note to Article II. of Convention with France.

ADDITIONAL ARTICLE *to the Treaty of Commerce and Navigation between the United States and Belgium, of July* 17, 1858. *Proclaimed July* 30, 1869.

The high contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens, agree that any counterfeiting in one of the two countries of the trade-marks affixed in the other on merchandise, to show its origin and quality, shall be strictly prohibited, and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven.

The trade-marks in which the citizens of one of the two countries may wish to secure the right of property in the other, must be lodged, to wit: the marks of citizens of the United States at Brussels, in the office of the clerk of the Tribunal of Commerce; and the marks of Belgian citizens at the Patent Office in Washington.

CONVENTION *between the United States of America and France concerning Trade-marks. Proclaimed April* 16, 1869.

ARTICLE I.

Every reproduction in one of the two countries of trade-marks affixed in the other to certain merchandise to prove its origin and quality, is forbidden, and shall give ground for an action for damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven, just as if the plaintiff were a subject or citizen of that country.

The exclusive right to use a trade-mark for the benefit of citizens of the United States in France, or of French subjects in the territory of the United States, cannot exist for a longer period than that fixed by the law of the country for its own citizens.

If the trade-mark has become public property in the country of its origin, it shall be equally free to all in the other country.

ARTICLE II.

If the owners of trade-marks, residing in either of the two countries, wish to secure their rights in the other country, they must deposit duplicate copies of those marks in the Patent Office

at Washington,[1] and in the clerk's office of the Tribunal of Commerce of the Seine, at Paris.

CONVENTION *between the United States and the German Empire. Proclaimed June* 1, 1872.

ARTICLE XVII.

With regard to the marks or labels[2] of goods, or of their packages, and also with regard to patterns and marks of manufacture and trade,[3] the citizens of Germany shall enjoy in the United States of America, and American citizens[4] shall enjoy in Germany, the same protection as native citizens.

ADDITIONAL ARTICLE *to the Treaty of Navigation and Commerce between the United States of America and the Emperor of Russia, of the* 18*th of December*, 1832. *Concluded and signed at Washington, January* 27, 1868.

The high contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens and subjects, agree that any counterfeiting in one of the

[1] Many errors have been committed in consequence of a misconception of the scope and meaning of the language of this article. The Commissioner of Patents, on the 6th of December, 1872, made a decision thereon of which the following is an extract: "That clearly means that a resident of this country wishing to secure protection for his trade-mark in France must give constructive notice to the people of that country, by depositing duplicate copies in the clerk's office of the Tribunal of Commerce of the Seine; and so of a resident of France, who is required to deposit his mark in this Office. So far as the tribunals of this country are concerned, the mere deposit of copies of a mark in this Office, by residents of this country, does not amount to registration. The Act of Congress of July 8, 1870, is the governing rule in the latter case" (Matter of Lanman & Kemp).

Before the passage of the Act of 1870, many residents of the United States deposited copies of their marks in the Patent Office. That was done without authority of law, and consequently no certificate of such deposit can be received in evidence. This is an important point.

[2] The use of this word must not be permitted to mislead into the idea that *labels* are technical trade-marks; for, as has been shown in the foregoing treatise, they are only mere vehicles for trade-marks.

[3] These five words mean trade-marks proper.

[4] Observe the broad term, which must be limited to citizens of the United States.

two countries of the trade-marks affixed in the other on merchandise to show its origin and quality, shall be strictly prohibited and repressed, and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven.

The trade-marks in which the citizens or subjects of one of the two countries may wish to secure the right of property in the other, must be lodged exclusively, to wit: the marks of citizens of the United States in the Department of Manufactures and Inland Commerce at St. Petersburg, and the marks of Russian subjects at the Patent Office in Washington.

LAWS OF VARIOUS COUNTRIES.

AUSTRIAN LAW OF DECEMBER 7, 1858.

I. *General Provisions.*

ART. 1. — Under the name of trade-marks are understood, in the present law, the particular signs serving to distinguish in commerce the products and the merchandise of one manufacturer from the products and merchandise of another (emblems, ciphers, vignettes, &c., constituting such signs).

ART. 2. — When a manufacturer desires to secure the exclusive use of a trade-mark, he must register it, conformably to the provisions of the following chapter.

ART. 3. — A person cannot obtain an exclusive right to marks consisting of signs in general use in commerce for particular merchandise, nor to marks which consist only of letters, words, or numerals, nor of the arms of the State or of its provinces.

ART. 4. — The exclusive right to a trade-mark only prohibits other manufacturers from the right to use the same mark on the species of merchandise belonging to the production or objects of commerce and industry to which the protected mark has been appropriated.

ART. 5. — The right to an exclusive mark is inherent in the industrial enterprise to which the mark is attached. This right is extinguished with the enterprise. A change of the enterprise changes also the proprietorship. In this case, however, the new

proprietor is obliged to have within three months the mark transcribed in his name under penalty of forfeiture, except always in a case where the manufacture shall be continued by the widow or a minor heir of a manufacturer, or on account of an estate in succession or in bankruptcy.

ART. 6. — No person shall arbitrarily take the name, the firm-title, nor the escutcheon or denomination of another manufacturer or native, to designate merchandise or products.

ART. 7. — All that is stated in the present law in regard to trade-marks shall apply equally to marks borne on packages, boxes, vases, envelopes, &c.

ART. 8. — The present law does not change any of the provisions in regard to particular marks ordained for certain classes of merchandise, especially the provisions as to stamping.

II. *Registration of Marks.*

ART. 9. — The mark of which a manufacturer desires to secure the exclusive right (art. 2) must be deposited in duplicate at the Chamber of Commerce and Industry of the district in which his manufactory is situate and carried on. One of the copies shall remain on deposit at the Chamber of Commerce and Industry, and be attached to the register of inscription; the other is returned to the depositor furnished with the statements designated in the following article.

ART. 10. — On each of the two copies the employé or functionary appointed for the purpose by the Chamber of Commerce and Industry shall write: — *a*, the number of the order of registry; *b*, the day and hour of presentation; *c*, the name of him for whom the mark has been registered; *d*, the designation of the commercial enterprise to which the work is appropriated; — to which he shall affix his signature and seal of office.

ART. 11. — The registration is subject to a tax of 10 florins, which shall be paid into the fund of the Chamber of Commerce and Industry.

ART. 12. — From the day and the hour of the presentation of the mark at the Chamber of Commerce and Industry commences the right of the depositor to the exclusive use of the mark, and it is as of this period that his right of priority shall be judged, in case the same mark shall be deposited by another person in the same Chamber or in other Chambers of Commerce and Industry.

ART. 13. — To obtain the transcription of the right to a mark, in the sense of article 5, the applicant must present the proof of

acquisition of title to the industrial enterprise in question. The transcript is subject to the same tax as the first registration.

ART. 14.—The Chamber of Commerce and Industry shall always keep the register of marks open to the inspection of the public.

III. *Usurpations, Contraventions, and Penalties.*

ART. 15.—Every usurpation of right to a mark, whether by reason of unlawful appropriation or the counterfeiting of a mark for the sale of merchandise bearing the spurious mark, shall give the right to the injured party to demand the final cessation of unlawful use of said mark, and its suppression on merchandise invested therewith and intended for sale. The injured party may also demand the destruction of instruments and appliances used exclusively or principally to counterfeit said mark. The right of the injured party to recover damages for the harm suffered in consequence of the usurpation of his right to the mark shall be adjudged according to the provisions of the civil code.

ART. 16.—It is counterfeiting when the marks in question cannot be distinguished one from the other without requiring an inspection more keen than ordinary.

ART. 17.—The provisions contained in article 15 are also applicable against those—*a*, who illegally appropriate the name, the firm-title, the escutcheon, or particular denomination of the commercial establishment of an industrial centre or producer, to designate merchandise intended for sale; and those— *b*, who expose for sale products or merchandise marked with an interdicted sign of this nature.

ART. 18.—If the usurpation (arts. 15 and 17) has been knowingly committed, the wrong-doer is amenable to damages in from 25 to 500 florins, independently of the penalties which may have been pronounced against him, according to the provisions of the general penal code.

ART. 19.—In case of repetition of the offence, the penalty shall be doubled. In case of further repetition, the wrong-doer shall be amenable, independently of damages, to an imprisonment of from one week to three months.

ART. 20.—If the fine should be such as might too sensibly affect the pecuniary means of the condemned, or exhaust the resources needed by him for the subsistence of himself and family, or hinder him from satisfying the judgment for damages, the fine shall be converted into an imprisonment of one day for each sum of 5 florins.

ART. 21. — The judge of the misdemeanor may also order the judgment to be made public.

ART. 22. — The amount of fines shall go into the funds of the poor of the place where the wrongful act shall have been committed.

IV. *On Authorities and Mode of Procedure;* and V. *On Transitory Provisions*, are not of general interest.

BAVARIA.

In Bavaria, a law of March 5, 1840, regulates property in trade-marks, labels, &c. From the time of the passage of that law the mark has not been obligatory, but may consist of the name of the fabricant, accompanied by the indication of his place of manufacture; or in any emblem whatever.

To secure the exclusive property in the mark chosen by him, the manufacturer must make before the police authorities of his district a declaration of the mark adopted by him, and deposit a representation and one copy of it. This declaration is to be inscribed in a special register, and a certificate delivered to the declarant. This register is public, so that all may take notice of it.

The punishment for counterfeiting is a fine of from 10 to 50 florins, doubled for a second offence, besides temporary or final suspension from the manufacturing or other industry of the counterfeiter, according to circumstances. This is in addition to damages to the party injured.

This law is applicable to foreign trade-marks and firm-names, always upon the condition that the owners affix to their products their names and places of domicile, or make the declaration or deposit with the police authorities in one of the districts of the Kingdom of Bavaria, — *Provided* the same protection shall be accorded and assured to Bavarians in the country of the foreign manufacturer.

BELGIUM.

The French legislative rules still govern in the matter of trade-marks. Thus there are still in vigor the decrees of 1801 relative to hardware and cutlery; the law of 1803 relative to manufactures, fabrics, and workshops; the imperial decree of 1810 containing provisions for the suppression of the counterfeiting of trade-marks on hardware and cutlery; and the imperial decree of 1809 relating to the *conseils de prud'hommes*.

To the said laws are added the royal decree of 1818 relative to marks of makers of pipes, and that of 1820 concerning manufacture of cloths. The pipes, their labels, boxes, &c., are to bear the print of the arms of the city or commune where made All kinds of cloths composed wholly or in part of wool are to bear labels announcing their national origin. The counterfeiting of the said marks is to be punished as stated in the laws.

Property in labels, signs, and names of merchants is not protected in Belgium by any special law; the principles of the common law being alone applicable to the repression of usurpation of this kind of property.

CANADA.

"An Act to amend the law relating to the Fraudulent Marking of Merchandise," which took effect on the first day of September, 1872, is very similar to the British Act of 1862.

Under the Act respecting Trade-marks, &c., of 1868, it is provided that "all marks, names, brands, labels, packages, or other business devices, which may be adopted for use by any person in his trade, business, occupation, or calling, for the purpose of distinguishing any manufacture, product, or article of any description by him manufactured, produced, compounded, packed, or offered for sale, no matter how applied," &c., &c., may be registered; and timber and lumber upon which labor has been expended are deemed manufactures.

The owner of the mark may petition for the cancellation thereof. The mark may be assigned. In case of interference of an application with a mark already registered, the Minister of Agriculture shall examine witnesses for the purpose of establishing the ownership, and may order entry or cancellation, or both.

The proprietor of a mark may have the same registered by depositing with the Minister of Agriculture a drawing and description in duplicate of such mark, together with a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof. It shall then be examined, and if not identical with or closely resembling any registered mark, it shall be registered, and a certified copy of the drawing and description be returned to the proprietor. The certificate of the Minister or of his Deputy shall state the day, month, and year of the entry in the "Trade-mark Register;" and such certificates shall be evidence of the facts therein alleged.

DENMARK.

The counterfeiting of trade-marks or of stamps is punishable by the ordinance of 1840, with imprisonment not exceeding four years, or in minor cases with fines.

ENGLISH "MERCHANDISE MARKS ACT" OF 1862.[1]

Construction of Words.

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

[1] This Act embraces not only technical "trade-marks," but also all other kinds of "marks" for goods. It contains no provision for registration. Mr. Roebuck, the chairman of the committee of the House of Commons having the matter in charge, moved "That a system of registration of trade-marks be adopted in this bill." The motion was put and lost. The Cutler's Company of Sheffield register trade-marks for cutlery made in a small district. Many manufacturers enter their marks at Stationers' Hall, under a supposed authority of the copyright law. It is difficult to conceive what legal benefit can be derived from such entry, beyond fixing a date of claim.

placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provisions of such statutes or any of them; the word "misdemeanor" shall include crime and offence in Scotland; and the word "court" shall include any sheriff or sheriff-substitute in Scotland.

Forging a Trade-mark or falsely applying any Trade-mark with intent to defraud, a Misdemeanor.

2. Every person (&c. &c.) so committing a misdemeanor shall also forfeit to Her Majesty every chattel and article belonging to such person to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade-mark or forged or counterfeited trade-mark as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade-mark, or forged or counterfeited trade-mark as aforesaid, shall have been so applied, and every instrument in the possession or power of such person for applying any such trade-mark or forged or counterfeit trade-mark as aforesaid, shall be forfeited to Her Majesty; and the court before which any such misdemeanor shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such court shall think fit.

Applying a forged Trade-mark to any Vessel, Case, Wrapper, &c., in or with which any Article is sold or intended to be sold, a Misdemeanor.

3. (This title sufficiently expresses the subject.)

Selling Articles with forged or false Trade-marks after 31*st December*, 1863, *Penalty equal to alue of Article sold, and a sum not exceeding* 5*l. nor less than* 10*s.*

4. (For the present purpose this is sufficiently expressed in the title.)

Additions to and Alterations of Trade-marks made with intent to defraud to be deemed Forgeries.

5. (Every addition, alteration, or imitation, with intent to defraud, included.)

Any Person who, after 31*st December*, 1863, *shall have sold an Article having a false Trade-mark to be bound to give Information where he procured it. Power to Justices to Summon Parties refusing to give Information. Penalty for Refusal,* 5*l.*

6. (For the present purpose this is sufficiently expressed in the title.)

Marking any false Indication of Quantity, &c., upon an Article with intent to defraud, Penalty, a sum equal to the value of the Article and the further sum not exceeding 5*l.*, *and not less than* 10*s.*

7. (The same may be said of this.)

Selling or exposing for Sale after the 31*st December*, 1863, *Articles with false Statement of Quantities, &c., Penalty not more than* 5*l. or less than* 5*s.*

8. (Sufficient for present purposes.)

Proviso that it shall not be an Offence to apply Names or Words known to be used for indicating particular Classes of Manufactures.

9. (Sufficient for present purposes.)

Description of Trade-marks and forged Trade-marks in Indictments, &c.

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

Conviction not to affect any Right or Civil Remedy.

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

which any person shall be compelled to give or make shall be admissible in evidence against such person in support of any indictment for a misdemeanor at common law or otherwise, or of any proceeding under the provisions of this Act.

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

12. (Sufficient for present purpose.)

Persons who aid in the Commission of a Misdemeanor to be also guilty.

13. (Sufficiently expressed.)

Punishment for Misdemeanor under this Act.

14. Imprisonment for not more than two years, with or without hard labor, or by fine, or both by imprisonment with or without hard labor and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied.

Recovery of Penalties.

15. (This provides for summary proceedings, &c.)

Summary Proceedings before Justices to be within 11 *and* 12 *Vict. c.* 43.

16. (Sufficient for present purpose.)

In Actions Penalties to be accounted for in like Manner as other Moneys payable to the Crown, and Plaintiffs to recover full Costs of Suit.

17. (Sufficient for present purpose.)

Limitations of Actions, &c.

18. Three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

After 31*st December*, 1863, *Vendor of an Article with a Trade-mark to be deemed to contract that the Mark is genuine.*

19. (Sufficient for present purpose.)

After the 31*st December*, 1863, *Vendor of an Article with Description upon it of its Quantity to be deemed to contract that the Description was true.*

20. (Sufficient for present purpose.)

In Suits at Law or in Equity against Persons for using forged Trade-marks, Court may order Article to be destroyed, and may award Injunction, &c.

21. (Sufficient for present purpose.)

Persons aggrieved by Forgeries may recover Damages against the guilty Parties.

22. (Sufficient for present purpose.)

Defendant obtaining a Verdict to have full Indemnity for Costs.

23. (. . . "Unless the court or a judge thereof shall direct that costs of the ordinary amount only shall be allowed.")

A Plaintiff suing for a Penalty may be compelled to give Security for Costs.

24. (Sufficient for present purpose.)

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

25. (Sufficient for present purpose.)

Short Title.

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

FRENCH LAW OF JUNE 23, 1857.

TITLE I. — *Of the Right of Property in Marks.*

ART. 1. — The mark of manufacture and commerce is optional. Decrees rendered in the form of regulations of public administration can always, except in certain cases, declare marks to be obligatory for the products that they specify. As marks of manufacture and of commerce, shall be considered names under a distinctive form, denominations, emblems, imprints, stamps, stamped tickets, vignettes, reliefs, letters, ciphers, envelopes, and all other signs serving to distinguish the products of a manufacturer and the objects of a commerce.

ART. 2. — No one can claim the exclusive property of a mark, unless he shall have deposited two fac-similes thereof with the clerk of the Tribunal of Commerce of his domicile.

ART. 3. — The deposit has effect but for fifteen years. The property in a mark may always be protected for a new term of fifteen years by means of a new deposit.

ART. 4.—Besides the charge for stamp and of registration, there is a legal charge fixed at one franc for the drawing-up of the entry of each mark and for the cost of proceeding.

TITLE II.—*Dispositions Relative to Foreigners.*

ART. 5.—Foreigners who possess in France establishments of manufacture and commerce, enjoy for the products of their establishments the benefit of the present law upon fulfilling the formalities that it prescribes.

ART. 6.—Foreigners and the French whose establishments are situated outside of France, shall equally enjoy the benefit of the present law for the products of their establishments, if, in the countries where they are situated diplomatic conventions have established reciprocity for French marks. In this case, the deposit of foreign marks shall take place with the clerk of the Tribunal of Commerce of the department of the Seine.

TITLE III.—*Penalties.*

ART. 7.—The punishment shall be a fine of from 50 to 3000 francs, and with imprisonment of from three months to three years, or of one of these penalties only:—

1st. For such as shall have counterfeited a mark or made use of a counterfeit mark;

2d. For such as shall fraudulently affix to their products or the objects of their commerce a mark belonging to another;

3d. For such as shall have knowingly sold or exposed for sale one product or more than one product invested with a false mark fraudulently imitative or bearing indications tending to deceive the purchaser as to the nature of the product.

ART. 9.—They shall be punished with a fine of from 50 to 1000 francs, and with imprisonment of from fifteen days to six months, or with one or the other of such penalties:—

1st. Who shall not have affixed to their products a mark declared to be obligatory;

2d. Who shall have sold or exposed for sale one product or more than one product not bearing the obligatory mark for that species of product;

3d. Who shall have contravened the provisions rendered in execution of article 1st of the present law.

ART. 10.—The penalties established by the present law are not cumulative.

The heavier penalties are only to be pronounced for acts done anterior to the first act of pursuit.

ART. 11. — The penalties prescribed by articles 7, 8, and 9 may be increased to double in case of repetition of the offence. It is such repetition when within the five years anterior a condemnation shall have been pronounced against the prisoner for one of the misdemeanors provided for in the present law.

ART. 12. — Article 453 of the penal code shall apply to the misdemeanors under the present law.

ART. 13. — Besides, offenders may be deprived of the right of participating in election of Tribunals and of Chambers of Commerce, of Consulting Chambers of Arts and Manufactures, and of Councils of Selectmen, for a term not exceeding ten years.

The Tribunal may order the posting-up of the judgment in places to be determined, and its insertion in full in newspapers to be designated by it; the whole at the cost of the condemned.

ART. 14. — The confiscation of products recognized as contrary to the provisions of articles 7 and 8, even in cases of acquittal, may be pronounced by the Tribunal, besides the apparatus which especially served for the commission of the wrong.

The Tribunal may order that confiscated products shall be delivered to the owner of the mark counterfeited, or fraudulently affixed, or imitated, independent of, and in addition to ample damages that may have been given.

It shall prescribe, in all cases, the marks adjudged to be counterfeited contrary to the provision of articles 7 and 8.

ART. 15. — In the cases premised in the first two paragraphs of article 9, the Tribunal shall prescribe always that the marks declared to be obligatory shall be affixed to the products subject thereto.

The Tribunal may pronounce the confiscation of products, if the prisoner shall have undergone during the five last preceding years a condemnation for one of the misdemeanors provided in the first two paragraphs of article 9.

TITLE IV.

ART. 16. — Civil actions relative to marks are brought before the civil tribunals and judged as summary matters. (The remainder of this title relates to the mode of procedure. Title V., which contains the remaining part of the Act, relates to general and transitory matters, as, for example, the seizure and condemnation of foreign merchandise falsely bearing either the mark or the name of a resident of France; and other subjects of but local interest.)

HOLLAND.

There is no especial law on the subject of protection of trade-marks and stamps; but the infringement or counterfeiting thereof is punished by the ordinary penal code.

PRUSSIA.

Legislative enactments protect trade-marks and manufacturers' names. Whoever shall put a mark upon merchandise or the envelopes thereof bearing the name, firm-title, or domicile of another manufacturer, or who knowingly shall commit to commerce merchandise bearing false marks, is punished by a fine of from 50 to 1000 dollars, and, in addition thereto, with imprisonment of one year or more, according to circumstances. These penalties are equally applicable when a Prussian shall counterfeit the mark of a foreigner, but only when international treaties or the laws of such foreigner's country chall guaranty reciprocity to Prussian subjects.

ROME.

There exist in what were lately the Pontifical Dominions two kinds of marks: 1st, the mark affixed to objects made by the Government; 2d, the private mark placed by each manufacturer upon his products. This latter mark is not obligatory, and fabrics bearing such private mark need not the official stamp to indicate the origin of the goods. However, some kinds of fabrics bear the Government stamp.

Woollen and cotton cloths have attached to the weft a leaden seal; and certain tissues and skins, presented at the Custom-house, accompanied by a certificate of the commercial authority, are furnished by the Government officials with a leaden stamp, as a guaranty of nationality.

RUSSIA.

Trade-marks are not obligatory; but stamped products enjoy very notable advantages. Thus, these products are not confiscated when found united to foreign merchandise not provided with a customs-stamp; and when these products are reimported into Russia, they enter free of custom-house duty.

The originator of a new product must, if he wish to stamp such product, make a declaration at the Department of Manufactures, and deposit a copy of his mark, indicating his full name and his

place of manufacture. If the proprietor transfer his place of business, he should instruct the said Department, which may direct the stamp to be changed.

The fraudulent application upon Russian products of marks belonging to other makers is punished as counterfeiting, and the merchandise falsely marked is delivered over to the one whose mark has been simulated. If Russian marks are affixed to foreign goods, the said goods are confiscated, and the wrong-doer fined. The consequences are the same if Russian products are invested with false seals imitating those of the Customs, with the fraudulent intent that the same shall be accepted as products of foreign origin.

SARDINIA.

The trade-mark has been obligatory ever since the year 1725. By a royal edict of 1733 each manufacturer and dyer of woollen stuffs was obliged to affix to his fabrics a mark, a representation of which was to be deposited with the secretary of his district. For any violation of the right of mark, a fine was to be imposed and the merchandise marked with the false mark confiscated. More recent legislation has imposed new obligations on manufactures of tissues.

SAXONY.

Trade-marks are not obligatory. The manufacturer whose mark has been counterfeited may obtain legal redress. But although the mark is not obligatory, yet where Saxon products are to be exported to certain countries, especially America, they must be accompanied with a certificate of origin.

SPAIN.

The mark is obligatory upon cloths only: such is the regulation of 1832. Thereby the manufacturers were obliged to mark their cloths according to the degrees of quality, first, second, or third.

WIRTEMBERG.

By the general regulation of 1836, each manufacturer is obliged to affix to his products a mark of his name and device. An impression of this mark must be deposited with a Government official. Simulation of marks is punished as counterfeiting.

PATENT OFFICE FORMS.

APPLICATION FOR REGISTRATION.

PETITION.

1. By a Sole Applicant.

To the Commissioner of Patents:

Your petitioner respectfully represents that he is domiciled[1] in the United States, and is engaged in the manufacture and sale of [melodeons] at [the city of New York, N. Y.], and that he is entitled to the exclusive use upon said class of merchandise of the trade-mark described in the specification hereto annexed, and shown in the fac-similes to be herewith filed.

He therefore prays that said trade-mark may be registered and recorded in the Patent Office, in accordance with law.

[Henry H. Bradley.]

2. By a Partnership.

To the Commissioner of Patents:

Your petitioners respectfully represent that they constitute the firm of [Scott, Newman, & Co.], domiciled in [the United States], and engaged in the manufacture and sale of [cotton-sheetings] at [Fall River, Massachusetts]; and that, as said firm, they are entitled to the exclusive use, upon said class of merchandise, of the trade-mark described in the specification hereto annexed, and shown in the fac-similes to be herewith filed.

They therefore pray that said trade-mark may be registered and recorded in the Patent Office, in accordance with law.

[Scott, Newman, & Co.,
By Martin Scott, *a member of the firm.*]

[1] The statute reads: "any person or firm *domiciled* in the United States." Domicile, in certain cases, being an essential prerequisite to registration, should be averred.

3. By a Corporation.

To the Commissioner of Patents:

Your petitioner, a corporation created by authority of [section 4 of chapter 80 of the Acts of Congress of 1870[1]], respectfully represents, that it is engaged in the manufacture and sale of [boots and shoes] at [Washington, District of Columbia]; and that it is entitled to the exclusive use, upon said class of merchandise, of the trade-mark described in the specification hereto annexed, and shown in the fac-similes to be herewith filed.

It is therefore prayed that said trade-mark may be registered and recorded in the Patent Office, in accordance with law.

[Washington City Boot and Shoe
[L. S.] Manufacturing Company,
By Robert Ball, *President.*[2]]

Petition with Power of Attorney.

To the Commissioner of Patents:

Your Petitioner [*&c., as in the foregoing forms, to the end of the prayer, and then continue*]; and he hereby appoints Solomon Sharp, of the city New York, N. Y., as his attorney in the presentation and prosecution of this application, to make the necessary amendments thereto, and to receive the certificate of registration.[3]

[*Name.*]

Specification.

Specification of a trade-mark used by [Scott, Newman, & Co.], of Fall River, Massachusetts, for cotton-sheetings.

[Our] trade-mark consists of a [crescent-shaped symbol and the word "Excelsior." These have been and are generally arranged, as shown in the accompanying drawing, above and below the fig-

[1] Or of any other authority of the United States, or of any State or Territory thereof, as the case may be. Or if the corporation be located in any foreign country which by treaty or convention affords similar privileges to citizens of the United States (sec. 77, Act of 1870), the form may be thus: "a corporation located in the city of Paris, in the Republic of France," &c.

[2] Or any other officer of the corporation (sec. 77, Act of 1870).

[3] The signature of the applicant is sufficient to authenticate this instrument, without its being acknowledged before a public officer.

ure of a man represented as ascending the side of a mountain and carrying a banner, upon which is inscribed the word "Excelsior;" and the whole inclosed within an ornamental border, substantially like that shown in the drawing. But the figure of the man with the banner may be omitted, or some other device substituted for it, and the border may be changed at pleasure, or omitted altogether, without materially changing the character of our trade-mark, the two essential features of which are the crescent-shaped symbol and the word "Excelsior"].

This trade-mark we have used in our business for [ten years last past. The particular goods upon which we have used, and still use it, are made of cotton, and known as "sheetings;" and we are accustomed to print it, in blue ink, upon the outside of each piece of the manufactured goods. We have also printed it upon labels, which have afterward been pasted upon the separate pieces of sheetings, and also placed upon the outside of the cases in which the goods have been packed.

SCOTT, NEWMAN, & CO.,
By MARTIN SCOTT, *a member of the firm.*]

Witnesses:

Benjamin F. Lloyd,
Merwin Hallibow.

AFFIDAVIT UPON APPLICATION FOR REGISTRATION OF A TRADE-MARK.

[Commonwealth of Massachusetts,[1]
County of Franklin. } ss.]

Personally appeared before me, a [justice of the peace],[2] the above-named [Martin Scott], who, being duly sworn, deposes and says that [he is a member of the firm of Scott, Newman, & Co., above named]; that [said firm] has the right to the use of the trade-mark described in the foregoing specification, and that no other person, firm, or corporation has the right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive; and that the description and the

[1] Or State of New York, or Territory of Idaho, or Kingdom of Spain, as the case may be.

[2] As to the various officers before whom an oath may be taken for this purpose, see § 321. See, also, as to the proper official seal of a notary public.

fac-similes presented for record truly represent the trade-mark sought to be protected; that the statements in the petition and specification are true; that he resides in [Boston], and all the other members of the firm reside at [Fall River, in said Commonwealth]; and that they are all domiciled [1] in [the United States and are citizens [2] thereof].

[MARTIN SCOTT.]

Sworn to and subscribed before me this [15th day of July, 1870].

[JOHN JURAT,
Justice of the Peace.]

AMENDMENT.

To the Commissioner of Patents:

In the matter of my application for registration of a trade-mark for melodeons, filed on the 18th day of September, 1872, I hereby amend my specification by striking out all between the tenth and thirteenth lines, inclusive, on page 1; by inserting after line nineteen on page 2 the words, "This trade-mark I have used in my business for seventeen years last past;" and by substituting the word "gilded" for "branded" in the last paragraph.[3]

HENRY H. BRADLEY.

APPEAL OF APPLICANT.[4]

To the Commissioner of Patents:

SIR, — I hereby appeal to you in person from the decision of the Examiner of Trade-marks, dated November 15, 1872, in the matter of my application for the registration of a trade-mark for cigars. The following are assigned as reasons of appeal: —

[1] Domicile need not be stated when the applicant is a non-resident of the United States. (See § 287–296, as to the commercial character imparted to one engaged in commerce abroad.) In such case, the place of residence in a foreign country must be stated.

[2] Or is a citizen of the republic of Mexico, or a subject of the Queen of Great Britain, &c., &c.

[3] This amendment involves the necessity of a new affidavit; for the specification is materially changed by the allegation of an additional fact, as to the length of time the mark has been used.

[4] This form may readily be adapted to the case of a partnership, or of a corporation. The appellant may set forth as many reasons as suggest themselves to his mind. This appeal being in the nature of a rehearing, no fee is required therefor.

1st. The Examiner erred, in holding that my residence in the island of Cuba at the time of application debarred me from the benefits of the Act of Congress approved July 8, 1870, in relation to the registration of trade-marks, inasmuch as, by his own admission and by the evidence filed by me, it is clearly shown that I was then a citizen of the United States.[1]

2d. He erred, in holding that the words "Improved and Excellent" do not constitute a lawful trade-mark.[2]

3d. He erred, in holding that a statement of the length of time the said trade-mark had been used by me is an essential requisite.[3]

4th. He erred, in (&c. &c.).

[LEMUEL STONE.]

TRANSFER OF A TRADE-MARK.[4]

We, Jotham Mills and Abner Clark, of Keokuk, Iowa, partners under the firm name of Mills & Clark, in consideration of five hundred dollars to us paid by Jarvis Case, of the same place, do hereby sell, assign, and transfer to the said Jarvis Case and his assigns the exclusive right to use in the manufacture and sale of stoves a certain trade-mark for stoves the description and fac-similes of which trade-mark were duly deposited by us in the United States Patent Office, and recorded therein; the same to be held, enjoyed, and used by the said Jarvis Case as fully and entirely as the same would have been held and enjoyed by us if this transfer had not been made.

Witness our hands this 20th day of December, 1872.

[JOTHAM MILLS,
ABNER CLARK.]

NOTICE OF PRELIMINARY INTERFERENCE.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
Washington, D. C., , 187 .

W. T. P. & C. McC., doing business as firm of P. & McC., Baltimore, Md.

Please find below a copy of a communication from the Trade-

[1] See §§ 290, 291, 295, *ante.* [2] See § 276, *ante.* [3] See § 316, *ante.*

[4] The assignment of an abstract symbol as a trade-mark is not within the range of legal possibility (see § 361). Therefore, unless the purported assignors had actually reduced the thing to possession, by affixing it as their trade-mark to the stoves sold by them, they had no title to convey, and this so called transfer is a nullity in law.

mark Examiner, concerning your application for registration of a trade-mark for whiskey, filed on the day of , 187 .

Very respectfully,

[M. D. LEGGETT, *Commissioner.*]

Room No. 10.

In the matter of the alleged trade-mark above referred to, notice is hereby given that in the particulars hereinafter named, another party claims to be the first and original adoptor, and that the question of priority will be determined in conformity with the rules and regulations for the conduct of interferences, a copy of which will be found inclosed.[1]

The preliminary statement (analogous to that called for by rule 53) must be filed on or before the day of , 187 . This statement must be sealed up before filing (to be opened only by the Trade-mark Examiner), and the name of the party filing it, and the subject, be indicated on the envelope.

In case the party who was first to make application for registration alone file a statement, no testimony will be required, but priority of adoption will be awarded to him. In default of such filing by the earlier applicant, and the other applicant do file the required statement, no testimony will be received from the former going to prove the date of his adoption prior to the earliest date of adoption alleged in his application for registration. In the event of neither party filing a statement, a decision will be rendered in favor of the party who was first to file application.

The subject-matter involved is the symbol of a crescent in combination with the word "Crescent," as a trade-mark for whiskey.[2]

[1] It is not necessary to recite these in full in this place. See the chapter on Interferences, *ante*.

[2] A copy of this notice is sent by the Office to each party. — Unless it be intended to let the case go by default, or to rely entirely upon the record made by the respective applications, the next step in order is to follow the foregoing instructions.

Great particularity should be observed in wording the statement, as the result may depend upon its expressions. The facts should be tersely narrated; care being taken, however, while avoiding the Scylla of prolixity not to perish by the Charybdis of a lack of perspicuity. Bear this in mind: while the preliminary statement can never be used as evidence on behalf of the party making it, it may be used as evidence against him.

The examples following may be taken as fair precedents. Truth is more necessary than form.

Preliminary Statement.[1]

To the Commissioner of Patents:

In compliance with the requirement of official notice of October 2, 1872, and in furtherance of our claim of right to registration of our trade-mark, we make this preliminary statement.

We commenced business in the city of Baltimore, Md., on the first day of October, 1867, as wholesale and retail dealers in liquors, and as rectifiers and compounders of the same. In the course of a few weeks thereafter we found that it would be beneficial to our interests to adopt some mark or brand to apply to a particular quality of rye-whiskey of our manufacture. It was important for us to adopt such a mark as should distinguish our article of manufacture from that of others in the market, as a protection from encroachment, and to secure to us the benefits of reputation in the profits arising therefrom. We tried to devise a mark which should not be like nor resemble any other in use for the same class of merchandise, and finally, on or about the first day of January, 1868, adopted that for which we now claim the right of registration.

We were induced to adopt the device of the word "Crescent" and the symbol of a crescent from these facts: the distillery where our whiskey was manufactured is located at Canton, in the extreme eastern and a growing section of the city; and the whiskey itself was increasing in favor and general use. These facts suggested to us the symbol of the East — the crescent — which signifies, to increase. We adopted it in conjunction with its name. We conceived the idea that these two things would be a suitable designation for our commodity; so, after making diligent and thorough inquiry in this and other cities, and in every possible way, to learn whether it was like any other brand in the market, or bore a near resemblance thereto, and finding that it did not, we concluded to adopt it. This we accordingly did on or about the first day of January, 1868, and having had a stencil-plate cut (the same stencil-plate which we are now using, and which was employed in making the fac-similes filed with our application for registration), we commenced at once to affix the same to our goods. This we did by stencilling the heads of the barrels containing our whiskey.

[1] Form is not of so much consequence as substance. Let circumstances be stated, so that from the detail of simple facts deductions may be made by the Office. Great care should be taken to state all matters bearing upon the issue. Too much conciseness must lead to obscurity; and obscurity may possibly be attributed to a lack of honesty.

We were the first to use the said mark to designate said class of merchandise, and we have never abandoned it, nor permitted any other manufacturer or vendor to make use of it, all which we are fully prepared to prove.

[*Signatures.*]

State of Maryland, }
City of Baltimore. } ss.

On this 7th day of October, 1872, before me, the undersigned, a justice of the peace [*or other officer, as the case may be*], personally appeared the above-named William T. P—— and Charles McC——, and made oath in due form of law to the truth of the foregoing statement by them subscribed.

[*Signature of officer and title of office.*[1]]

(*Another precedent of a Preliminary Statement in the same case.*)

To the Commissioner of Patents:

In regard to the application filed by us, for registration of a trade-mark, we state as follows:—

At about the time we commenced building our distillery, we requested Emmart & Quartley, of the city of Baltimore, to execute some design for us that would answer for a name for our place, and also for our trade-mark. During the early part of March, 1872, a sketch was made, which, meeting with our approval, was placed in the hands of an artist, to be colored. May 1st, it was given to the engraver, who at once prepared the plates, and upon their completion, and the printing of the copies, we applied for registration. By the testimony of A. D. Emmart and A. Quartley we can prove that the design is original[2] with us, and was chosen by us on account of the situation of our property, we not knowing at the time that any one had ever thought of it. The name "Crescent" and its symbol is the designation of our distillery. We propose[3]

[1] If a notary public, or clerk of a court, he should affix his official seal.

[2] The question is not, Who originated the design? but, Who first affixed it as a mark to merchandise? It is referred to here as a circumstance to support the parties' statement. See the case of Schrauder *v.* Beresford & Co., in the chapter on Interferences, as to origin of design.

[3] This is a fatal admission. Although the persons making this statement were actually the senior applicants for registration, they show conclusively that they did not consummate their purpose, *i.e.*, did not make the device a trade-mark by affixing it to merchandise. Their adversaries show that they did stencil the mark upon their barrels containing the product of their manufacture.

to use the mark on all rye-whiskey made by us. For the exact dates of the conception and execution of the different stages of the work, we can produce the testimony of the persons engaged by us for that object, as before stated. [*Finish substantially as in the foregoing precedent.*]

Notice of Interference.

Department of the Interior,
U. S. patent office.
Washington, D. C., , 187 .

[*Name of party to whom addressed.*]

Please find below a copy of a communication from the Trade-mark Examiner, concerning your application for registration of a trade-mark for whiskey, filed on the day of , 187 .

Very respectfully,
[M. D. Leggett, *Commissioner.*]

Room No. 10.

The parties hereinafter named are hereby notified that their claims to exclusive use of a trade-mark specified in Office letter of the [27th of June, 1872], are adjudged to interfere with each other, and that a hearing will be granted them on the [21st] day of [October, 1872].

The testimony of the respective parties must be closed previous to the dates hereinafter designated.

Rebutting testimony, but no other, may be taken after the closing of the testimony-in-chief, but the same must be closed previous to the [7th day of October, 1872].

All testimony must be taken in accordance with the printed rules previously transmitted.

[George T. Smith, of Cincinnati, Ohio, filed his application May 20, 1827. His direct testimony must be closed before the 26th day of August, 1872.[1] — Augustus F. Jones, Cincinnati, Ohio, attorney of record.

Benjamin Barter of Philadelphia, Penn., filed his application February 20, 1872, and a certificate of registration was issued to

[1] The junior applicant stands in the place of plaintiff, as he attacks the claim of right of the senior party or parties, — for there may be several persons standing on the defensive as respondents. Each party is obliged to go forward and make out his case against those who filed their applications before him.

him April 9, 1872. His direct testimony must be closed before the 23d day of September, 1872.—Dodson & Fogg, Camden, N. J., attorneys of record.]

——— ———,

Trade-mark Examiner.

NOTICE OF THE TAKING OF TESTIMONY.

Before the Commissioner of Patents, in the matter of the Interference declared between the application of George T. Smith, for registration of trade-mark for whiskey, and the certificate of registry of Benjamin Barter, dated April 9, 1872.

——— ———

SIRS,—You are hereby notified that on Monday, August 12, 1872, at the office of Hamilton Roberts, Esq., No. 140 Central Avenue, Columbus, Ohio, at nine o'clock in the forenoon, I shall proceed to take the testimony of A. B., C. D., and E. F., all of Columbus, Ohio, as witnesses on my behalf.

The examination will continue from day to day, until completed. You are invited to attend and cross-examine.

[GEORGE T. SMITH,
By AUG. F. JONES, *his Attorney.*]

Cincinnati, O., August 5, 1872.

To Messrs. DODSON & FOGG, Attorneys for Respondent.

We hereby admit[1] due service of notice of which the foregoing is a copy, this 6th day of August, 1872.

[DODSON & FOGG,
Attorneys for Respondent.]

State of ,
County of . } ss.

Personally appeared before me, a justice of the peace in and for said county, Samuel Johnson, who, being duly sworn, says that he served the foregoing notice upon Dodson & Fogg, attorneys for Benjamin Barter aforesaid, at one o'clock, P.M., of the 6th day of August, 1872, by leaving a copy thereof at their office in Camden, N. J., in charge of their clerk.

SAMUEL JOHNSON.

Sworn to before me this 7th day of August, 1872.

——— ———,

Justice of the Peace.

[1] Unless service be admitted, there must be proof of service either by affidavit or by certificate of marshal or sheriff.

Deposition.

Before the Commissioner of Patents, in the matter of Interference between the application of George T. Smith, for registration of trade-mark for whiskey, and the certificate of registry of Benjamin Barter, dated April 9, 1872.

Depositions of witnesses examined in behalf of George T. Smith, pursuant to the annexed notice, at the office of Hamilton Roberts, Esq., No. 140 Central Avenue, Columbus, Ohio, on Monday, August 12, 1872, and following days.

A. B., being duly sworn [*or* affirmed], doth depose and say, in answer to interrogatories proposed to him by James G. Fant, Esq., counsel for the said George T. Smith, as follows, to wit:—

Question 1. What is your name, age, residence, and occupation?

Answer 1. My name is A. B. I am twenty-seven years old. My residence is in Columbus, Ohio. I am a wholesale dealer in groceries.

Quest. 2. &c.

And in answer to cross-interrogatories proposed to him by Charles Cavil, Esq., counsel for Benjamin Barter, he saith:—

Cross-question 1. How long have you known the trade-mark in question?

Ans. 1. &c.

A. .

Certificate of Officer.

[*To follow depositions.*]

State of , } ss.
County of . }

At , in said county, on the 12th day of August, 1872, and subsequent days, before me personally appeared the above-named [*give full names of all the witnesses*], and made oath that the foregoing depositions by them respectively subscribed contain the truth, the whole truth, and nothing but the truth. The said depositions were taken at the request of —— — —, to be used upon the hearing of an interference between the claim of the said —— —— and that of —— ——, to the exclusive use of a trade-mark, before the Commissioner of Patents, on the [21st day of October, 1872].

The said —— —— was duly notified, as appears by the proof

attached to the original notice, hereto annexed, and he attended by —— ——, Esq., his counsel.

WILLIAM BLACKSTONE,
Justice of the Peace.[1]

APPEAL IN INTERFERENCE CASE.

LEOPOLD WIRTS
v.
WILSON & DUNN. } Trade-mark Interference.

To the Commissioner of Patents:

SIR, — I hereby appeal to you in person from the decision of the Examiner of Trade-marks, in the matter of interference between my application for registration of a trade-mark for spool-cotton and the certificate of registry issued to the respondents, in which priority of adoption was awarded to them, the said Wilson & Dunn. The following are assigned as reasons for appeal: —

1st. The Examiner erred, in holding that to constitute adoption of a symbol as a trade-mark there must be an actual affixing to merchandise.

2d. He erred, in holding that the copyrighting of the said symbol was not, in legal effect, an actual adoption.

3d. He erred, in ruling out the deposition of James Johnson, because of alleged informalities.

4th. [*Any other objections, in regular order.*]

[1] Or U. S. Commissioner, or Judge, or Notary Public, or other officer having authority to administer oaths for general purposes.

The officer, having appended to the depositions the notice under which they were taken, shall then seal up the testimony, and direct it to the Commissioner of Patents; and shall also place upon the package a certificate of the taking, sealing up, and addressing, and the date of sending, &c.

FORMS OF PLEADINGS, &c.

No. 1. — Beginnings of Declaration in Federal Courts.[1]

Circuit Court of the United States.

For the [*Southern*] *District of* [*New York*].

A. B. }
C. *v.* D. }

Of the day of , 187 . As yet of term, in the year of our Lord one thousand eight hundred and seventy .

District of New York, ss.

A. B., who is a citizen of the State of [Ohio], plaintiff in this suit, by Merwin Hallibow, Esq., his attorney, complains of C. D., who is a citizen of the State of [New York], defendant in this suit, of a plea of trespass on the case: For that whereas the said plaintiff, before and at the time of the committing of the grievances by the

[1] Particular attention is invited to the following extracts from "An Act to further the Administration of Justice," approved June 1, 1872: —

Sec. 4 provides, among other matters, that "all process issued from the courts of the United States shall bear teste from the day of such issue."

"Sec. 5. That the practice, pleadings, and forms and modes of proceeding, in other than equity and admiralty causes in the Circuit and District Courts of the United States, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the Courts of Record of the State within which such Circuit or District Courts are held, any rule of court to the contrary notwithstanding: *Provided, however*, That nothing herein contained shall alter the rules of evidence under the laws of the United States and as practised in the courts thereof."

"Sec. 6. That in common-law causes in the Circuit and District Courts of the United States the plaintiff shall be entitled to similar remedies, by attachment or other process against the property of the defendant, which are now provided for by the laws of the State in which such court is held, applicable to the courts of such State; and such Circuit or District Courts may, from time to time by general rules, adopt such State laws as may be in force in the State in relation to attachments and other process; and the party recovering judgment in such cause shall be entitled to similar remedies upon the same, by execution or otherwise, as are now provided by the laws of the State within which said Circuit or District Courts shall be held in like causes, or which shall be adopted by rules as aforesaid: *Provided*, That similar preliminary affidavits or proofs, and similar security, as required by such laws, shall be first furnished by the party seeking such attachment or other remedy."

said C. D., as hereinafter mentioned, did manufacture, vend, and sell [*here state the cause of action in accordance with the suggestions contained in form No. 2*].

By an Alien against a Citizen of the United States.

P. Q., who is a subject of the Emperor [*or* citizen of the Republic] of , and an alien, plaintiff, &c., complains of R. S., who is a citizen of the State of , &c.

By a Citizen of the United States against an Alien.

R. S., who is a citizen of the State of , plaintiff, &c., complains of P. Q., who is a subject of the King of , &c.

By a Corporate Body.

The [*giving the full corporate name*] Company, citizens of the State of , incorporated by the name aforesaid, by the said State, and having their principal place of business therein, plaintiffs, &c.

No. 2. — Declaration for Infringement of a Registered Trade-mark.

United States Circuit Court.

—— *District of* ——.

E. F.
v.
G. H.

Of the day of , 187 . As yet of term, in the year of our Lord one thousand eight hundred and seventy .

E. F., being a citizen of the United States of America, and resident in the city of ,[1] plaintiff in this suit, by Merwin Hallibow,

[1] Probably this averment is not necessary when the action is brought in a Federal court under the trade-mark Act of July 8, 1870. *Citizenship*, under that Act, is less a matter of importance than *domicile*, *i.e.*, the commercial character, rather than the political status, is the point. But, to avoid all question as to jurisdiction, it is best to make the allegation so that it may appear whether the plaintiff sues as a citizen or as an alien. Where the subject-matter confers jurisdiction (as in a suit for infringement of a duly-registered trade-mark), an allegation of citizenship of a particular State is not required. However, abundant caution cannot harm.

his attorney, complains of G. H., defendant, of the said District, of a plea of trespass on the case: For that whereas he, the said plaintiff, for divers years before, and at the time of the committing of the grievances hereafter next mentioned, did manufacture, vend, and sell, and continue to manufacture, vend, and sell, and still does continue to manufacture, vend, and sell for profit, divers large numbers of a certain reaping-machine called the "Harvest Victor," which said machine the said plaintiff was then, and still is, used and accustomed to sell, each machine bearing a representation of "Time," with a scythe, and the words "Harvest Victor" in raised characters, as his trade-mark therefor.[1] And the said plaintiff being then domiciled within the United States, did cause to be recorded, in the Patent Office of the United States, a statement of his name, residence, and place of business; the class of merchandise and the particular description of goods comprised in such class, by which the aforementioned trade-mark had been appropriated as aforesaid; a description of the said trade-mark itself, with fac-similes thereof, and the mode in which it has been applied and used; and the length of time during which the said trade-mark had been used; and having made a payment of a fee of twenty-five dollars, and complied with the regulations prescribed in such case by the Commissioner of Patents; and having filed a declaration under the oath of this plaintiff, to the effect that he then had a right to the use of the said trade-mark, and that no other person, firm, or corporation, had the right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that the description and fac-similes presented by him for record truly represented the trade-mark sought to be protected, therefore he obtained a certificate of registry of said trade-mark under the seal of the said Patent Office, certified by the Commissioner of Patents, bearing date the day of , 187 , in due form of law, as by reference to said certificate and a schedule thereto annexed will fully appear.

And the said plaintiff further says that before and at the time of committing the grievances hereinafter next mentioned, he had gained and acquired great fame and reputation with the public on account of the excellent properties of the said reaping-machine, so

[1] Whether a full compliance with all the requirements of the statute in regard to registration need to be alleged has not been decided by any court. Perhaps it would be sufficient to simply allege the fact of due registration, evidenced by the certificate of the Patent Office, as regularity would be presumed. At any rate, the exemplification of the record would demonstrate the matter.

by him manufactured, vended, and sold, whereby the said plaintiff daily acquired and obtained great gain and profit. Yet the said defendant, well knowing the premises, but contriving to injure the said plaintiff in his said sale of said reaping-machine, and to deprive him of the great gains and profits which he the said plaintiff would otherwise have acquired by manufacturing, vending, and selling the said machine, did, on the day of , eighteen hundred and seventy , and at divers other times before and afterwards, and before the commencement of this suit, unlawfully and wrongfully, injuriously, deceitfully, and fraudulently, against the will and without the license or consent of the said plaintiff, manufacture and make, and cause to be manufactured and made, divers, to wit, 100 reaping-machines, marked in imitation of, and bearing an almost exact copy of the said plaintiff's trade-mark, to wit, the said representation of "Time," with a scythe, and the words "Harvest Victor" in raised characters, as hereinbefore set forth, in order to denote that the reaping-machine of the said defendant was the genuine reaping-machine manufactured, vended, and sold by the said plaintiff; and did knowingly, wrongfully, injuriously, deceitfully, and fraudulently vend and sell for his own lucre and gain the said last-mentioned reaping-machines; by reason of which said premises the said plaintiff has been greatly injured and deprived of great profit and advantage, in being hindered and prevented by the said defendant from selling, vending, and disposing of divers large numbers, to wit, 100 of the said reaping-machines, which the said plaintiff would otherwise have sold, vended, and disposed of, and has thereby sustained actual damage to the amount of two thousand dollars.

Yet the said defendant, though requested, hath never paid the same, or any part thereof, to the said plaintiff, but hath refused, and yet refuses so to do, and therefore the plaintiff brings this suit.

MERWIN HALLIBOW,
Attorney, and of Counsel for Plaintiff.

[*Title of the suit.*]

The defendant will please to take notice that the within is a copy of a declaration filed with the clerk of the United States Circuit Court for the District of at and that the defendant must plead thereto within twenty days after service hereof on him, or judgment will go by default.

Dated 187 .

MERWIN HALLIBOW,
Plaintiff's Attorney.

To G. H., the above-named Defendant.

(*Or this.*)

[*Title of the suit.*]

The defendant will please to take notice that a rule has been entered in this suit with the clerk of this court, at his office, in the city of , requiring the defendant to plead to the declaration filed in this action, with a copy whereof he is hereby served, within twenty days after service of a copy thereof and notice of said rule, or judgment.

Dated , 187 .

Yours, &c.,

MERWIN HALLIBOW,
Attorney for Plaintiff.

To G. H., Defendant.

AFFIDAVIT OF SERVICE OF THE DECLARATION.

L. M., being duly sworn, says, that on the day of , 187 , he personally served on the defendant G. H. within named, a copy of the within declaration and notice of rule to plead as herein indorsed (*or*, hereto annexed).

L. M.

Sworn to before me, this day of , 187 .

No. 3. — GENERAL DEMURRER TO DECLARATION.

[*Title of the cause, as in Form No.* 1.]

And the said defendant, by G. G., his attorney, comes and defends the wrong or injury, when, &c., and says that the said declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the defendant, and that he the said defendant is not bound by law to answer the same.

And this he is ready to verify; wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him, &c.[1]

G. G., *Attorney for Defendant.*

[1] There may be several objections to the declaration, as, for example, that it shows no trade-mark in the legal sense, or does not set forth facts of any kind sufficient to constitute a cause of action. In Barrows *v.* Knight (6 R. I. 434), the defendant took the ground that the plaintiff had no right to appropriate the name of a famous deceased person; and that, even if he had, it was not plainly set forth that the defendant had infringed thereon.

Plea in Abatement to the Jurisdiction.

[*Title of the cause, as in Form No.* 1.]

And the said defendant C. D., by G. G. his attorney [*or in his own proper person*], comes and defends the wrong and injury when [&c.], and says that the court here ought not to take cognizance of, or sustain the action aforesaid, because he says that the cause of action aforesaid, if any accrued to the said plaintiff, accrued to him at Jersey City, within the jurisdiction of the United States Circuit for the District of New Jersey, and not within the jurisdiction of this court, and this he is ready to verify: wherefore he prays judgment, if the court here will take further cognizance of, or sustain the action aforesaid, &c.[1]

G. G., *Attorney for Defendant.*
[*Or*, C. D., *Defendant.*]

Affidavit.

—— *District of* ——.

C. D., the above-named defendant, being duly sworn, says, that the above plea is true in substance, and matter of fact.

C. D.

Sworn to before me this day of , 187 .

Replication to the Foregoing Plea.

[*Title of the cause, as in Form No.* 1.]

And the said plaintiff says that the court here ought to take further cognizance of, and sustain his action aforesaid against the said defendant, because the said plaintiff says that the cause of action aforesaid did arise within the jurisdiction of this court now here, to wit: at [*name the place*], as he hath above in declaring alleged; and this he prays may be inquired of by the country, and the said defendant doth the like, &c.

M. H., *Attorney for Plaintiff.*

[1] When both parties are citizens of the same State, and the action is brought for vindication of a common-law right to the use of a trade-mark, this plea is available. But if the action is brought under the provisions of the Trade-mark Act of July 8, 1870, the subject-matter gives jurisdiction, as in a patent or copyright case.

NOTICE OF MOTION FOR LEAVE TO AMEND.

[*Title of the cause, as in Form No.* 1.]

Sir,— Please to take notice that on the affidavit, with a copy whereof you are herewith served, a motion will be made before the Circuit Court of the United States for the District of , before one of the judges of the said court, on the day of , 187 , at o'clock in the noon, or as soon thereafter as counsel can be heard, that the plaintiff [*or defendant*] in this cause have leave to amend the declaration [*or other pleading*] filed herein, by inserting [*or striking out, or substituting, as the case may be, specifying the amendment proposed*], on such terms as the said court may direct.

Dated , 187 . Yours, &c.,

M. H., *Attorney for*, &c.

To N. O. P., Esq., Attorney for, &c.

No. 4.— COMPLAINT AT COMMON LAW IN STATE COURTS.

By and against Partners.

A. B. and C. D., *Plaintiffs*,
against
E. F. and G. H., *Defendants*.

The plaintiffs, A. B. and C. D., partners, doing business under the firm-name of A. B. & Co., complain of E. F. and G. H., doing business under the firm-name of F. & H., and allege:—

That the said plaintiffs, before and at the time of the committing of the grievances by the said E. F. and G. H., as partners aforesaid, as hereinafter mentioned, did manufacture, vend, and sell, and continue to manufacture, vend, and sell, divers large quantities of lead-pencils for the use of artists and others, which said lead-pencils were each stamped in gold with a device representing a spread eagle with a star over its head, and the letters "A. B." underneath the said eagle, which said device when so applied constituted the exclusive trade-mark of the said plaintiffs, to indicate to purchasers and the public that the said lead-pencils were the product and merchandise of the said plaintiffs, and the said lead-pencils when offered for sale in large quantities were done up in packages of dozens from one dozen up to

twelve dozen in each package, and each package thereof was wrapped in paper having thereon a label with a deep-blue ground upon which was stamped in gold the trade-mark before described, and the said label also contained a printed notice reading as follows: "Genuine STAR AND EAGLE lead-pencils, manufactured and sold by A. B. & Co., GRAPHITE BLOCK, JERSEY CITY, N. J. *None Genuine without our Trade-mark.*" And the said plaintiffs do further allege that, before and at the time mentioned, they had gained and acquired great fame and reputation with the public, on account of the excellent quality of the said lead-pencils so manufactured and sold by them; yet the said defendants, well knowing the premises, but wickedly and wrongfully, subtly and unjustly, intending to injure and defraud the said plaintiffs in the sale of the lead-pencils so manufactured by them, and to deprive them of the just gains and profits which they the said plaintiffs would otherwise have made in vending and selling the said lead-pencils, on the day of , and at divers other days and times between that day and the day of the commencement of this suit, at the city of New York, and divers other places, did wrongfully, knowingly, injuriously, deceitfully, and fraudulently, against the will and without the license or consent of the said plaintiffs, manufacture, and cause to be manufactured, divers, to wit, one thousand dozen of lead-pencils, in imitation of the lead-pencils manufactured and sold, or offered for sale by the said plaintiffs as aforesaid, and did stamp, or cause to be stamped, each one of the said lead-pencils manufactured by the said defendants with a mark similar in appearance to that before described as used by the plaintiffs, and to which they then had and still have an exclusive right of use, and did pack or caused the same to be packed in the same manner, and to be wrapped in paper bearing a label of the same color as that of the said plaintiffs, upon which was stamped, in silver, a device very similar to that used by the plaintiffs as their exclusive trade-mark as aforesaid, which said label contained a notice having the same general effect as that of the plaintiffs, and reading thus: "The Best STAR and EAGLE lead-pencils, made expressly for F. & H. at GRANITE BLOCK, Jersey City, N. J. — None Genuine without our House-mark," in order to denote that said spurious lead-pencils were the genuine manufacture of the plaintiffs; and the said defendants did knowingly, wrongfully, injuriously, deceitfully, and fraudulently vend and sell, for their own lucre and gain, the said last-mentioned lead-pencils, as and for lead-pencils manufactured and sold by the said plaintiffs, whereas in truth and in fact the said

plaintiffs had never been the manufacturers or vendors thereof, or any part thereof; by reason of which said premises the said plaintiffs have been fraudulently injured and deprived of great advantage which they would otherwise have derived from the sale of lead-pencils so manufactured and marked by them, and have sustained actual damage to the amount of one thousand dollars, and have been otherwise greatly injured in the selling and vending of the said lead-pencils to the further amount of five thousand dollars and therefore the plaintiffs bring this suit.

MERWIN HALLIBOW,
Attorney for Plaintiffs.

No. 5.—BILL IN EQUITY.

CIRCUIT COURT OF THE UNITED STATES,
For the District of .

To the Judges of the Circuit Court of the United States for the District of in the Circuit, sitting as a Court of Equity.

A. B. & C. D., of , and citizens of the State of , bring this their bill against E. F., of , and a citizen of the State of . And thereupon your orators, humbly complaining, show unto your honors that they are the assignees and successors in business of & , a firm which was composed of , , and your orators, and which firm was formerly engaged in the manufactory and sale of sewing-machines in ; and for the period of more than five years your orators and their predecessors had been engaged in the manufacture and sale of sewing-machines at the same place; and that during the whole period of time of such manufacture and sale by them they had exclusively used and your orators are now so using, and had, and still have the right so to use, a certain trade-mark for said sewing-machines, which trade-mark was printed on paper of an ultramarine ground on which is represented a view of the Princess Penelope weaving, and the name "Penelope," which is the essential part of said mark, printed thereon; and that no person, firm, or corporation except the said and your orators have had at any time heretofore, and none except your orators now have any right to the use of the said trade-mark or of any trade-mark substantially the same.

They further show to your honors that on the said day of , 18 , being entitled as aforesaid to the exclusive use of said

trade-mark, and desiring to secure to themselves full and lawful protection for the same by due registration thereof in the United States Patent Office, according to law, your orators did deposit in said Patent Office of the United States for registration their trade-mark aforesaid for sewing-machines; and having fully complied with all the requirements of the Act of Congress in such cases made and provided, the trade-mark aforesaid was on the day of , 18 , duly and lawfully registered and recorded in said United States Patent Office, with protection to remain in force for thirty years from said date, all of which, with an accurate copy and description of said trade-mark and the declaration of a member of the firm, on which it was registered, will more fully and at large appear from copies from the Patent Office, duly certified by , Commissioner of Patents, under his seal of office, and herewith filed as part of this bill marked ; and thereupon protection in the exclusive use of the trade-mark aforesaid previously held and enjoyed by your orators was secured to them for the period of thirty years from said day of , 18 .

Your orators, further complaining, respectfully show unto your honors, that since your orators have had the exclusive right to use the said trade-mark, to wit, from the day of to the present time, the said , of , in the State of , has been manufacturing sewing-machines in said city of , and has been unlawfully and without your orators' consent using, in the sale thereof, a trade-mark substantially like, and indeed almost identical with, that of your orators.

To the end, therefore, that your orators may obtain relief in the premises in this honorable court, where alone adequate relief can be afforded, they pray: —

1st. That the said E. F. may be made a defendant to this bill, and compelled to answer each and every allegation thereof, on oath, as fully and to the same extent as if he were directly interrogated as to each allegation.

2d. That he may be compelled to render before a commissioner of this court a full, true, and perfect account of all profits of every description which he has made, or might have made, by the use of the simulated trade-mark aforesaid, or by the use of any other trade-mark for sewing-machines having thereon as a constituent part thereof the word "Penelope," or a representation of the Princess Penelope weaving, or any trade-mark having such near resemblance to that of your orators, as aforesaid, as might be calculated to deceive; and that he, the said E. F., be decreed to pay over to them all such profits.

3d. That the said commissioner be required to ascertain and report to this court, also, what loss and damage has been inflicted upon your orators by reason of the infringement of their rights, and the interference aforesaid with the right of exclusive use of the trade-mark first-mentioned; and that the said E. F. be also decreed to pay to them such damages.

4th. And may it please your honors, the premises considered, to grant unto your orators a restraining order against the said defendant enjoining and restraining him, his clerks, attorneys, agents, and servants from using the simulated trade-mark aforesaid, or any other trade-mark containing the word "Penelope," or being substantially the same with that of your orators.

5th. And that your orators may obtain the injunction and relief prayed for, and all such other and further relief as the nature of their case may require, may it please your honors to award against the said E. F. a writ of subpœna, &c.

C. D. [*for the firm.*]

KELLER & WATSON,
Counsel for Complainants.

United States of America, }
District of . } ss.

At the city of , in the county of , and district aforesaid, this 3d day of , 187 , personally appeared before me, ——, U. S. Commissioner for said district, the above-named C. D., and made oath that the facts set forth in the foregoing bill, so far as they purport to be stated as of his own knowledge, are true; and so far as they purport to be stated on information and belief, he believes to be true.

Given under my hand this day of , 187 .

——,

[L. S.] *U. S. Commissioner for District of .*

No. 6. — ORDER TO SHOW CAUSE WHY INJUNCTION SHOULD NOT ISSUE.

In the Circuit Court of the United States for the District of at .

At Chambers in Vacation. and , citizens and inhabitants of the State of , and partners under the firm and style of & *versus* , a citizen and inhabitant of the city of in the State of .

This day came the complainants by and their counsel, and presented to me, , Judge of the Circuit Court of the United States for the District of , at my chambers, in vacation, their bill of complaint against the defendant ; and the same, with the affidavit of thereto annexed and the exhibits filed, being read and duly considered, on motion of said complainants by their counsel aforesaid, it is ordered, that the defendant do, on the of the special term of the Circuit Court of the United States for the District of at , to be held on the day of , appear before said court and show cause, if any he have to show, why an injunction should not issue against him, and accounts be ordered, according to the prayer of said bill; such course to be shown on said bill on affidavit, provided copies thereof be served on said defendant, with a copy of this order, on or before , the day of .

—— ——,
Judge, &c.

No. 7. — Answer to the Foregoing Bill.

[*Title of court and caption.*]

The answer of E. F., defendant, to the bill of complaint of A. B. and C. D., complainants.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer to, this defendant answering saith: — (1.) That he has been informed and admits it to be true that, upon application by the complainants, registration was granted by the Patent Office of the United States on the day of , 18 , as in said bill alleged, of an alleged trade-mark as described in the said bill of complaint; and this defendant says that he does not know and is not informed, save by said bill of complaint, whether or not the said complainants did properly make application for said registration of trade-mark, and did comply with all the requirements of law, and did have the said certificate of registration issued to them in due form of law. He leaves the complainants to make such proof thereof as they shall be advised is material. (2.) And this defendant, on information and belief, de-

nies that by virtue of any such registration of the said trade-mark in said bill mentioned, or otherwise, the said complainants became, or ever were, or either of them ever was, possessed of any exclusive right to use the said alleged trade-mark in the said certificate of registration and bill of complaint described, if indeed the trade-mark and label used by this defendant is in any wise to be regarded as the same, either in substance or effect with the said trade-mark claimed by the complainants.

[&c. &c. &c.]

No. 8. — Decree for Injunction.[1]

[*Title of cause, &c.*]

[*Then follows the usual recital of all essential preliminary matters, as in ordinary cases of injunction.*]

It is ordered, adjudged, and decreed, and this court, by virtue of the power therein vested, doth order, adjudge, and decree, that the defendants, Calvin Flint Spear and George B. Ripley, and each of them, and their, and each of their attorneys, servants, and agents be, and they are hereby perpetually enjoined and restrained from making, devising, or causing to be made or devised, purchasing or procuring, any marks, stamps, labels, or tickets, described in the complaint in this action, as in use by the defendants, upon tickings possessed and sold by them, and that they be in like manner enjoined and restrained from using the said marks, stamps, labels, or tickets upon any tickings whatever in their possession, or under their control, or offered or kept for sale by them, or on their account, or for their benefit. And that they be in like manner enjoined and restrained from selling, keeping, or offering for sale any tickings bearing thereon any such stamp, mark, label, or ticket. And that they be in like manner enjoined and restrained from making, devising, or causing to be made or devised, purchasing or procuring, or in any way or manner using for or upon any tickings whatever any stamp, mark, label, or ticket similar to the said stamp, mark, label, or ticket of the plaintiffs, or having thereon the letters A C A, or being in any manner an imitation, whether in whole or in part, of the said stamp, mark, label, or ticket of the plaintiffs. And that they be in like manner enjoined and restrained from selling, keeping, or offering for sale any tickings as the real

[1] This is taken from the decree of Duer, J., in case of Amoskeag Manuf. Co. *v.* Spear, 2 Sand. S. C. 599 ("A C A" is the essence of the mark).

A C A tickings, which are not so, and for that purpose, from resorting to any device, deceit, fraud, or misrepresentation whatever, by the use of any stamp, mark, label, or ticket, or otherwise. And that they be in like manner enjoined and restrained from in any manner using the letters A C A on goods, or on the wrappers or covering thereof.

[The foregoing forms of pleadings, &c., are not intended to furnish models for all the machinery of legal and equitable procedure. It must be obvious to even the specialist in trade-mark litigation that these forms merely supplement ordinary books of practice. He must have recourse to the latter in the majority of cases.]

TABLE OF CASES

REGISTERED AS TRADE-MARKS,

UNDER THE ACT OF CONGRESS OF JULY 8, 1870.

THESE matters should not be implicitly relied on as precedents; for while it is true that the greater number of the cases are valid in law, having all the essential characteristics of lawful trade-marks, as laid down in § 143 of this book, many of the remainder are fatally-defective, while not a few are extremely dubious.

It would be invidious to annotate each case, and thus possibly injure the claimant thereof by indicating its indefensible features. Each reader must scrutinize for himself. It cannot fail to be observed, that the majority of worthless, self-styled trade-marks were registered within the first few months after the passage of the statute. It took time, study, toil, on the part of the Office, to learn and apply the principles of the law appertaining to this rather novel branch of jurisprudence, each day bringing fresh verifications of the truth that there is no royal road to knowledge. Courts have erred, as well as have practitioners. For some time the Office, in the discharge of ministerial functions, was satisfied with the statement sworn to by the applicant, and registered on the faith thereof; but by-and-by the fact dawned upon the mind that an examination of a judicial nature was required by the Act. Thenceforth all applications were rejected which did not at least make out a *primâ facie* exclusive right to the symbol claimed, and which would not probably endure the test of litigation. It must be apparent to any one who will run an eye down the following list, that some words or devices filed cannot possibly be recognized as symbols of manufacture or commerce. Several heads have already fallen into the basket at the hands of

the executioner of the law. Many other defective marks may be recast, and put into legal form by a proceeding in the nature of re-issue. Mere registration does not create a trade-mark. The law will not recognize nor protect any but legitimate offspring. The spurious children must be cast out.

For full descriptions, inquirers are referred to the specifications and fac-similes, copies of which may be obtained from the Patent Office by any person upon payment of twenty-five cents each. The descriptions in this table must necessarily be very brief. The object has been to give only the essential word or other symbol. When a reader looks at the *class* column, he can then, by looking at the description, learn whether it is worth his while to send to the Patent Office for a printed specification and a copy of the mark.

In many of the earlier cases, the specifications referred to drawings thereto annexed, but did not describe the marks. In such cases, it is sometimes difficult to determine what is the essential symbol.

This list is brought down to the latest day of registration before going to press. (*See* ADDENDUM.)

Registrants.	Brief Description.	Class.	No.
Abendroth Bros. . . .	"Cotton Plant," &c.	Ranges & stoves	306
do. do.[1] . .	"Sunny South," &c.	do. do.	307
Adams, Blake, & Taylor	"G.O.Blake's Bourbon Co., Ky.," &c.	Whiskey . . .	703
do. do. do.	Apple-tree, and words "Apple-Tree"	Gin	712
Adams & Fay[2] . . .	"Young America," &c.	Writing-ink . .	912
do. do.	"J. Dessauer's Inks," and shield .	do. . .	921
do. do.	"Black Swan," &c.	do. . .	922
Adams, G. S. . . .	Headless bull, ox-yoke, &c. . . .	Mustard & spices	790
Adams, John W. . .	Boot upside-down, with horn-blower, and words "Mammoth Shoe" .	Boots and shoes	600
Adams & Taylor . .	Device, "Honeysuckle, Schiedam," &c.	Gin . . .	658
do. do. . . .	"Daniel Boone, Paris, Ky.," &c. .	Whiskey . . .	659
do. do. . . .	Phœnix, and letters "A. T.," &c. .	Gin	691
do. do.[3] . . .	"Kentucky Pioneer," and picture .	Whiskey . . .	692
do. do. . . .	Within two rings, "Mayflower," &c.	Gin	693
Adams & Young . . .	"Lee's Liniment"	Liniment . . .	446
Adriance, Platt, & Co..	Word "Buckeye"	Mowing mach'y	1075
Aikin, Lambert, & Co.	A lozenge, with the initials "A. L. & Co.," between two *fleurs-de-lis*	Watches and jewelry . .	472
Allen, Shapleigh, & Co.	"Crown Teas," with figure of crown	Teas	527
Althof, Bergmann, & Co.	Trotting-horse, harnessed in a hoop, &c.	Toys . . .	799
Altwell, Jr., James . .	Letters "C K C"	Knitting cotton	660
do. do. do. . .	Female sitting in chair knitting stocking, surmounted by words "Cabinet Knitting Cotton" . .	do. do. .	661

[1] See § 273, *ante*.

[2] See § 218, *ante*.

[3] See § 193, *ante*.

Registrants.	Brief Description.	Class.	No.
Altwell, Jr., James . .	"Improved Cabinet C. W. C." . .	Welting-cord .	662
American Club Fish Co.	"The American Club," with hieroglyph of fish	Preserved fish .	285
American Graphite Co.	Elaborate design, figure of globe, ship, locomotive, &c.	Plumbago or graphite lubricant .	737
do. do.	Circle, within which "Plumbago Railway-Grease"	Plumbago grease	197
Amer. Standard Tool Co.	"A. S. T. Co.—Hero"	Pistols	318
American Sterling Co.	"American Sterling"	Am. sterl'g metal	694
American Tube Works	Eagle, shield, &c.	Seamless metal tubes . . .	17
Amoskeag Manuf. Co.[1]	Letters "A C A"	Tickings & cottons	713
Anderson & Co., S. H.	"Premium Loaf," with designs of barrel, &c.	Flour	290
Appleby & Helme[2] . .	Landscape, train of cars, &c. . .	Snuff	61
Armistead, Louis Lee .	Bull's head, with words "The Durham Smoking Tobacco" . . .	Tobacco . . .	231
do. do.[3]	"Deer Tongue," and deer . . .	Smoking-tobacco	512
Ashcroft, John . . .	Coffee-pot, and words "The Mocha Steam Coffee-Pot"	Coffee-pot . .	608
do. do. . . .	Chain, star, anchor, &c. . . .	Coffee	553
Atchison & Bro. . .	"Atchison's Sure Cure for Cholera," &c.	Cholera medicine	447
Atlantic White Lead Co.	"Atlantic," and a circle formed of words.	White lead .	71
do. do. do.	Letters "A. W. L. Co.," &c. . . .	Refined boiled linseed-oil .	72
Atmore & Son . . .	"Atmore's Mince-Meat"	Mince-meat . .	436
Averill Chem. Paint Co.	A rock, with the word "Chemistry" upon it, &c.; eagle, bearing ribbon, with words "Economical, Beautiful, Durable," &c. .	Liquid paint . .	1
do. do. do.	Mixed device, with words "Mixed, ready for use"	Paint	128
do. do. do.	Ornamental design, and "Liquid Chemical Paint"	Liq. chem. paint	129
do. do. do.[4]	"Chemical Paint"	Chemical paint .	130
do. do. do.	"Chemically-prepared Paint" . .	Paint	384
do. do. do.	"Averill Chemical Paint" . . .	Chemical paint .	143
do. do. do.	Eagle on a rock, holding in its beak a paint-pot and brush, city, lettering, &c.	Paint	224
Ayers, Francis H. . .	Arms of Louisiana, and words "Dr. F. H. Ayers' Celebrated Vinegar Bitters"	Medicine . . .	901
Babcock & Co., J. P. .	Word "Irish"	Soap	667
Backman & Wilson . .	Border within which copy of Landseer's painting called "Monarch of the Glen," firm-name, individual names, name of brand, "Challenge Brand," &c. . . .	Sugar-cur'd hams	1066

[1] See §§ 153–156, *ante*.
[2] Not described in specification.
[3] See § 273, *ante*.
[4] See § 251, *ante*.

Registrants.	Brief Description.	Class.	No.
Backus & Co., F. M.[1] .	"Water White Oil"	Refined petroleum	640
Backus, Frederick M. .	"Fire Engine Oil"	Lubricating-oil .	266
Badger, Benjamin F. .	"Souvenir"	Razor-strops . .	96
Badger, Benj. F. . .	Oval figure, containing the word "Badger"	Razor-strop . .	944
Baeder, Adamson, & Co.	Diamond, containing descriptive words.	Glue . . .	175
do. do. do.	A figure of a crescent	Emery . . .	890
Baker & Bro., H. J.[2] .	"Crystal"	Castor-oil . . .	373
do. do. do. . .	"A. A."	do. . .	374
Baker & Bullock . .	Two horns, with quadrangular block	Soap	473
Baker, Carr, & Co. . .	"The Concord Hame, B. C. & Co."	Hames . . .	811
Baker, Francis . . .	Bee, and word "Mills"	Salt	372
Baker, Seth W. . . .	Horse covered with blanket, and the words "Baker's Patent Evaporating Horse-Blankets"	Horse-blankets .	791
Balch & Co., A. W.[3] .	"Rip Van Winkle Copper Distilled Whiskey"	Whiskey . . .	601
do. do. do. . .	Words "Antiquity Whiskey" . .	do. . . .	602
do. do. do. . .	Shield, containing a crescent . .	Wines & liquors	852
do. do. do. . .	Hexagon, with letters "A. W. B. & Co.," and words "Crystal Glen."	Whiskey . .	586
do. do. do. . .	"A. W. B. & Co.," and word "Pyramid."	do. . .	587
do. do. do. . .	"Thirty-three Stars," and cuts of stars.	Gin . . .	588
do. do. do. . .	"Santa Claus Schiedam," and picture.	do. . . .	589
do. do. do. . .	Outline of a bell	Wine	590
Baldwin, Oran S. . .	"Baldwin, the Clothier"	Clothing . . .	351
Baldwin, Prentice, & Waller	Wings, & words "The Winged Hat"	Hats	182
Baldy & Co., J. B. . .	Four designs: locomotive, female, cage, and coach, &c.	Mustard . . .	2
Barclay, George C. . .	"Tricopherous"	Preparation for the hair . .	267
Barkhouse Bros. & Co.[4]	"Barkhouse Brothers & Company," and cut of horse, and words "Gold Dust," &c.	Whiskey . . .	626
Barksdale, Ford S. . .	"Our Society"	Newspaper . .	424
Barnes, Demas . . .	"Hagan's Magnolia Balm," and magnolia blossom	Balm	232
do. do. . . .	"Mexican Mustang Liniment," &c.	Liniment . . .	233
do. do. . . .	"Lyon's Magnetic Powder," &c. .	Insect-powder .	234
do. do. . . .	"Lyon's Kathairon for the Hair".	Preparation for the hair . .	235
Barnes, Wallace . .	Figure of patent level-tempered clock-spring	Clock-springs .	474
Bartlett & Butman . .	"Common Sense"	Trusses . . .	933
Bartlett & Co., H. A. .	"Crumbs of Comfort"	Stove blacking .	18
Bartlett, Robbins, & Co.	"Baltimore Kitchener," & two stars	Kitchen-ranges .	513
Batcheller Manuf. Co. .	Maltese cross, & words "Gold Cross."	Agricult.-forks .	131
Bates, Benjamin . . .	Ring, stripe, or band, with signature	Beer	176

[1] See § 274, *ante*.
[2] See § 274, *ante*.
[3] See § 218, *ante*.
[4] See § 273, *ante*.

Registrants.	Brief Description.	Class.	No.
Bates, Benjamin . . .	Ring, stripe, or band, of diverse colors.	Beer . . .	268
do. do. . . .	"National"	Tonic beer . .	1010
Baxter, James P. . .	Three yellow tablets, &c.—elaborate	Sugar corn . .	375
Bayles, James A. . .	"Bayles' Improved Tree Digger"	Nursery trees, &c.	869
Bay State Iron Co.[1] . .	Photograph of pig-iron, with words "Port Henry"	Pig-iron . . .	874
do. do. . .	"Bay State," and photographs of rolled plates	Plate metal . .	875
Beardsley Scythe Co. .	"Harvest Victor"	Scythes . . .	843
Benson, Charles W. .	"Catalina"	Wine tonic . .	945
Beresford & Co., R. .	*Cancelled*	. . . . .	765
do. do. .	Word "Peerless" on device . . .	Sugar-cured hams, &c.	1082
do. do. .	Figure of woman, eagle flying, &c.	do. do.	1083
Bergen & Bainbridge[2]	"Dolly Varden," with designs . .	Card-stock, wedding & visiting papers, &c. .	833
Bernecker, John L. . .	Spread eagle, with letters "L" and "B" and "&"	Whiskey . . .	207
Bickford, E. F. . . .	"Bickford Reinforced Overshoe," &c.	Overshoes . .	844
Biddle Hardware Co.[3]	"Wisconsin Wood-Chopper" . .	Axes	923
Bidwell, John C. . .	"J. C. Bidwell, Pittsburg Plow-Works," &c.	Plows, &c. . .	155
Billings, Henry M. . .	Ring and bar, with words "Tarrant's Seltzer Aperient" . . .	Medicine . . .	387
Bishop & Co., R. M. .	"Royal Olive Soap"	Soap	977
Bishop, George Riker .	"Yuh-heh"	Mineral water .	495
Bishop, William A. . .	Monogram, with letters "W. A. B."	Medicine . . .	545
Bissell & Moore Manufacturing Co. . . .	"The Electric"	Saws	341
Black Diam. Cement Co.	Picture of black diamond, and words "Black Diamond Cement Co."	Cement . . .	861
Blackwell, W. T. . .	Durham bull, and "Genuine Durham Smoking Tobacco" . . .	Smoking-tobacco	122
Blackwell, William T.[4]	"Durham Smoking Tobacco" . .	do.	454
Blanchard's Sons, Porter[5]	"The Blanchard Churn" . . .	Churns . . .	254
Blatchley, Charles G. .	"B," enclosed within a circle . .	Pumps	198
Bliss, Keene, & Co. . .	Bird with serpent in beak. . . .	Cundurango . .	514
do. do. do. . .	Bird holding serpent in beak, and words "Bliss, Keene, & Co., Cundurango"	do. . .	515
Block & Co., H. . . .	Dove with olive-branch in mouth, &c.	Whiskey . . .	112
Blume & Co.	Eagle, between the letters "B" and "C"	Chiccory . . .	177
Bock, Genin, & Co. . .	"Paragon Wax Match"	Matches . . .	352
Boetticher, Kellogg, & Co.[6]	"I X L"	Chopping-axe .	83
Borgner, H. C. . . .	"I S, Everybody's Favorite, Indigo-Soap"	Indigo-soap . .	776

[1] See § 193, *ante*.
[2] See § 218, *ante*.
[3] See § 193, *ante*.
[4] See "Durham" case, chapter on Interferences.
[5] See §§ 377–379, *ante*.
[6] See §§ 68–70, 450, *ante*.

Registrants.	Brief Description.	Class.	No.
Boston Lead Co. . . .	"Boston Lead Company," and star and seal	Lead for painters' use	714
Bostwick & Tilford [1] .	"Daylight, B. & T."	Illuminating oils	376
do. do. [1] .	"Gaslight, B. & T."	do. do.	377
Bourke & Co., F. G. .	"The New York Copper or Metallic Paint"	Metallic paint .	255
Bourne, George . . .	Diamond, containing the letter "A," &c.	Fertilizer . . .	169
Bouton, Whitehead, & Co.	"Western Star," with 5-pointed star	Pitch-forks . .	591
do. do. do.	Jones' Plow, with star between words	Plows	627
Bowen, Hunt, & Winslow	Representation of American eagle, with spread wings	Black alpaca dress-goods .	66
Boyce & McKenzie . .	Picture of a tree, with words "Dr. Pettis' Australian Blood-Purifier"	Medicine . . .	1048
Boynton, E. M. . . .	Patent lightning saw, &c., and words "*Il tempo passa*"	Saws	636
Brady & Co., D. C. .	Figure of mortar & pestle, with words "Brady's Kentucky Whisky," and "Pharmaceutic"	Whiskey . . .	704
Brainerd, Armstrong, & Co.	Man holding a spool of silk, and words "Best in the World" .	Sewing silk and machine twist	1000
Branson, Ellis . . .	An oval, with word "Kohinoor" .	Retail coal . .	3
Brayley, James . . .	A belt, with buffalo's head, &c. . .	Thrash. machines	216
do. do. . . .	"The Buffalo Pitts Thresher" . .	do. do.	308
Bridgeford & Co. . .	Name "American," and letter "A"	Cooking and other stoves . . .	592
Briggs & Bro. . . .	Octagonal figure, with words "Put up by Briggs & Bro., Rochester, N. Y."	Seeds	442
do. do. . . .	"Choice Collection, Briggs & Bro., seedsmen and florists, Rochester, N. Y."	do.	443
Bristol Brass & Clock Co.	"Crystal"	Lamp-burners .	1001
Brodhurst, Kelita [2] . .	"Daniel"	Bridle-bits and stirrups . .	946
Brooklyn White Lead Co.	View of Company's factory, with words "Baltic," "White Lead," "Ground in Refined Oil," "Pure," &c.	White-lead . .	53
do. do. do.	View, enclosed in a semicircle, of Co.'s factory, with words, "Refined," "White Lead," &c. . .	do. . .	54
do. do. do.	View, with words "Manufactured from pure metallic lead, ground in pure linseed-oil," &c. . . .	do. . .	55

[1] See § 274, *ante*.

[2] See § 349, *ante*.

Registrants.	Brief Description.	Class.	No.
Brown Chem. Co., C. F.	Words "Young American" . . .	Liniment . . .	800
Brown & Co., B. F. . .	"Army and Navy Blacking," and two stars	Blacking & leather dressing . .	403
do. do. . .	"Cirage Français," &c.	do. do. .	404
do. do. . .	"Brown's Satin Polish," &c. . .	do. do. .	405
Brown & Co., D. A. .	"Concord, N. H., Use"	Wagon-axles .	97
Brown & Co., S. N. .	"The Trade Wagon"	Wagons . . .	528
Brown, Frederick . .	Fac-simile of signature, and word "Genuine"	Essence of Jamaica ginger . . .	715
Brown & Sons, John I.	"Brown's Bronchial Troches" . .	Bronchial troches	475
Brown, W. A. & F. R.	"Log-Cabin," and design of cottage	Tobacco . . .	467
Buchan & Co., James[1]	"Diamond Soap"	Soap	924
Bucher, Gibbs, & Co. .	"Gibbs' Imperial Trade-Mark" .	Plows	217
Buffalo Magic Polish. Co.	Representation of a lady in the act of polishing a vase	Polishing preparation . . .	13
Bullucke, John . . .	"Warranted all pure Linen and grass bleach," decorations, &c.	Linen goods and fabrics . .	327
Bullymore, Richard .	Picture of fat hog, letter "B," and words "Full Weight" . . .	Lard	876
Butcher & Butcher . .	Name "W. Goodlad," and device of an anchor	Files	777
do. do. . .	Letter "B" enclosed in a ring, with arrow and Maltese cross . . .	Files, edge-tools, &c.	778
Butcher & Co., William	"W. Butcher," with cut of anchor	Cast-steel and castings . .	573
Butler, Earhart, & Co.	Can labelled "Butler, Earhart, & Co.'s Genuine"	Essence of coffee	425
do. do. do.	"Buckeye Mills" and "Sprig" .	Coffees, spices, &c.	455
Butler & Haynes . .	"Improved Cement Oil, 1870," in a circle	Composition oil	148
Cable Flax Mills . .	Words "Cable Flax Mills," encircled with a cable	Twines, yarns, &c.	792
Cahn, Belt, & Co. . .	Arms of Baltimore, casks, and monogram "C. B. & Co."	Whiskey . . .	947
do. do. . .	Seal, with clover-leaf, and term "Maryland Club"	do. . . .	948
Calhoun, Robbins, & Co.	"Japan Machine Twist," with vignette	Sewing-silk and twist . . .	738
Callaghan & Brother .	"Farmers and Mechanics" . . .	Cassimeres . .	222
Cameron & Co., R. W.	"Cameron's Triumph"	Twist-tobacco .	291
do. do. do.	"Diamond," with picture of a diamond	Kerosene . . .	292
Canfield, William M. .	Arms of N.Y. State, in circle; words "Empire Packing," &c. . . .	Steam & hydraulic packing . .	360

[1] See § 273, *ante*.

Registrants.	Brief Description.	Class.	No
Cape Ann Isinglass and Glue Co.	Eagle's wings, and name	Isinglass	1076
Capel & Roebuck	"Bone's Old Bourbon"	Whiskey	370
do. do.	"Boyd's Old Kentucky Bourbon"	do.	371
Carew, Andrew T.	"The American Club," and fish	Fish	476
Carroll, John W.[1]	Bust of Prince of Prussia, "Our Fritz," &c.	Smoking-tobacco	156
do. do.[1]	Horse, with words "The Celebrated Brown Dick"	do.	157
do. do.	Bust of a man, and "The Celebrated Lone Jack"	do.	158
Carson & Le A. & W.	"Lemon's Superior Sparkling," &c.	Ginger-ale, &c.	159
Carter Brothers & Co.	"Carter's Mucilage"	Mucilage	546
do. do. do.	"Carter's Ink"	Ink	388
Cassidy, John E.	"Pure Old Neptune Whiskey"	Whiskey	1002
Castle Brothers	Turreted castle, with shield-shaped border	Teas	812
Cazade & Crooks	"Otard, Dupuy, & Co., Cognac," &c.	Liquors	739
do. do.	Belt and crown, and words "Otard, Dupuy, & Co."	Brandy-bot. caps	993
Chamberlain, W. D.	Anchor, arrow, crosier, &c., in double circle	Medicine	913
Charleston (S. C.) Mining and Manuf. Co.	"Goodrich Bone-Phosphate"	Fertilizer	293
Chase & Co.	American buffalo, with inscription, "1.4. lb. nett, Chase & Co.'s Pure Ground Pepper"	Coffee, spices, &c.	891
Chaurant & Co., H.	Star, crescent, &c.	Confectionery	1077
Cherrington, Robert E.	Monogram, "P. S. P.," and word "Graphite"	Stove-polish	227
Chevalier & Co., F.	"Castle," &c.	Whiskey	1049
Chicago Attrition Pulverizing Co.	"Attrition Flour," and representation of a shield	Attrition flour	884
Chicago Manuf. Co.	Word "Tubular"	Lanterns	722
Chiles, Edward	"Chiles' Tonic Elixir"	Medicine	574
Chipman, George W.	"Anti-Moth Carpet-Linings"	Carpet-linings	294
Clark, George	"Rubigo Whiskey"	Whiskey	1034
Clark, Giles O.	Picture of foot and ankle, with a hand rubbing, star, letters "G. O. C.," &c.	Liniment	950
Clark, James L.	A star, to indicate star matches	Friction matches	1003
Clark, Orion	The constellation Orion, with figure armed with a club, &c.	Hair and face dressings	456
Clark Thread Co.	"O. N. T." "Clark's O. N. T. Spool-Cotton"	Spool-thread	949
do. do.	"O. N. T." arranged within a border	do.	969
Clarke & Schultz	"C. S. United States of North America, Trade-Mark"	Liquors & wines	723

[1] See § 218, *ante*.

Registrants.	Brief Description.	Class.	No.
Claubery, Wilhelm . .	Figure of a soldier on foot . . .	Cutlery & surgical instruments	1004
Clement, Colburn, & Co.	Likeness of Washington, with the name beneath	Men's boots . .	695
do. do. do.	"H. Clay," and likeness of H. Clay	Gentlemen's boots	516
Clemons, Welcome G. .	Monogram, "T. G.," and words "The Taylor Gin"	Cotton-gins . .	1076
Cleveland, Orestes . .	"American Grap' ite Polygrade Pencils," and "Dixon"	Lead-pencils . .	956
do. do. . .	Representation of a crucible . . .	do. . .	957
do. do. . .	The word "Crucible"	do. . .	958
do. do. . .	Letter "S."	do. . .	959
do. do. . .	"S. S."	do. . .	960
do. do. . .	"M."	do. . .	961
do. do. . .	"S. M."	do. . .	962
do. do. . .	"V. H."	do. . .	963
do. do. . .	"V. S."	do. . .	964
do. do. . .	"V. V. H."	do. . .	965
do. do. . .	"American Graphite"	do. . .	966
Clifton, Charles H. . .	Pen, and "C. H. Clifton's Double Pointed Nickel Pen"	Writing-pens .	353
Cloud, Aikin, & Co. .	Design, and "Hungarian Condn. Powders"	Medicine . . .	554
do. do. . .	Letter "R," with serpent coiled upon it	Liniment . . .	779
Coats, J. & P. . . .	Combined arms of Great Britain and United States, with words, "Best six-cord spool thread," &c.	Spool-cotton . .	724
Cochran, McLean, & Co.	Three figures of articles for ladies' wear	Fancy goods for ladies' wear .	1053
Coes & Co., Aury G. .	"The Genuine Coes Screw Wrench"	Screw-wrenches	361
Coffin & Altemus . .	Word "Washington," with or without figure	Calico prints . .	663
do. do. . .	"Ballardvale"	Bleach'd long-cl'th	681
do. do. . .	"Rochdale"	do. do.	682
do. do. . .	"Avondale"	do. do.	705
Cohn & Co., M. . . .	"Novelty Ribbed Front Corset," "Perfect Fitting," "O K size, White"	Corsets . . .	529
Coit, Tracy	"Shadines"	Fish	4
Colburn, Charles H. .	"Colburn Top"	Removable tops for boots . .	766
Cole & Co., H. C. . .	"F. F. F. G."	Flour	256
Coleman, Dudley H. .	"Maid of the South"	Corn and wheat mills . . .	892
Coleman, James S. . .	"Coleman's Compound Extract of Eucalyptus," figure of mariner's compass, &c.	Medicine . . .	1040
Coleman, Walker, & Co.	"C. & W.'s," 3000, 3500, 99, with illustrations	Saddlery h'ware	978

Registrants.	Brief Description.	Class.	No.
Coleman & Co., Lewis	Elaborate design, "shield, lions, crown, eagle," &c.	Spool-cotton	183
Coles & Co., I. U.	Picture of car-truck in a border	Tallow packing for car journals	668
Colgate & Co.[1]	"Cashmere Bouquet"	Soap, toilet preparations, &c.	914
do. do.	Shield, garlands of leaves, and letters "C. & Co."	do. do.	915
Collender, Hugh W.	"Eureka Billiard-Cushion"	Billiard cushions	236
Collins Co.	"Collins & Co., Hartford Cast Cast-Steel"	Plows	523
do. do.	"Cast Cast-Steel"	Edge-tools, &c.	849
do. do.	Letters "C. C. S."	Edge-tools & agricultural ins'ts	850
Colwell, William I.	"Champion"	Muley-saw h'gings	740
Colwells, Shaw, & Willard Manuf. Co.	Representation of the cross-section of a tin-lined lead pipe, with projecting ribs, &c.	Tin-lin'd lead pipe	867
Comstock, Castle, & Co.	"Economy"	Stoves	295
Congress and Empire Spring Co.	"C."	Mineral water	398
Conklin, P. & F. G.	Deer, with head erect and front foot raised, &c.	Gloves	934
Conway & Son, John R.	Sheaf of wheat, &c., words "Upland Distillery," and monogram "J. R. C. & S."	Whiskey	935
Cook & Co., M. R.	Maltese Cross, with star, and letters "G. A. F. C."	do.	741
do. do.	Monogram of "M. R. & Co., within letter C.," &c.	do.	742
do. do.	Monogram, with words "Manhattan Club Whiskey"	do.	743
Cooper, John	"Cooper's Engine & Mill Works"	Machinery	269
Cowpe & Co., W.	"Excelsior," and letters "W. C. & Co."	Lace leather	951
Crichton, Malcolm[2]	"Monticello"	Whiskey	877
do. do.[2]	"Marieland"	do.	925
Crockett, David B.	A boat, with name, and letters "C. C. C."	Compos. coating	160
Crow, William	"Centaur Liniment"	Liniment	926
Crump, Samuel	Star, with words "Bull's Eye"	Labels and cards	457
do. do.	Head of bull, &c., and words "Full Weight"	Labels and show-cards	637
do. do.	"Crump's Label Press," &c.	Labels and show-cards for manufacturers	1011
Culter & Proctor	"Woman's Rights," in either raised or sunk letters	Stoves and stove trimmings	1068

[1] See § 273, *ante*.

[2] See § 193, *ante*.

Registrants.	Brief Description.	Class.	No.
Cummings, T. J. T. .	"Model Baker," and figure of the apparatus	Baking & roasting apparatus	793
Cutter, Tower, & Co. .	Figure of a dove, and word "Dove"	Lead-pencils . .	1005
Dale, Ross, & Co. . .	Picture of a stag erect	Dry goods . .	12
Danforth, George M. .	Open hand over a flame, and letter "D."	Burning-fluid .	113
Danforth, R. F. . . .	Portrait of proprietor, &c., monogram "R. F. D.," &c.	Non-explosive burning-fluid	67
Davis, Curtis	"Peerless"	Soaps	669
do. do.	Word "Domestic"	do.	670
Davis & Co., S. H. . .	"Salt-Sea"	Oysters, fish, &c.	725
Davis, Jr., & Co., S. .	Diamond-shaped figure, containing "S. Davis, Jr.," &c.	Hams, shoulders, tongues, &c.	902
Davis & Son, James .	A displayed banner, with the word "Banner"	Leather . . .	801
Davis & Son, Perry[1] .	"Pain-Killer"	Medicine . . .	416
do. do.	"Bearine"	Pomatum . . .	970
Dawes, Fisk, & Fanning	A star, with other forms, letters, &c.	Umbrellas and parasols . .	84
Dawes & Fanning[2] . .	"140"	Alpaca-finished umbrellas .	644
Dearborn, N. L. . . .	Word "Zincoline"	Paint	632
De Cordova, G. . . .	"Wine of the Allspice"	Wine of allspice	984
Delaney, Virgil . . .	A caduceus or Mercury's rod, and words "Delaney's Vegetable Pain Exterminator"	Medicine . . .	1054
Demarest, James . .	"Hesperidina"	Stomach bitters	257
Deniker & Melville . .	A crown, with monogram of firm-name	Toilet-soap . .	85
do. do. .	"Alpina"	Perfumes,s'ps,&c.	609
Denison, George M. .	Axle-box, with volume of smoke .	Lubricating comp.	506
Des Auges, Robert . .	Two oranges, eagle, name, and signature	Honolulu orange bitters . .	114
Devlin & Co.	Letter "D" upon a shield, with hand grasping branch	Clothing,shirts,&c.	780
Diamond, Jacob . . .	Six-pointed star, with letter "D" .	Spectacles . .	507
Dick, Dundas . . .	"The Dundas Dick Soft Capsules"	Medicine . . .	362
Dill, Joseph	"Dill's Excelsior Marquetry" . .	Marquetry . .	802
Dobbins, Robert . . .	"Dobbins' Healing-Salve," and cut of honey-bee	Salve	184
Dolan, Thomas . . .	"Broadway," &c.	Shawls . . .	1035
Domestic Sewing Machine Co.	"Domestic"	Sewing-machines	414
do. do. do.[3] .	"Domestic"	Sewing-machine attachments	530

[1] See § 273, *ante*.

[2] See title "Numerals."

[3] *Abundans cautela non nocet.*

Registrants.	Brief Description.	Class.	No.
Dorn, Julius	Name, and circle enclosing woodcock	Whiskey . . .	389
Douglas Axe Manuf. Co.	"D. Sharp," &c.	Axes	302
do. do. do.	"W. Hunt," &c.	do.	303
do. do. do.	"A. Cutter," &c.	do.	304
Douglass & Co., Wm. B.	"Lake Superior Vis," and outline of lake	Medicine . . .	893
Doxsee, James H.[1] . .	Fishes crossed to resemble let. "X"	Preserved-fish .	853
Dreydoppel, William .	"Economy"	Soap	555
Dreyfus, Joseph . . .	Star, crescent, branch of oak, & clouds	Stomach bitters	940
Droege & Co., Ignatius	"Excellent"	Stoves	161
Dugdale & Girvin . .	"Magnum Bonum," and "Soluble Phosphate"	Fertilizer . . .	115
do. do. . .	"Excellenza," and "Soluble Ammoniated Superphosphate" . .	do. . . .	116
Dunlap & Co.	Maltese cross, with stag's head on its face	Hats, caps, and straw goods	170
Dunn & Co.[2]	"Everlasting"	Medicine . . .	448
Dunn Edge-tool Co. .	"D. E. T. Co.'s Clipper" . . .	Edge-tools . .	477
do. do. . .	"Fine Cutlery Steel," and firm-name	Scythes . . .	562
do. do. . .	"Damascus Blade," and firm-name	do. . . .	563
Durkee & Co., E. R. .	Representation of a helmet . . .	Spices, groceries, and drugs .	603
do. do. . .	Representation of a tiger's head .	do. do. .	604
do. do. . .	Monogram of "E. R. D. & Co.," within shield	do. do. .	605
do. do. . .	Representation of a gauntlet . . .	do. do. .	606
Dutcher Temple Co. .	The letter "D" and lozenge . . .	Loom-temples .	496
Dyott, M. B.	Repres. of the world and sun, with words "Carbon Gas-Light," &c.	Carbon gas-light oil & burners	706
Eagle Tanning Works	"Eagle Tanning Works," with eagle	Leather . . .	449
Earle, James M. . . .	Bust of American Indian, and words "Massasoit Mills" . .	Coffees, spices, &c.	1055
Edgerly, Hosea B.[3] . .	"Edgerline"	Boots and shoes	610
Elias & Bro., W. W. .	Elliptically-formed lady's locket, with chain	Jewelry . . .	237
Ellis & Co., W. L. . .	Five-pointed star, name, &c. . . .	Oyster packing	5
Elwell, Fiske, & Worth	Man holding umbrella, pump, &c. .	Umbrellas and parasols . .	406
do. do. do.	Diamond, with letters and figures .	do. do. .	407
Empire Mill Co. . . .	Sheaf of wheat, and words "Empire Mill Co.'s"	Flour	1006
English, Lizzie F. . .	A watch-key, & monogram "B.C.E."	Watch-keys . .	1062
English, Richard W.[4] .	Distinguishing feature is "X" . .	Brooms . . .	86
do. do.[4] .	"XXX"	XXX brooms .	87
do. do.[4] .	"XX"	XX do. .	88
Estey & Co., J. . . .	"The Vox Jubilante"	Reed-organs .	486
do. do. . . .	Word "Delecante"	Stop & reed-organs	638

[1] See § 250, *ante*.
[2] See § 273, *ante*.
[3] See § 217, *ante*.
[4] See §§ 162, 163, *ante*.

Registrants.	Brief Description.	Class.	No.
Evans, Clow, Dalzell, & Co.	Crescent, and monogram of letters "T." and "W."	Wrought-iron pipe	6
Evans, Lippincott, & Cunningham	"Banner Hams," and American shield with stars, &c.	Hams	894
Evans, Thomas R.	"Evans' American Gaiter"	Gaiters	426
Excelsior Needle Co.	"Excelsior"	Sewing-machine needles	1056
Faber, Eberhard[1]	"Star Pencils," in fancy frame	Lead-pencils	19
do. do.	"A. W. Faber"	do.	117
Faber, John	"*Quis quis fortuna sua Faber*," &c.	Drugs & medicines	971
Falk & Bro., G.	"Curls"	Cigars	952
Falls City Cement Co.	Anchor, with words "Falls City Cement Co."	Cement	862
Farber, McPike, & Co.	A crown, name and address of firm, and brand	Flour	895
Farr, Asa	"Southerner"	Pistols	1036
Farrington, Campbell, & Co.	"Detroit Mills Gold-Dust Mustard"	Mustard	936
Fechheimer & Workum	"Beech Grove Distillery," a triangle enclosing the letters "F. & W."	Whiskey	1012
Fegan, Peter	"Arlington," pictorial design, &c.	Rye whiskey	1057
Fenno & Co., Isaac	Monogram of "F. C. M. Co.," and drawing of machine	Cloth cut'g mach's	995
Filley, Giles F.[2]	"Charter Oak"	Cooking-stoves	328
Fink, H. G. G.	"Fink's Magic Oil," with cut of bottle	Medicine	611
Finkle & Lyon Manuf. Co.	Female clad in mail, with shield, on which are the words "Victor Sewing-Machine"	Sewing-machines	631
Fish & Son, G. H.	"Saratoga Aperient"	Med. preparation	1013
Fisk, Clark, & Flagg	"The Belfort Brace"	Gents' furn'g g'ds	270
do. do. do.	"Cheviot Shirts"	do. do.	271
do. do. do.	Lion passant, and words "*Cura et industria*"	Furnishing goods	118
do. do. do.	"Cheviot Shirtings"	Cheviot shirtings	249
do. do. do.	"The Argyll Brace"	Gents' furn'g g'ds	296
do. do. do.	"The Hampton Brace"	do. do.	297
do. do. do.[3]	"The Samson Brace"	Suspenders	744
Fitch & Son, S. S.	"The Queen's Toilet," and monogram of "M. I."	Toilet preparation	726
Fleischmann & Co.	Sheaf of grain, & generally firm-name	Yeast	821
Fleming, Cochran	Fac-simile of signatures "Fleming Bros." and "C. McLane"	Medicine	756
do. do.	Raised seal & "McLane's Liver Pill"	do.	757
do. do.	Fac-simile of signatures "C. McLane" and "Fleming Bros."	do.	758
Flint & Co.	Figure of a Quaker, &c., and "Jacob Warren"	Root & herb bitters	98

[1] Not described in specification.

[2] Filley *v.* Fassett, 44 Mo. 173.

[3] See § 273, *ante*.

Registrants.	Brief Description.	Class.	No.
Flint & Co., H. S. . .	"Dr. H. S. Flint's Shaker Bitters," with figures	Bitters	845
do. do. . .	"Dr. H. S. Flint & Co.'s Celebrated Quaker Choice Root and Herb Bitters," and figure of Quaker	do.	846
Foote, Arthur W. . .	Figure of a man astride the globe, and words "Uncle Sam" . .	Tobacco . . .	20
Forest-City Varnish, Oil, and Naphtha Co. .	Figure of a crown, & word "Crown"	Varnish, oil, and naphtha . .	727
Forest-River Lead Co. .	Barrel, on which are fig's "1840," &c.	Lead	847
Forster, Joseph . . .	"London Cordial Gin," signature and pictorial illustration . . .	Cordial gin . .	444
Foster, Wm. & Henry .	Triangles, enclosing "R. D. W. &" and "H. F."	Lastings & serges	427
Francis & Mallon . .	"Beaverine"	Boots and shoes	565
Frank & Co., Charles .	"Olive Bitters," with portrait of Dr. Aldo Wise	Bitters . . .	1028
French, E. D. & W. A.	Shield with three eagles' heads . .	Painters', &c., supplies . .	1084
Frieberg & Workum[1] .	Triangle, "O K," "Cabinet Bourbon," &c.	Whiskey . . .	89
do. do. .	Letters "F and W," female head, and "40"	do. . . .	696
Friedman Bros. . . .	"May flowers"	Boots and shoes	878
do. do. . . .	"De Soto"	do. do.	879
do. do. . . .	"Mississippi Valley"	do. do.	880
Fuller, Irad	Maltese Cross, name, grain & grapes	Wines, liquors, &c.	517
Furber, George C. . .	Open Bible, and verse therefrom .	Medical compound	99
Fusiyama Tea Imp. Co.	Monogram, "F. T. I. Co.," with figure, &c.	Tea	286
Gaff & Co., T. & J. W.	Open diamond, with figure or letter in centre	Rye and Bourbon whiskey . .	781
Gaines & Co., W. A. .	"Old Crow Distillery Copper Distilled Whiskey," &c.	Whiskey . . .	101
do. do. do. .	do. (substantially same) . . .	do. . . .	102
do. do. do. .	do. (add. "Franklin Co., Ky.")	do. . . .	103
do. do. do. .	"Hermitage Distillery Copper Distilled Pure Rye Whiskey," &c.	do.	104
Galena Oil Works . .	Words "Galena Oil," and star . .	Lubricating-oil .	772
Galt, William M. . .	"Golden Hill"	Flour	458
Gantz, George F. . .	Elaborate device, crown, stand of flags, &c., with words "Awarded to G. F. Gantz & Co.," &c. . .	Baking-powder .	813
Garbutt & Co., E. H. .	"E. H. G. & Co.," and words "All Right"	Coffee, spices, &c.	803
Gardiner & Co., L. Y. .	Figure of a star, with figure, mark, or letter	Brooms & brushes	100

[1] Not described in specification.

Registrants.	Brief Description.	Class.	No.
Garlick, Charles . . .	Quadrangle, figure, and signatures "Simpson & Co." and "Alex. Simpson"	Condition-powd'rs	459
Garrett & Sons, W. E.	Dragon rampant, with letters "G. S. S." &c.	Snuff	7
Gaullieur & André[1] .	Map of South Florida and Cuba, and words "La Flor del Tropico" .	Cigars . . .	927
Gay, Calvin B.[2] . . .	"Globe Boot and Shoe Store" . .	Boots and shoes	782
Georger, Charles E. .	Fem. bust, with word "Carbolicon"	Preparation for the hair . .	162
Gerber & Co., C. . .	Star of five points, with the words "Star Ax"	Axes	593
Gibbs, Ross, Field, & Field	Two bears, &c., and cock and trumpet, &c.	Woollen goods .	199
Gillender & Co., A. . .	"Solace"	Fine-cut chewing-tobacco . .	767
Gililand, Samuel . . .	"Pain-Banisher"	Medicine . . .	728
Gill & Looty[3] . . .	Figure of the Apollo Belvidere, and words "Apollo Gin, Schiedam"	Gin	521
Gillett, Allen H. . . .	Circular brand, proprietor's name, and "Woodcock Rye" . . .	Whiskey . . .	321
Giron, Frères	Two ladies on horseback, &c. . .	Velvet ribbons	1069
Globe Collar Co. . . .	Representation of a globe, and the letter "N"	Corsets . . .	953
Goodall, J. M. . . .	"Baskerville Vellum Wove," &c. .	Writing-paper .	804
Goodwin & Co. . . .	"Welcome Tobacco"	Tobacco . . .	607
Gordon, Gerald . . .	"Nutritious Condiment for Horses and Cattle," and figure of a horse, with letter "A" and figure "1" on his body	Cattle food . .	794
Goss, W. H.	"Tamarind Beer," with figure of a tamarind-tree	Tamarind-beer .	848
Graves, Chester H. . .	"Atwood's Pure Alcohol," &c. . .	Alcohol . . .	575
Great N. Y. Tea Co. .	Letters "G. N. Y. T. Co.," and Japanese emblem	Tea and coffee .	524
Green, Richard . . .	Shield, monogram, "Sea Foam" .	Preparations for the hair . .	21
Greenwoods Scythe Co.[4]	Words "Red Racer"	Mowing, reaping, and harvesting tools . . .	749
do. do.[4]	"Tip-Top"	do. do. .	750
do. do.[4]	"Queen of the Meadow"	do. do. .	751
do. do.[4]	"Star of the West"	do. do. .	752
do. do.[4]	"King of the Field"	do. do. .	753
do. do.[4]	"Western Dutchman"	do. do. .	754
do. do.	"Our Best," in connection with firm-name	do. do. .	773
do. do.	Word "Harvester"	Corn-knife . .	774

[1] See § 273, *ante*.
[2] "Globe" is the essential part.
[3] See § 218, *ante*.
[4] See § 275, *ante*.

Registrants.	Brief Description.	Class.	No.
Greenwoods Scythe Co.[1]	Letters "I X L"	Mowing, &c., tools	788
Grover & Baker Sewing Machine Co. . . .	Monogram of the letters "G" and "B," & name of Co., with devices	Sewing-machines	1019
Grubb & Co., John . .	An orange, and word "Orange" .	Sugar-cur'd hams	1078
Hacker & Richardson .	Pair of boots, one worn and one good	Boot-heels . .	188
Haines, John P. . . .	"Magic Disk Oil Cans"	Oil-cans . . .	566
Haley, John J. . . .	Representation of an elephant, produced by grouping of female figures	Medicines . .	532
Halford Sauce Co. . .	Crown and star, with letters "H. S. Co.," &c.	Table-sauce . .	822
Hall & Alger	"Dr. Henry Humphrey's Celebrated Liniment and Pain-Reliever," with portrait of a man	Medicine . . .	745
Hall, Isaac	"Sanseam"	Bk.-seam'd boots	1070
Hall, John L. S. . . .	"Columbo Bitters," letters & figures	Medicine . . .	408
Hall & Speer	"Hall & Speer," and monogram "P. G. W."	Agricult. impl'ts	123
Hallett & Co., G. W. .	A star, with the words "Tool Co."	Metal tools, &c.	729
Hamilton, T. F. . . .	A cross, and the word "Seamless"	Corsets . . .	1029
Hamilton, W. G. . .	Words "Steeled Wheels," moulded on the wheels	Car-wheels . .	8
Hamilton Woollen Co.	"Tycoon Reps"	Cotton, wool'n, &c.	716
do. do. .	"Red Riding Hood," figure of girl and wolf, &c.	Cotton & woollen fabrics . .	916
do. do. .	"Niobe Alpaca," cut of Niobe and child	do. do. .	917
Hammond, J. N. . . .	"Soda Beer"	Small-beer . .	823
Hand, Thomas J. . .	Skeleton bullock's head, with horns, resting on heart, plowman, &c.	Fertilizers . .	478
Hardee, Philip M. . .	"Superfine Merino," and letter "T"	Knit goods and fabrics . .	497
Harding, William W. .	Oblong figure, with rounded base and top	Photog. albums	683
do. do. .	Pointed elliptical figure, with circle, &c.	do. do.	684
do. do. .	Raised indented frame, &c. . . .	do. do.	685
do. do. .	Rectangular frame, &c.	do. do.	686
do. do. .	Rectangular frame, with central oval, &c.	do. do.	687
Harkness, Charles . .	"Patent Wax," and a honey-bee .	Candles . . .	390
Harmon, Merrick, & Co.	"Prime Engine Oil," with eagle, &c.	Engine-oil . .	439
Hart, Jr., & Bro., Wm. H.	Figure of a heart	Shields for neckties . . .	460
Harris, Beebe, & Co. .	"Flounders"	Chewing-tobacco	979
do. do. .	"Firm Brand"	Plug chew.-tobac.	928
do. do. .	"Pocahontas"	do. do.	929
do. do. .	"Mule Ear," with figure of the mule	do. do.	930

[1] See §§ 68–70, 450, *ante*.

Registrants.	Brief Description.	Class.	No.
Harris & Co., J. N. . .	"Lung Balsam"	Medicine . . .	417
Harris Manuf. Co. . .	"Buck's Head"	Cotton goods .	225
do. do. . .	"Little Champion"	Harvesters . .	428
do. do. . .	Cotton-plant, and words "Gem of the Spindle"	Fine cot. shirtings	479
Harris, Richmond, & Shafer	Complete anchor, with cable, &c. .	Clothiers & tailors' trimmings .	329
do. do. . . .	Coronet, shield with Greek cross, &c.	do. do. .	330
do. do. . . .	Map of North America, with spread eagle, &c.	do. do. .	331
Hartman & Co., S. B. .	"Hope," with picture of an anchor	Bitters . . .	218
Hartwell, Harrison J. .	"The Compound Oxygen Treatment"	Medicine . . .	346
Hauthaway & Sons, C. L.	Figure of a diamond or lozenge . .	Leather-dressing	78
Hawley, Alfred A. . .	"Repellent" — peculiar device . .	Water-proof mat'l	672
Haworth & Williams .	Word "Diamond," with letter "H" above and below the word, inclosed in a rhomboid	Cigars	1037
Hay, Henry H.[1] . . .	"L. F.," red letters on yellow ground, &c.	Medicine . . .	208
Hedges, William N. .	Five-pointed star, and monogram "H. C. B. P."	Baking powder .	309
Heller & Brightly . .	Transit instrument, and firm-name	Math. instruments	140
Henarie, Daniel V. B.[1]	Star on shield, &c.	Whiskey . . .	209
Hennessy & Co., J. . .	"Jas. Hennessy, Cognac," with arm and hand in mail	Brandy . . .	854
do. do. . .	"Jas. Hennessy & Co., Cognac," pictorial illustration	do. . . .	855
Hernsheim, Simon[1] . .	"Black," and representation of a horse, in stencil	Leaf-tobacco . .	272
Hill & Co., James R. .	"The Concord Harness"	Harness . . .	567
Hillebrand & Wolf . .	Star and suspended key	Locks & hardware	178
Hine, Charles C. . .	"The Insurance Monitor" . . .	Periodical . .	903
Hinrichs, C. F. A. . .	"Fire-Proof Chimney," and picture of phœnix	Lamp chimneys	628
Hirsch & Co., D.[1] . .	Oval, inclosing words "Big Thing," &c.	Cigars	22
do. do.[2] . .	Elaborate picture of Falstaff . .	do.	23
do. do.[1] . . .	Elaborate picture of Gulliver . .	do.	24
do. do.[1] . . .	Star in oval, words "Lone Star," &c.	do.	25
do. do.[1] . . .	Lion and serpent in oval, and words "The Lion"	do.	26
do. do.[1] . . .	Picture of Mephistopheles, and word "Mephisto"	do.	27
do. do.[1] . . .	Arms of State of Missouri, &c. . .	do.	28
do. do.[1] . . .	Picture of Jupiter, &c.	do.	29
do. do.[1] . . .	"Defiance," and picture in oval .	do.	30
do. do.[1] . . .	"Success," &c., in oval	do.	31

[1] Not described in specification.

[2] Ditto; see § 218, *ante*.

Registrants.	Brief Description.	Class.	No.
Hirsch & Co., D.[1] . .	"The Power of Fashion," and picture	do.	32
do. do.[1] . . .	Crowned eagle, &c.	do.	33
do. do.[1] . . .	"Legal Tender," &c., in oval . .	do.	34
do. do.[1] . . .	"The Pelican," and picture . . .	do.	35
Hirsch & Oppenheimer[1]	"H. & O. Perret, Geneva," in script, star	Watches . . .	36
Hodgson & Co., Thos. S.	Keystone, with Maltese cross and "T. S. H. & Co."	Medicine . . .	238
Hoffheimer Bros. . .	Initials "H. B.," "Fairfax Old Bourbon"	Whiskey . . .	79
Hogg, John K. . . .	Star, and word "Star"	Soap	9
Holbrook & Merrill . .	Ornamental woman's head, and words "The Empress" . . .	Cosmetics, pomades, &c. .	135
Holden, Tascott, & Co.	"Chicago Enamel Paint-Works," &c.	Paint	469
do. do. do.	"Tascott's Enamel-Paint" . . .	do.	470
do. do. do.	"Chicago Enamel Paint Works" .	do.	471
Holloway & Co. . . .	A serpent, and the words "Holloway's Pills"	Medicine . . .	598
do. do. . . .	Serpent, and the words "Holloway's Ointment"	do.	599
Hollwede, Charles F. .	"Isola Bella," and proprietor's name	Varnish . . .	863
Holman, Andrew J. .	Open book, and words "Let there be light"	Bibles	612
Holmes, Henry J.[1] . .	Device, "H. J. H.," and cotton-plant	Cotton-seed . .	37
Holmes, Thomas J. . .	"Holmes' Boston Perfumer" . .	Atomizers for perfuming, &c. .	480
Home Woollen Co. . .	Word "Home," with figures . .	Shawls, cloakings	568
Hooper, Quincy A. . .	"Rivera's Pine-Apple Beer," in border and device	Pine-apple beer.	533
Hopkins, Andrew J. .	Cut of horse, sulky, and driver, and "Go"	Medicine . . .	534
Horner, Jr., Joshua . .	"Maryland Super-Phosphate," and plow	Fertilizers . .	535
do. do. . .	"Maryland Superphosphate and Tobacco-Sustain," &c. . . .	do. . . .	594
Horton & Son, Eli[2] . .	"The Horton Lathe-Chuck" . .	Lathe chucks .	518
Hostetter & Smith . .	Trade-name, and picture of St. George and Dragon	Medicine . . .	223
Houghton, Edwin F.[1] .	Globe, and "Cosmoline" across it .	Cosmoline, a product of petroleum	56
Hudson & Co., H. C. .	"Hudson's Golden California Mustard," fac-simile of signature "H. C. Hudson," &c. . . .	Mustard . . .	1050
Hudson, Thomas S. .	"Sphynx," with pictorial representation	Stationers' hardw.	219
Hughes, D. W. . . .	Figure of a man, &c., and "Hughes' Missouri Corn Planter" . . .	Corn planters .	38
Hughes, John M. . .	"Hughes' Carbolic Insect-Powder"	Insect-powder .	332

[1] Not described in specification.

[2] See §§ 377–379, *ante*.

Registrants.	Brief Description.	Class.	No.
Hurlbut & Shanty . .	Anchor, or resemblance thereto . .	N'ck-ties,bows,&c.	673
Husson, Edmond . .	Collar & cuff, and monogram "E. H."	Ladies' collars, cuffs, &c. . .	481
Hutchinson, Jr., S. . .	Figure of apparatus, and words "Wicked Oiler"	Oiling apparatus	824
Hutchinson & Thomas	"The Coat-Fitting Shirt," with illustration	Shirts	273
Hydraulic Cement Co.	Circle, enclosing directions for use, address, and words "Akron Hydraulic Cement," &c.	Hydraulic cement	347
Ingraham & Co., E. . .	"Grecian"	Clocks	576
do. do. . .	"Venetian"	do.	577
do. do. . .	"Ionic"	do.	578
do. do. . .	"Doric"	do.	579
Ives, Beecher, & Co. .	"Very Old Brandy," grapes & leaves	Brandy . . .	429
do. do. . .	Elaborate design: wreath, crown, &c.	do.	547
do. do. . .	do. do. oval label . . .	do.	548
do. do. . .	do. do. do. . . .	do.	549
Jackson & Co., J. A.[1] .	Picture of Perseus & Andromeda, &c.	Stomach bitters	39
Jackson Co.	Head and upper part of the body of an Indian, words "Indian Head Mills"	Cotton sheetings	538
Jackson & Wiley . .	"J. & W.," composition bearings .	Car, &c., bearings	378
Jenkins, Nathaniel[2] .	"Annihilator"	Medicine . . .	746
Jenkins, Thomas E. .	Picture of plant *Cinchona Calisaya*, with flowers, birds, and leaves .	do. . . .	310
Jennings, Abraham G.	Bobbin & carriage of a lace machine	Lace goods . .	163
do. do.[3] .	"200"	Nets and lace .	311
do. do.[3] .	"190"	do. do. .	312
do. do.[3] .	"150"	do. do. .	313
do. do.[3] .	"180"	Nets & lace goods	391
do. do.[3] .	"300"	do. do.	392
do. do. .	"Stella"	do. do.	393
do. do. .	"La Duchesse"	do. do.	394
do. do. .	"Diamond"	do. do.	395
do. do.[3] .	"750"	Hair-nets . . .	717
do. do. .	"775"	do. . . .	718
Jervey, William E. .	"Puroline"	Illumin. oils, &c.	164
Johnson, Charles E. .	Griffin holding balls, eagle, &c. . .	Printers' ink. .	228
Johnson & Co., I. S. .	"Sheridan's Cavalry Condition Powders"	Medicine . . .	918
Johnson & Co., Oliver .	"Villa Paints"	Paint	379
Johnson, Frank G.[1] .	"Indestructible School Chart" .	School charts .	40
Jones, Edward F. . .	"The Binghamton Scale Works," and bee-hive	Weighing scales	200
do. do. . .	Picture of shoe, with words "Ankle Counter"	Shoes, brogans, and boots .	149
Joslin, Palmer, & Williams	"Real," and letters "S. A. H." .	Jewelry . . .	730

[1] Not described in specification. [2] See § 273, *ante*. [3] See title "Numerals."

Registrants.	Brief Description.	Class.	No.
Joslin, William E. . .	"A. B. C. D. E. F.," representing patterns	Shirtings . .	498
Kavanagh & Decker .	"The Nonpareil"	Billiard-tables .	536
Keeler, Ezra W. . . .	"Clarence," and figure of a cross .	Twine, warp, yarn, &c.	230
Keep, William J. . .	Words "Side Burner"	Stoves	624
do. do. . .	"Side Burning"	do.	625
Kellogg, John Q. . .	"Jurubeba"	Medicine . . .	306
Kennedy & Co., S. H. .	Device of tree, &c.	Hemlock linim'nt	1080
Kennedy, Simon H. .	Monogram "K. C. E. P."	do. . . .	380
Kimball & Co., W. S. .	"Peerless," with cut of rising sun	Tobacco . . .	274
King, S. A.	Letter "T," with figure of a Chinese carrying chests of tea . .	Tea	825
King, William . . .	Proprietor's portrait, surmounted by British arms, above which the words "King's Sauce Royal," &c.	Table-sauce . .	57
Kingsford & Son, T. .	"Silver Gloss Starch"	Starch	768
Knight, B. B. & R. . .	"100^{s} Fruit of the Loom 100^{s}," with fruit	Cotton goods .	220
do. do. . . .	"Fruit of the Loom"	Cotton shirtings	418
Knight, Samuel F. . .	Figure of a turtle, and inscription .	Shell-goods . .	1030
Knoepfel, W. H.[1] . .	"J. G. B. Siegert's Angostura Bitters"	Bitters . . .	580
Knox, Jr., James . .	Duck, encircled by wreath of thistle leaves, with words "Moveo et Profigior"	Linen thread .	482
Kohler, John F. . . .	"A. R."	Bread	537
do. do. . . .	"Cream Bread," and letters "A. R."	do.	653
Kuhlman, Henry . .	"Cape-Hood Water-Proof" . . .	Water-proof garments . . .	654
Kupfer, John B. . . .	Letters "K. K. C."	Biscuits & crack'rs	856
do. do. . . .	"K. C." (for Kenosha crackers) .	do. do.	941
Kwong On Cheong[2] .	"U. S." in a diamond	Tea	409
Lacroix, A. L. . . .	Device of pine-apple shape, and words "Pine-Apple Strengthening Cordial Bitters," &c. . . .	Strengthening cordial bitters .	996
Laflin & Rand Powder Co.	Various devices, and "Laflin & Rand Powder Co., N. Y.," &c. .	Gunpowder . .	885
Landenberger & Co. .	Shield, with double-headed eagle, and firm-initials	Woven & knitted goods . . .	834
do. do. .	do. do. do.	do. do. .	835
Landsberg, Silvius . .	"Genuine Virgin Gold Plate," and eagle	Jewelry and watches . .	419
Landsberger & Co.[3] .	Picture of three four-winged bees, for the letter "B."	Wild-blackberry bitters . .	814
Langdon Manuf. Co. .	Letters "G. B."	Shirtings, &c. .	719

[1] See § 194, *ante*. [2] Chinese firm domiciled in the United States. [3] See § 273, *ante*.

Registrants.	Brief Description.	Class.	No.
Lamman & Kemp[1] . .	Words "Florida Water"	Toilet-perfume	1094
Laroche Frères du Martinet	"Laroche Frères du Martinet," with monogram of "V. E. Mauger"	Writing-paper and envelopes .	994
Larrabee & Sons, E. .	Engraving of the "Battle Monument" of Baltimore, and words "Monumental Factory" . . .	Leather . . .	1071
Lawrence, B. & P. . .	Shield, with *fleur-de-lis*, &c., "warranted pure linen"	Writing-paper .	937
Lawrence & Sons, D. .	"Medford Rum," &c.	Medford rum .	165
Lear, Peter	"Lear's Lung and Spine Protector"	Apparel for protecting lungs	569
Leberman & Co. . .	"Primrose Soap"	Soap	189
do. do. . .	"Philada. Soap Co., Phil.," with monogram of "P. S. C." . .	do.	185
Le Clercq, Arthur . .	Pictures of "Copying Press, Earth, and Mercury"	Copying presses	731
Lee & Bro.	"A. R. L."	Medicine . . .	333
Lesley, Alex. M.[2] . .	"Zero"	Refrigerators and water-coolers	664
Lester, Felix E. . . .	"Green Mountain Beer"	Beer	483
Levi, Lewis	Lozenge, and "Manhattan Fine Shirts"	Shirts	179
Lewenthal & Co., R. .	"R. Lewenthal & Co.," with monogram of "H. & M."	White lead . .	769
Lewis & Co., A. K. . .	Kettle suspended over fire, &c. . .	Whiskey & bitters	275
Lincoln & Co., Geo. S.[3]	"Molasses-Gate," in raised letters	Molasses-gate .	146
Lippiatt Silver Plate and Engraving Co.[3] . .	Mythological device, double-headed bird, &c.	Silver & plated ware	41
Littlefield, Alvah . .	Device, reversed Q, &c.	Quinine tonic bitters. . . .	1091
Loring, John P. . . .	Shield, antique letters "J. P. L.," monogram	Hosiery, trim'ngs	363
Lovett, Jane	Rings, containing "Mrs. Jane Lovett's Nipple-Salve"	Nipple-salve . .	508
Low & Co., C. A. . .	Letter "L," inclosed in diamond-shaped lines	Tea	240
Lowell Manuf. Co. . .	Picture of machinery, and of a carpet rolled	Carpets . . .	132
Luckemeyer & Co., K.	"Eugenie"	Gloves . . .	864
Luscombe & Co., T. T.	"Silver Polish Bath Brick," &c. .	Polishing-brick .	805
Lynch & Buckingham .	"Huntoon Governor"	Governors for steam-engines	334
Lynch & Co., J. A. . .	Propeller-wheel, bearing the words "The Huntoon Governor" . .	Huntoon steam-governors .	68
Mallory & Co., J. F. .	Shield-shaped symbol	Canned goods .	1093

[1] Registered in consequence of decision referred to on p. 559.

[2] See § 273, *ante*.

[3] Not described in specification.

Registrants.	Brief Description.	Class.	No.
Mayer Brothers & Co. .	Representation of a fish, and letters "H. K."	Cherry-juice . .	1038
McBeth, Bentel, & Margadant	"The Universal Wood Worker" .	Wood working .	381
McBride & Co., S. W. .	"White Lilly"	Soap	1058
McComb, James J. . .	"Arrow-Tie"	Cotton-bale ties	314
do. do. . .	"McComb," with drawing of an arrow	Cotton-bale bands and ties . .	171
McComber, Joel . . .	"The McComber Last," with figure	Boot & shoe lasts	250
McConnell, Porter, & Co.[1]	"Scioto"	Fire-br'k, tiles, &c.	510
McCutcheon, Gordon, & Co.	"Red Sea," and "McCutcheon, Gordon, & Co."	Flour	747
McDermott, Reddington, Hostetter, & Co.	"Yerba Santa," lettering, devices, &c.	Medicine . . .	69
McKee, John	"McKee's Corn Salve," and figures	Corn-salve . .	451
McKennon, J. W. . .	Monogram, composed of the letters "B. C. T. D.," &c.	Chemical test and detector for bank-checks	836
do. do. . . .	"Commercial Safety Paper," &c. .	Bank-checks, &c.	981
McKeon, Thomas . .	"Iron Crown Paint," and two sailors	Paint	484
McKinnon, John A. .	Words "McKinnon's Colic Cure," printed on a horse	Medical compound	42
McLean & Co., Samuel[2]	"Railroad Brand," locomotive, wild animals, &c.	Worsted goods .	136
Maddox, William . .	Elaborate device, two obelisks, one having on it the words "Maddox Japanese," the other "Cough Balsam"	Cough balsam .	62
Magan, M. H. M. . .	Frog drawing a box, on which is "Cleansing Powder"	Cleansing powder	865
Maguire, I. & C. . . .	Pass in the Andes Mountains, two natives leading llamas, cundurango plant, &c.	Medicine . . .	896
Maillard, Henry . . .	American eagle, &c., serpents, anchor, &c.	Confectionery and chocolate . .	870
Mallory & Co., D. D. .	Diamond-shaped figure, and firm-name.	Canned oysters and fruit . .	985
Manhattan Cloth and Paper Co.	Circle with firm-name, figure of Indian with bow and arrows .	Cloth and paper	688
Mansfield, G. H. . . .	Picture of a fish	Fish-lines . . .	509
Marcelin, Warren, & Co.	Word "Sulphurine"	Disinfectants, &c.	629
Marley & Cook . . .	Monogram of names, &c., "The Acme Shirt"	Shirts	897

[1] See § 193, *ante*.

[2] Not described in specification.

Registrants.	Brief Description.	Class.	No.
Martin & Co.[1] . . .	Fancy shield with device	Whiskey . . .	210
Martin, J. L.	Female head, with word "Ozoami"	Preparation for the hair .	58
Marx & Rawolle . . .	Monogram, "R. T. G. C.," &c. . .	Glycerine soap .	364
Maryland Fertilizing & Manufacturing Co. .	Words "Tobacco Food"	Fertilizers . .	645
do. do. do.	Representation of palmetto-tree, and "Cotton Food"	do. . .	646
do. do. do.	*Cancelled*	do. . .	647
Massonneau, Charles F.	"Arnica and Iodine," portrait of manufacturer, and "Trade-mark"	Strengthening plasters . .	450
Mason Manuf. Co. . .	"Mason's Improved"	Fruit-jars . .	276
Mathews, David P. . .	Monogram "D. P. M."	Medical compound for cattle . .	499
Mauger, Victor E. . .	"Wharfedale"	Printing-presses	826
do. do. . .	"Goodall Playing Cards"	Playing-cards .	556
do. do. . .	"Hughes & Kimber Litho machines," and arrow	Printing machinery & materials	886
do. do. . .	"Bichromatic"	Playing-cards .	980
Maw, Son, & Thompson, S.	Monogram, "S. C. M. M. T.," elaborate	Surgeons' ins'ts	430
Maxwell & Clarke . .	"Game Cock"	Paints	1007
Mayo, Israel C. . . .	"Piscatine"	Preserved fish .	633
Mayo, Urial K.[2] . . .	"Mayoline"	Artificial teeth .	904
Meneely, E. A. & G. R.	"The Meneely Bell-Foundry" . .	Bells	335
Mercantile Loan and Warehouse Co. . .	Words "Safe Sure," so arranged that same S answers for both words	Stationery, and mem. books .	851
Merrill, R. S., W. B., and J. A[3]. . . .	"Mineral Sperm Oil"	Hydrocarbon oil	557
Messinger, Charles R. .	"F. G."	Smoking-tobacco	558
do. do. . .	"C. S."	do.	559
do. do. . .	"Granger"	Chewing-tobacco	570
do. do . .	"One A Better"	Smoking-tobacco	1041
Meyer, Julius W. . .	Label, with crown, and monogram of dealer, &c.	Axes	43
Miami Powder Co. . .	Mounted cannon, and "Miami Powder Co.," &c.	Gunpowder . .	909
Michigan Stove Co. .	Arms of Michigan, and words "E Pluribus Unum," &c.	Stoves, &c. . .	982
Middlesex Co. . . .	"Middlesex Yacht Cloth" . . .	Woollen cloth .	655
Milhau's Sons, J. . .	Words "Lanoix Vaccine" . . .	Vaccine . . .	837
Millard, E. R.	Monogram of letters "D.C." in star	Dressing comp'nd	190
Miller, Albert W. W. .	"Men's Furnisher"	Gentlemen's furnishing goods	258

[1] Not described in specification.

[2] See § 217, *ante*.

[3] See § 273, *ante*.

Registrants.	Brief Description.	Class.	No.
Miller & Bro.	Eagle Shirt Factory, and picture of an eagle	Shirts	613
Mills, Johnson, & Co. .	"R. Bond, Bourbon Co., Ky.," and two arrow-heads	Whiskey . . .	191
do. do. do. .	"T. O. P., 1858, Paris, Ky.," and two triangles	do. . . .	192
do. do. do. .	"I. Seawright, Bourbon Co., Ky.," eight-pointed star	do. . . .	193
do. do. do. .	"T. Williams, Bourbon Co., Ky." with anchor	do. . . .	194
do. do. do. .	"S. N. Pike's Whiskey, Cinn, Ohio," with "XXX" . . .	do. . . .	215
do. do. do. .	"John Frazer, Paris, Ky., Bourbon"	do. . . .	201
do. do. do. .	"S. N. Pike's Magnolia Whiskey," diamond, &c.	do. . . .	241
do. do. do. .	"Dave Jones' Paris, Ky., Bourbon"	do. . . .	461
do. do. do. .	"Bourbon," and two spear-heads .	do. . . .	462
do. do. do. .	"A Wickliffe," arranged in semi-circle	do. . . .	463
Mitchell, Samuel J. .	"Franklin Lightning Rod Factory"	Lightning-rods .	354
Molesworth, William .	"Wm. Molesworth, M.D., Vaginal Injecting and Vacuum or Suction Syringe," with figure . .	Vaginal injecting syringe . .	838
Moline Plow Company [1]	Monogram, &c.	Plows & cultiv'rs	251
Moller & Sons, William	Pyramidal figure, with fac-simile .	Sugar, syrup, and molasses . .	150
do. do. do.	A parallelogram, and word "Sirup"	Syrup	195
do. do. do.	"Diamond Syrup"	Syrup & molasses	348
do. do. do.	"Wm. Moller & Sons' Block Sugar"	Sugar	349
Monies & Pughe . . .	Peculiar five-pointed star	Crackers . . .	382
Monks & Sons, J. A. .	Stag or elk's head, and words "Douglass Elkhorn"	Whiskey . . .	355
do. do. do. .	"J. A. M." and various words . .	do. . . .	410
do. do. do. .	"J. A. M." and "Licking Valley Bourbon," &c.	do. . . .	411
Moore & Co., Jesse . .	Stag's antlers, above firm-marks .	do. . . .	322
Moore, Thomas E. . .	"Pure Hand-Mash Copper Whiskey," and figure of a man stirring a mash-tub	do. . . .	412
do. do. . .	"Pure Sour-Mash Copper Whisky," with figure of man	do. . . .	656
do. do. . .	"Pure Sweet-Mash Bourbon Whisky," with cut of tub	do. . . .	657
do. do. . .	Sheaf of rye, and words "Pure Old Rye Whiskies"	do. . . .	711
Moore & Co., J. C. . .	"Argus Oil Co.," eye and arrows .	Oils, wax, & tallow	827
Moorman, C. P. . . .	"C. P. Moorman — Old Bourbon," with crown and cross	Whiskey . . .	63

[1] Not described in specification.

Registrants.	Brief Description.	Class.	No.
Moorman & Hardy [1] .	Picture of an English crown, and fac-simile of a barrel of very peculiar construction	Whiskey . . .	64
do. do. . .	"J. H. Cutter, Old Bourbon," "Pure Old Rye," &c. . . .	do. . . .	90
Morehouse, Charles L.	"Arctic Machinery Oil"	Machinery oil .	151
do. do.	"Crystal Head Light Oil" . . .	Illuminating oil	152
do. do.	"Amberline Machinery Oil" . .	Lubricating oil .	153
do. do.	"Zepher Wool and Factory Oil" .	Factory oils . .	154
Morgan's Sons, Enoch .	"Sapolio"	Polishing comp'd	323
do. do. do.	Human face reflected in a pan . .	do. do.	324
Morison, Son, & Hutchinson [2]	"The Star Shirt," with six-pointed star	Shirts	202
Morrison & Co., James	Dial and Magnetic Needle, &c. . .	Sugar-cured hams	697
Morse Brothers . . .	Word "Sun," with or without pictorial design	Prepared plumbago . . .	1042
Murdock, Jr., E. . . .	"Sunshine Polish Oil"	Substitute for linseed-oil . .	614
Myer, Daniel W. . .	"D. W. M." and figures "1840" in a triangle	Ague and fever mixtures . .	1014
Myers & Co., E. [3] . .	Winged shoe, monogram, and "Shoe Fly"	Prize candy . .	44
Myers & Co.	A star, with title of product . . .	Wool-detergent and bleaching compound .	986
Myers & Co., Lawrence	"M" in heraldic garter, in oval form.	Gin	365
do. do. do.	Cluster of grapes, "Royal Sherry," &c.	Sherry wine .	366
Myers & Drummond .	"Golden Slug," &c.	Pressed chewing-tobacco . .	1020
do. do. .	"Pancake"	do. do. .	1021
Nason, James H. . .	Palette with pencil and brushes, and name, &c.	Pigment . . .	229
National Rubber Co. .	Word "Anchor," picture of anchor.	Rubber goods .	783
National Yeast Co. . .	Eagles, with words "National Dry-Hop Yeast"	Yeast	127

[1] The certificate in this case has been considered by the U. S. Circuit Court, Cal. Dist., and annihilated (Moorman *v.* Hoge, Am. Law Review, vol. vi. p. 365, reported in full in California journals) The mark is described in the specification as consisting of a barrel of peculiar construction, "of extraordinary length, being thirty-eight inches, made with sixteen wooden and four massive iron hoops; staves one and one-fourth inch thick, and has a capacity of fifty gallons," &c. It is also set forth that the brands and devices were bought by the applicants for the sum of ten thousand dollars. The Office erred in admitting the application to registration.

[2] This mark has been sustained in the U. S. Circuit Court (Morison *et als. v.* Case, 9 Blatchford, 548, and Official Gazette, vol. ii. p. 544), and a perpetual injunction granted. But lest the language of the specification might mislead, it would be well not to follow the description as a precedent. — It runs thus: "The name of the 'Star Shirt,' both in this form, 'The Star Shirt,' and with the device of a six-pointed star in place of the word 'Star,' . . . and also the said device of the six-pointed star used in connection with the said words 'The Star Shirt.'" The Office is now more particular. A trade-mark must be *invariable*, as well as definite and certain.

[3] Not described in the specification.

Registrants.	Brief Description.	Class.	No.
National Wood-Manufacturing Co. . . .	"Wood Carpeting," and two stars.	Wood-carp'g, &c.	519
Navassa Phosphate Co.	"Azotin," in diamond-shaped border	Concentrated ammoniate . .	665
Nellis, Aaron J. . . .	Monogram "A. J. N.," with hay-forks, &c.	Hay-elevators, &c.	124
New England Felt-Roofing Company . . .	Figure of a bee-hive with bee . .	Felt roofings . .	721
Nichols & Co., J. R. .	"Cincho-Quinine"	Medicine . . .	707
Niederlander & Co., J.	Figure of a Chinaman	Bitters	898
Nones & Co., A. . . .	"Fleur de Lys," with cut of lily-flower, and "Brandywine.—:xxx:—A. Nones & Co." . .	Flour	784
North-Western Horse-Nail Co.	"Western Horse-Nail"	Horse-nails . .	277
North-Western Fire-Extinguisher Co. .	"The Babcock Fire-Extinguisher"	Fire-extinguisher	356
Norwalk Iron Works .	Star, and words "Steam Pump" .	Steam-pumps .	1015
Oakley, Jesse	Words "Maltese Soap"	Soap	648
do. do.	Figure of a Maltese cross	do.	770
O'Donnell, J. M. . .	"J. M. O'D." as a monogram, with various other devices and symbols	Whiskey . . .	649
do. do. . .	Monogram "J. M. O'D.," and "Jas. M. O'Donnell & Bros." .	do. . . .	650
do. do. . .	"J. M O'D.—O. K. No. ONE—Jas. M. O'Donnell"	do. . . .	651
Ohio Valley Piano Co.[1]	Words "Valley Gem"	Pianos	795
Oldberg, Oscar . . .	Word "Borobalsamine"	Aqueous solution of balsamic gums	630
Olzendam, A. P.[2] . .	Crown in a wreath, "A. P. O." .	Woollen hose .	10
Oppelt, Edmund J. . .	"Standard"	Tobacco . . .	203
Orth, Adam[2]	Monogram in diamond	Bitters	211
Ottenheimer, Rothschild, & Co.	Letter "G"	Corsets . . .	1008
do. do. do.	Letters "D | d." &c.	do.	759
do. do. do.	Word "Comet"	do.	760
do. do. do.	"W. F.," with ornamental border .	do.	761
do. do. do.	"G. S." do. do. do. .	do.	762
do. do. do.	"X. L." with or without anchor .	do.	1043
do. do. do.	"B."	do.	1044
do. do. do.	"D."	do.	1045
Page, G. F. and C. T. .	"Patna Cow," with words "Page's Patent, May 8, 1866"	Leather . . .	105
do. do. do.	"Page's Patent Tanned Leather," &c.	do. . . .	441
Palmer, Elihu B. . .	"Palmer's Spanish Dressing" . .	Dres'g for leather	615
Palmer, Kennedy . .	Diamond, with monogram "P. H. & G. 1871"	Advertising medium . . .	500
Palmer, Lorin[3] . . .	Crown, wreath, and words "Golden Crown"	Cigars, snuff, and tobacco . . .	106

[1] See § 273, *ante*.

[2] Not described in specification.

[3] Palmer *v.* Harris, 60 Penn. 156.

Registrants.	Brief Description.	Class.	No.
Palmer, O. M. . . .	Shield with a mortar, &c.	Salve	212
Parodi, Enrique . . .	"Superior de J. Mª Vichot," &c. .	Cigars	815
Partridge & Co., J. C. .	Eagles and young, and rock, &c. .	Cigars, tobacco, and snuff. .	65
Patent Elastic Felt Co.	"Patent Elastic Felt," and anchor.	Prepared cotton	464
Patent Metal Co. . .	Monogram, "G. L. S."	Metal	73
Paton & Co.	Word "Huguenot"	Cotton sheetings and flannels .	839
Paullin, Mary A.[1] . .	Cross-enclosed words "Mrs. Marple's Salve"	Salve	857
Pavenstedt & Co., E. .	Representation of a spread fan . .	Tea	720
Peake, William I. . .	An otter on a rock, & word "Otter"	Alpaca . . .	259
do. do. . .	A beaver, and words "Improved Silk Finish"	Mohair . . .	260
do. do. . .	A marten sable, and words "Turkish Mohair Brilliantine" . . .	do. . . .	261
do. do. . .	Star, shield, &c.	Dress-trimmings	1079
Pearl, Adolph	"Green Seal".	Tobacco . . .	350
Pease, Francis S. . .	An eagle, and the words "German Lead"	White lead, &c.	881
Peck & Snyder[2] . . .	Red ball, & words "Dead-red Ball"	Base balls . .	46
Pecker & Co., Seth E. .	View of Boston Custom-house, & words "Custom-House Gin" . .	Gin	616
Pemberton, John S. .	"Compound Syrup of Globe-Flower," and cut of flower . .	Cough-syrup .	816
Pemberton, Taylor, & Co.	Hercules and the Gorgon, with words	Medical comp'nd	166
Penn, William H. . .	Monogram "W.H.P.," and "Grape Wine Bitters"	Bitters. . . .	938
Perrin, Marie Eulalie .	Monogram, "J A," "Cyano, Pancreatin"	Medicine . . .	367
Perry & Co.	"New American"	Cooking-stoves .	278
Pettit & Barker . . .	"Pettit's American Eye-Salve," &c., with picture of human eye	Medicines. . .	817
Phalon & Son	"I love you," and picture of eye, &c.	Perfume . . .	325
Phelan & Collender . .	"The Standard American Billiard-Table," &c.	Billiard-tables .	242
Phillips, Charles H. . .	Monogram containing letters "P. H. I. L. L. I. P. S."	Essential oils and other chemicals	1072
Phillips & Co., E. R. .	"E. R. Phillips' Scotch Liniment," in border	Medicine . . .	357
Phosphor-Bronze Co. .	Initials "P. B. C."	Bronze alloys .	698
do. do. .	"Sligo".	Bronze alloys, &c.	699
Pierce, Henry L. . . .	A star, with "German Sweet Chocolate"	Chocolate. . .	882
Pike, Amasa H. . . .	Woman applying garter, & "Magic Garter"	Garter	298
Pilkington, Edwin T. .	"The Fruits and Flowers," illust'd.	Smoking & chewing tobacco .	279

[1] See § 246, *ante*.

[2] Not described in specification.

Registrants.	Brief Description.	Class.	No.
Pitt & McCann, W. T. & C.	Figure of a crescent, and word "Crescent"	Rye whiskey	1031
Place & Co., William H.	"Colorine"	Dyeing & coloring compounds	252
Plumb & Burdict	Diamond-shaped figure, "Bolt M. F. R. S." and monogram	Carriage bolts	967
Polalski & Co., Pincus	"Monte Christo," elaborate design, figures, ship, and military equipments	Cigars	581
Pomeroy's Sons, L.	"West Point Cadet," in rustic letters	Gray cloth	196
Pommer, Frank L.	"Malt Extract Lozenges," &c.	Lozenges	905
Pope & Baldwin	Picture of corn-planter, firm-title, &c.	Corn-planter	91
Popham, William H.	Figure of a pig or hog	Hog's lard	987
Pratt, Charles	"Astral Oil"	Oils	107
Prescott, James L.[1]	Monogram on scroll	Stove-polish	109
Procter & Gamble	Circle, enclosing the moon, stars, human profile	Soaps, candles, oils, &c.	887
Purley & Co., John	Egyptian landscape, camels, Bedouins, &c., and words "The Water of Life"	Medicine	906
Putnam, Silas S.	"The Putnam Curtain Fixture"	Curtain fixtures	422
Rall & Co., J. M.	"Oil of Soap," and two barrels	Oil of soap	617
Ralph, Alexander	Perched eagle, and letters "R. S. S."	Snuff	748
Rand, Jr., W. J.	Venus, and words "Sea-Moss Cough-Candy, Troches, & Syrup"	Sea-moss cough-candy, troches, and syrup	125
Randolph, R. R.	Portrait of King William, &c.	Tobacco	110
Ransom, Lewis E.	Large letter "R" and "Trade Mark"	Annatto	1073
Rappleye & Knight	"The Dollar Reward Soap," &c.	Soaps	431
Rasin, R. W. L.	Picture of an island in the Caribbean Sea, and words "Soluble Sea-Island Guano"	Soluble Sea-Island guano	45
Rawson & Philbrick	Picture of palm-tree, lettering, and signature	Cigars	92
Redington & Co.	"Cabinet Pipe Organ"	Cabinet organs	336
Redway & Burton	"Century"	Stoves	520
Reed, William H.	Lamp, with word "Sunlight"	Burning-fluid	708
Remington Empire Sewing-Machine Co.	"Remington Empire"	Sewing-machines	552
Renauld, François, & Co.	Medallion having printed thereon "H. Piper & Co., successors to Heidsieck à Rheims, Marne," and words "Renauld & François, sole Importers in the U. S."	Champ'ne-wine	1051
do. do. do.	Crest, and words "Old Brandy; trade-mark on capsules and cases; J. & F. Martell, Cognac," &c.	Brandy	1052

[1] Not described in specification.

Registrants.	Brief Description.	Class.	No.
Renne & Sons, W. . .	"Renne's Pain-Killing Magic Oil"	Medicine . . .	806
Reno, Griffen	"Dr. Reno's Catarrh Specific," and "Eureka"	do. . . .	280
Reud, William R. . .	"Oxyzone"	Medicines . .	1032
Reynolds, Benjamin K.	Figure of a horseshoe, "B. K. Reynolds, Pure Bourbon, Harrison Co., Ky."	Whiskey . . .	221
Rice, Mathias Joslyn .	Triangles, with letters "M. J. Rice," &c.	Picture frames,&c.	413
Rich & Burlingham .	Foliage and fruit of the cucumber-tree, &c.	Wood pumps .	243
Rich & Co., Isaac . .	Letter "I," in combination with two fishes	Spiced salmon .	618
Richards & Sons, I. D.	Thistle, &c.	Gin	560
do. do. do.	A single lily, with words "White Lily," &c.	Gin	137
do. do. do.	A shell, and the word "Shell" . .	do.	485
Richards, Robert G. .	Rising sun, with the letter "R." .	Burning-fluid .	204
Richardson, Boynton, & Co.	"Baltimore, Richardson, Boynton, & Co."	Fire-place heaters	501
Richardson, Frank L. .	"Dr. Kingford's Celebrated Pills"	Medicine . . .	486
Richmond, C. C. . .	Word "Crosby's," with picture or without	Axle-oil . . .	771
Ridenour, Coblentz, & Co.	Picture of a Hindoo doctor, and words "Hindoo Pain-Conqueror," blown in the glass . . .	Liniment . . .	93
do. do. do.	"Arabian Horse-Powders," with heads of seven animals . . .	Medicine . . .	186
Roberts & Co., J. E. .	"Longines"	Watches . . .	997
Roberts, Robert J. . .	"Diamond Edge"	Cutlery . . .	108
do. do. . .	"A Luxury.—R. J. Roberts' Razor-Steel Scissors," &c.	Scissors . . .	262
do. do. . .	"To the ladies. The proprietors of the Patent Parabola Needles," &c.	Needles . . .	358
do. do. . .	"R. J. Roberts' Diamond-Edge Razor"	Razors . . .	299
do. do. . .	"An Exquisite pleasure to shave with," "Diamond-Edge Razor"	do. . . .	300
do. do. . .	"R. J. Roberts' Razor Steel" . .	Razor steel . .	368
Robbins, Horace T. .	"The Storm King Improved" . .	Umbrellas . .	315
Robur Distillery Co. .	Word "ROBUR"	Spirits	1097
Rock River Paper Co.[1]	"Building Paper"	Paper	281
do. do. do.[1]	"Prepared Plastering-Board, or Paper"	Prepared plastering paper . .	634
Rockwood Photo-Engraving Co.	Device of rising sun, and words "Photo-Chromo Lith." . . .	Photo-engravings	337
do. do. do. .	Device of rising sun, and words "Photo-Engraving"	do.	338

[1] Applicant claims origin of article.

Registrants.	Brief Description.	Class.	No
Rogers & Burchfield .	Monogram of letters "R" and "B," and words "Siberian Iron" . .	Sheet-iron . .	595
Rogers & Bro. . . .	Hand holding thunder-bolts . . .	Silver-ware . .	796
Rogers, J. & J. . . .	Circle, with the letter "R" therein	Wrought-iron goods . . .	619
Roose, William S. . .	View of Stockton Hotel at Cape May, &c.	Cigars	80
do. do. . .	A print, with the name "La Manola"	do.	81
Rose, Buckley A. . .	"Rose Burning-Fluid," with picture of a rose	Burning-fluid .	282
Rose, Joseph [1] . . .	"Rosebaume"	Perfume . . .	807
Ross & Co., C. H. . .	"Monumental," &c.	Liquors . . .	119
do. do. . .	"Thompson," and "Pure Rye Whiskey"	Whiskey . . .	339
do. do. . .	"J. Jackson," "Old Rye Whiskey, 5 years old"	do. . . .	340
do. do. . .	"Patapsco"	do. . . .	550
do. do. . .	"Monongahela," "Mountain Dew," and "Old Rye Whiskey" . .	do. . . .	652
Rowe, Graves, & Co. .	Map of the State of Ohio, &c. . .	Vinegar and cider	283
Rowland, Raphael, & Co.	"Star Monogram Whiskey," star and monogram	Whiskey . . .	954
Rubber Paint Co. . . .	"Rubber Paint," with picture of tree, &c.	Rubber paint .	582
Russell & Seabold . .	Statuary design of Hercules and Lichta, &c.	Medicine . . .	808
Russell, Thomas . . .	"Little Belt," with ornamental devices	Cigars	1016
Ryan, William [2] . . .	Star, wreath, &c.	Hams	11
San Francisco Pioneer Woollen Factory .	Medal, with words "San Francisco Pioneer Woollen Factory," &c.	Woollen fabrics	420
Saratoga Seltzer-Spring Co.	Anchor, with "Saratoga Seltzer-Spring Co., 1870"	Mineral-water .	213
Schember, John . . .	"Dr. Hoffman's Celebrated German Liniment"	Liniment . . .	263
Schenck, C. S. . . .	Two lions erect, and label with words "Schenck's Water-Proof Tags and Labels"	Tags and labels	1046
Schmidlapp, Bros. . .	Cave, with sea-nymphs, and word "Iola"	Cigars . . .	316
Schmidt & Curtius . .	"Musical Note-Paper," with a stave of music	Letter-paper . .	968
Schoeffel, Adam . . .	Picture of crowing rooster, and word "Excelsior"	Sugar-cur'd hams	1059
Schrauder, George [3] .	"Bouquet"	Cured meats .	955
Schriber, James . . .	"A. A."	Smoking-tobacco	988
Schroeder, Herman . .	Bust of woman, & words "Schroeder's Imperial Balm"	Cosmetic . . .	317

[1] See § 217, *ante*.

[2] Not described in specification.

[3] See § 661, *ante*.

Registrants.	Brief Description.	Class.	No.
Schuchardt, Frederick	"Meder Swan Gin," and figure o swan	Gin	502
do. do.	"Swan Gin"	do.	503
Scott, Jane	Shield supporting dog, and words "The University Medicines," &c.	Medicine	452
Scranton Stove & Manufacturing Co.	Name of company, and words "Merry Christmas"	Stoves	287
do. do.	"The Excelsior Range"	Ranges	342
Seaman, Robert F.	"Wetterstedt's Patent Metallic Composition"	Paints	437
Seely, Samuel S.	"Seely's Liquid Cough and Heave Cure"	Medical compound	120
Seibert, Jacob H.	Two figures, representing condensers, &c.	Condensed lye	785
Selby & Co., James	Shield, with words "Union Planter"	Corn-planters	144
Seligman, Jacob	Words "Little Jake," &c.	Men's clothing,&c.	828
Seltzer & Miller	"Silver Brook Whiskey"	Whiskey	301
Shannon, Albert F.	"Ferdinand Summerfield's Oriental Balm"	Medicine	465
Sharp & Craig	"Non-Explosive," with figure of oil-can	Lamp-oil	736
Sharp, Edward S.	"T. M. Sharp's Celebrated Dyspepsia Pills"	Medicine	423
Sharp, Joel	Picture of machinery, with figure of engineer, &c.	Steam-engine	133
Shepard & Seaman, H. W. & R.	"The Iron Clad Can Co."	Sheet-metal wares, &c.	343
Sherriff, John L.	"Sherriff Palm"	Palm-leaf brushes	344
Shinnick, Woodside, & Gibbons	"Sensation"	Cooking-stoves	989
Shumway, F. P.	"The Partridge Fork"	Agricultural forks	786
Sibley, Solomon	Three lines, and words "Sibley's Trade-Mark," "Cut by this line," "For a perfect fit"	Shirt-bosoms	1063
Silbermann, Heinemann, & Co.	Letters "S. H. Co.," interlaced	Fringes, rib'ns,&c.	134
do. do.	"Honest Measure"	Cords, fringes, ribbons	172
Silicate Slate Co.	Open book, with words "Silicate Book-Slate Co."	Slates, &c.	205
Simes, I. F.	"Egg Soda"	Soda-water	829
Simpson & Co., E.	Spread-eagle, holding star, &c.	Wines and liquors	620
Singer, Nimick, & Co.	"Star Cast-Steel"	Cast-steel	487
Sleeper, Wells, & Aldrich	"Triumph"	Canned vegetables, &c.	700
do. do. do.	Shield, or shield-like border, with name, &c.	do. do.	701
Smith, Crosby, & Co.[1]	Portrait of Gen. Phil. Sheridan, and the words "Phil. Sheridan"	Cigars	244

[1] See § 218, *ante*.

Registrants.	Brief Description.	Class.	No.
Smith, Elisha T.	"E. T. S.," in double oval, &c.	Yeast	561
Smith, Hiram[1]	"Star of the West Pump," and star	Pump	432
Smith, Irving C.	"Goodenough"	Oil-cans	888
Smith, James T.	A standing guanaco, and word "Guanaco"	Umbrellas and parasols	94
Smith, Jesse S.	"Dr. J. S. Smith's Detergent Powder," portrait, signature, &c.	Detergent powder	70
Smith, Nathaniel	"Magnetic Balm"	Medicine	797
Smith, Samuel	"Excelsior Frying-Pan"	Frying-pan	284
Smith, Thos. L.	"Strawberry"	Gin	551
Smith, W. P.	Half-circle symbol, and words "Centrifugal Earth Drill"	Driven-well points and drills	990
Smith & Co., F. E.	"F. E. Smith & Co.'s Crushed White Wheat"	Crushed white wheat	858
Smith & Co., H. D.	Letter "S," in circle	Carriage hardware	521
Smith & Co., J. Lee	Illustration of a crown	Paints	173
Smith & Harris	A curve, formed of 2 semicircles, &c.	Fertilizers	245
Smith & Son, John C.	"Live Indian," with illustration	Cigars	230
Solms, Sidney J.	"Pekin Mills," and "Hoosier Doe-Skins"	Woven fabrics	522
Sorrento Wood-Carving Co.	Words "Sorrento-Wood Carving"	Wood-carvings	689
Soule, Kretsinger, & Co.	"Gold Medal," and monogram "S. K. & Co."	Agricultural implements	1017
Southern Fertilizing Co.	An anchor, and letters "S. F. Co.," &c.	Fertilizers	866
Spang, Jacob D.	Barrel, with proprietor's name, lamps, &c.	Illuminating-oil	138
Spencer, Albert H.	"Reliance"	Clothes wringer	326
Spencer Manuf. Co.	Diamond-shaped symbol on frame, to signify "Diamond Spectacles," &c.	Spectacles and eye-glasses	1023
do. do.	Crescent-shaped symbol on frame, to signify "Crescent Spectacles," &c.	do. do.	1024
Spies, Francis[2]	Bell, and words "Bell Brand Oils," &c.	Kerosene and spirits of turpentine	139
Springfield Iron Works	"The Joe George Plow"	Plows	1009
Staab, Charles P.	"Semper Paratus," on an escutcheon, which bears the upper part of lion, &c.	Artists' materials	621
Stanley, David A.	"Club-House Favorite"	Whiskey	488
Starkey, George R.	"Oxygenaqua"	Compound oxygen-water	1064

[1] See § 274, *ante*.

[2] Not described in specification.

Registrants.	Brief Description.	Class	No.
Starrett, Helen E.[1] . .	"Starrett Patent Overshoe," &c. .	Overshoes . .	871
Steel & Co., E. T. . .	Combination of the letters "H. W. and H."	Cloth or men's-wear . . .	147
Steele & Price . . .	Word "Cream," &c.	Baking-powder .	1085
Steffan & Co., F. . .	Shield & crown, lions & monogram	Shawls . . .	397
Stern & Co.	"Champion Shirts"	Shirts	991
Sternberger, Leopold .	Balance, shield, and word "Centennial"	Shirts, shirt-fronts, &c.	709
Sternberger, L. & S. .	Circle, crescent, &c., and word "Eclipse"	Shirts, draw'rs, &c.	253
Stevens, Alfred T. . .	"Stevens' Combination for Staining, Tinting, or Coloring," with the monogram "A. T. S." . .	Colors and paints	907
Stevens, Thomas W. .	"V. G. & S." in monogram, and "Bazaar Shirt"	Shirts	908
Stewart & Co., A. T. .	Arms of U.S., Gt. Britain, Germany, and France, &c., very elaborate .	Dry goods . .	763
Stickney & Poor . . .	Globe, with latitudinal and longitudinal lines	Spices	674
do. do. . . .	Pot, ornamented with flowers and leaves	do.	675
do. do. . . .	Figure of a bull	do.	676
do. do. . . .	Cup and saucer, flowers, &c. . . .	Coffee	677
Stowell & Co. . . .	"Samuel Kidder & Co.'s Asthmatic Pastilles"	Pastilles . . .	622
Strain, John G. . . .	"J. G. Strain's Grecian-Post Split-Bottom Chairs, Delaware, Ohio," and cut of chair	Split-bott'm chairs	504
Straiton, Schmitt, & Storm	Three owls, words "Owl Segars," &c.	Cigars	126
Strasburger & Pfeiffer .	Escutcheon, and letter "G" . . .	Harmonicas . .	1065
Strasburger, Fritz, & Pfeiffer	Inverted truncated cone, with smaller cone	Toys & fancy g'ds	246
Stuart, Peterson, & Co.	"Sunnyside"	Heaters & stoves	710
Suire & Co., F. E. . .	Mortar and pestle	Chemicals . .	388
Swain, Earle, & Co. .	"Golden Mustard," and figure of a cruet-stand	Mustard . . .	919
Swalley, Jos. W. . .	"Sea-Foam Soap," and proprietor's name	Soap	1060
Swank, M. J.	"Centennial"	Cigars	942
Sweet, Barnes, & Co. .	Lozenge figure, with letters "S. B. & Co."	Cutters for harvesters . .	571
Swett & Crouch . . .	Firm-name, and words "Willow-Spring Ice," &c.	Ice	798
Tamin, J. M. O. . . .	"Phosphorine"	Alimentary & medical preparat'ns	943

[1] An existing patent.

Registrants.	Brief Description.	Class.	No.
Taplin, Horace . . .	A star, harp, trefoil, & clasped hands	Badges, medals, studs . . .	732
do. do. . . .	American flag and staff, and clasped hands	do. do. .	733
Taylor, A. S.	"Taylor's Champagne Nectar" .	A beverage . .	872
Taylor, De Witt C. & George F.	Word "Perfection"	Refrigerating apparatus . .	787
Taylor, Jr., E. H. . .	"O. F. C.," &c.	Whiskey . . .	1022
Tenney & Sons, W. H.	"Harper's Ferry Flour from White Wheat"	Flour	572
Teter & Hite[1] . . .	One star overlapping another, in cloud	All-healing liniment and morning-star lamp-oil . .	47
Thalheimer & Hirsch .	Word "Centennial," and pictorial designs	Shirts,draw'rs,&c.	809
The Tanite Company .	"Tanite," &c.	Emery-wh'ls,&c.	1047
Thomas & Co., J. J. .	"Thomas' Smoothing Harrow and Broad-cast Weeder"	Harrows . . .	635
Thomas & Co., J. L. .	"Alexandra"	Refined petrol'm	999
Thompson, C. L. . .	Five-pointed star	Tonic or cr'm beer	789
Thompson & Steele . .	"Dr. Price's Cream"	Baking-powder .	95
Thompson, Steele, & Price Manufacturing Co.	"Dr. Price's Blood Enricher," &c.	Medicines . .	453
Thomson & Co., A. . .	"Crescent City," "Sugar Refinery," "A. Thomson & Co.," "Orleans Molasses," stars, crescent, &c. .	Molasses . . .	972
do. do. . .	"Crescent City," "Bouquet Syrup," stars, &c.	Syrup	973
do. do. . .	"Crescent City," "Louisiana Molasses," &c.	Molasses . . .	974
do. do. . .	"Pelican," "Molasses," & crescent-shaped symbol	do. . . .	931
do. do. . .	"Chalmette," "Molasses," and crescent	do. . . .	983
do. do. . .	Crescent-shaped symbol	Sugars,syrups,&c.	998
Thomson, Langdon, & Co.	Picture of a crown	Corsets, skirts, &c.	539
do. do. do.[2]	"Thomson's Royal Batswing" . .	Skirts	540
do. do. do.	"Thomson's Glove-Fitting Corsets," &c.	Corsets . . .	541
do. do. do.	Picture of corset, with zone-like section	do. . . .	542
do. do. do.	"Thomson's Glove-Fitting," with cuts	Skirts and corsets	543
do. do. do.	A cross, a crown, and words "The Crown Perfumery Company" .	Perfumery, &c. .	1025
do. do. do.	Picture of a crown, and words "The Crown Perfumery Company" .	do. .	1026
Thurber & Co., H. K. .	Autograph, &c.	Yeast powder .	14
do. do. do. .	Sheaf of wheat, with words "Century White Wheat Bourbon" .	Whiskey . . .	15

[1] Not described in specification.

[2] See § 273, *ante*.

Registrants.	Brief Description.	Class.	No.
Thurber & Co., H. K. .	"Century Whiskey," and monogram "H. T. & Co."	Whiskey . . .	889
Thurston, George B. .	"Mrs. Thurston's Celebrated Worm-Syrup"	Medic.-preparat'n	247
Tiemann & Co., D. F. .	Representation of a globe, paint-brush, paint-can, and the hand .	Paints, colors, and painting-materials . .	1039
Tilden & Co.	"Bromo Chloralum, Tilden & Co."	Medicine . . .	421
Tileston, William M. .	"Ginger, Tonic, Bitters, Wine, Spice," "W. M. T."	Ginger tonic bit'rs	899
Tilton & Co., J. E. . .	"Autographium"	Blank-books . .	734
Tinkham, F. J. . . .	Words "Lightning Polish" . . .	Polish for metals	859
Toppan & Winn, C. & M. F.	"Aquapelle"	Water-proof goods	111
Townsend, Elmer . .	Phrase "Cable Screw Wire," with or without picture	Boots and shoes	140
Townsend, Henry Elmer	"Cable Wire," with picture of piece of wire	do. do.	264
do. do.	"Screw Wire," &c.	do. do.	265
Trentman, Monning, & Son	"White Fawn Baking Powder," and figure of a white deer or fawn .	Baking powder .	1018
Trischet & Bondy, S. & J.	Figure of seated woman, holding shield and sword, eagle, words "Fast edges, trade-mark, full width," &c.	Velvet ribbons .	939
Truex, E. H.	"Cod-Liver Oil Jelly"	Cod-liver oil . .	764
Tucker, J. Augustus .	"Bay State Bone Superphosphate," &c	Fertilizer . . .	248
Tufts, James W.[1] . .	"The Arctic Soda Apparatus" . .	Soda water apparatus . .	678
Tully & Davenport . .	Female crowned head	Emery	641
Turner & Co., J. J. . .	Word "Excelsior"	Fertilizing comp'd	16
Turner, John P. . . .	"Victoria Jet"	Jewelry . . .	415
Tuttle, G. R.[2]	"Sterling Cannel Coal"	Coal	818
Twamley, James[3] . .	Man's face, printed or stamped . .	Elastic webbing	860
Tyler, John T. . . .	Monogram, word "Deerustator," &c.	Deerustating compound for steam-boilers .	1087
Tyzick, James . . .	Diamond or lozenge shaped symbol, and words "Trade-Mark, Black Diamond," &c.	Emery wheels or blocks . . .	1061
Underhill Edge Tool Co.	"Crown Axe," with or without picture of an axe	Axes	840
Underwood & Co., Wm.	"Deviled Extremets," &c. . . .	Deviled extremets	82
Union Akron Cement Co.	"Akron Cement," &c., with picture of star	Akron cement .	141

[1] See § 273, *ante*.

[2] Not a mere geographical term, because registrant is sole owner of place.

[3] See § 584, *ante*.

Registrants.	Brief Description.	Class.	No.
Union Manuf. Co. . .	"Minnehaha Mills," figure of man, fall of water, &c.	Paper	187
University Publish'g Co.	Name, with banner and monogram thereon	School-books, maps, &c. .	868
U. S. Proprietary Medicine Co.[1]	Representation of corporate-seal .	Medical comp'ds	74
Utica Cement Co. . .	"Utica Cement Co.," stars, &c. .	Hydraulic cement	433
Van Wart, Son, & Co.	Stars and stripes, with the star and part of the collar of the order of St. Michael and St. George . .	Saddlers' h'dware	992
Ventilating Water-proof Shoe Co.	"Ventilating Water-Proof Shoe Co. Works," and picture of 3 boys .	Boots and shoes	583
do. do.	"Ventilating Water-Proof Shoe Co.," "Lic. Stamp"	do. do.	584
Victor Scale Co. . .	Word "Victor"	Scales	49
Vidvard & Sheehan . .	"Meehan's Malt Potteen," and Irish harp	Whiskey . . .	180
do. do. . .	Medal, with stars, and words "Gold Medal Kentucky Malt Bourbon"	do. . . .	226
Viele, Platt B. . . .	"Viele's Golden Laundry-Bluing"	Laundry-bluing	438
Vincent, Hathaway, & Co.	Lozenge-shaped border, lettering, and monogram of letters "V. H. & Co."	Ginger-ale . .	883
Walker, Joseph H. . .	"Walker" and "Boot," and star .	Boots and shoes	288
do. do. . .	Combination of words "Saddle," "Seam," and "Boot" . . .	Boots	932
Walker, Oakley, & Co.	"Walker Tannery," with device of tiger, wreath, &c.	Leather . . .	289
Walsh, Brooks, & Kellogg	Monogram "C. S.," and words "Old Cave Spring"	Whiskey . . .	489
do. do. do.	"Old Woodburn," and three links .	do. . . .	490
do. do. do.	Monogram "B. C.," "Old Buck Creek Whiskey," &c.	do. . . .	491
do. do. do.	Monogram "C. G.," "Old Cedar Grove Whiskey," &c.. . . .	do. . . .	492
do. do. do.[2]	"Paul Jones," and letters "W. B. & K." in lozenge	do. . . .	702
Walter & Fielding . .	"* Richmond * Metallic Paint" .	Paints	493
do. do.[3] . .	"Vieille Montagne Green" . . .	do.	494
Walter & Shaeffer . .	Demon holding six bottles of bitters	Pipifax bitters .	434
Walters, Edwin . . .	Crescent or new moon, and word "Orient"	Whiskey . . .	880
do. do. . . .	Crescent, & words "Spring Valley"	do. . . .	873
Walton, Whann, & Co.	"The Great Fertilizer — Whann's Rawbone Superphosphate" . .	Fertilizer . . .	75
do. do. do.	"Virginia Tobacco Guano" . . .	do. . . .	319
do. do. do.	"Carolina Peanut Guano" . . .	Commercial fertilizers . .	642

[1] Not described in specification.

[2] See § 218, *ante*.

[3] See § 193, *ante*.

Registrants.	Brief Description.	Class.	No.
Ward & Co.	Letters and figure in combination, "B 4 + A. N. Y."	Cutlery . . .	755
Ware, Marshall, & Co.	The word "Gavotte"	Gloves	596
Ware, Jr., Preston . .	Monogram of letters "W. A. R. E."	Boots & shoes .	1033
Warfield, Alex. . . .	Letter "S," within which are the words "Warfield's Cold-Water Soap. Best in the World" . .	Soap	59
Warfield & Co. . . .	"Mecca," with firm initials . . .	Lubricating oil .	145
Warren, Edwin A. . .	"Warren's Not Poisonous Hair-Restorer"	Hair-restorer .	445
Waters, C. & W. A. .	"Magnolia Gin," and flowers . .	Gin	544
Waterston & Son, George	Picture of a bee, "The First Wax-Maker".	Sealing-wax . .	1027
Watson, R. H. . . .	Shield and border, with cut of a ship	Druggists' sundries . . .	831
Wattles, Joseph W. .	Bust of an Indian chief, with coronet of feathers, and necklace of talons, &c.	Suspenders and elastic webbing	50
Wattson & Clark[1] . .	"W × C" in a parallelogram . .	Superphosphate	60
Wayne, Edward S. . .	"Wayne's Diuretic Elixir of Buchu, Juniper," &c.	Medicines . .	345
Weaver, James E. . .	Pearl wheat, letters "J. E. W.," and two ears of wheat	Wheat	623
Webber & Co., J. T. .	Cut of mortar, having the words "Webber's Strengthening Bitters"	Strength'g bitters	841
Weber, Bernhard . .	Three cherubs coloring a chair . .	Colors	597
Webster & Co., H. . .	Horse-shoe, and words "Kentucky Favorite," &c.	Whiskey . . .	142
Weed Sewing-Machine Co.	Letters "F. F.," for "Family Favorite"	Sewing-machines	51
Weed & Co., W. A. .	Angles, with letters "S. N. W. E.," &c.	Perfumery, drugs, &c.	775
Weil & Woodleaf . .	Lion's head enclosed in a triangle .	Fancy goods . .	975
Weisenberger, Philip .	Mixed design of stones, flame, and words "Key-stone Non-Explosive," &c.	Burning-fluid .	121
Weeks & Dupee . . .	Word "Aurantine"	Chemicals for dyeing	525
Wells & Stell, W. S. and J. J. . . .	Figure of a conoid A, "Medikones," &c.	Medical preparations . . .	167
do. do. do.	Elongated conoid B, "Medikones," &c.	do. do.	168
Wells, William N.[1] . .	Pythagorean theorem, and dove .	Medicines . . .	76
Wendt & Rammelsberg	"Bismarck Cement," &c.	Cement . . .	585

[1] Not described in specification.

Registrants.	Brief Description.	Class.	No.
Werk & Sons, M. . .	Eagle, with words "Golden" and "Eagle," &c.	Wine	206
West Virginia Oil and Oil Land Co. . . .	Representation of the western hemisphere, with the word "Globe" across the same	Lubricating oils	48
Wheeler, A.	"Siccohast," & monogram "A. W."	Paint-drier . .	832
Wheeler, Madden, & Clemson	"Improved Conqueror Saw," with or without pictorial designs . .	Saws	1074
Wheeler & Wilson Manufacturing Co. . .	Shield, stars, & monogram "W. & W."	Sewing-machines	181
White & Alexander[1] .	Game-cock	Whiskey . . .	77
Whitelaw, Francis M. .	"Gold Ring Candy"	Candy	320
Whiting, George A. .	Monogram "W. & Co." with motto "Memor et fidelis" on a shield .	Ladies' under-garments, ruffles, &c.	359
Whitney, James H. .	Name, with locket enclosing portrait, &c.	Sewing-machine	399
Whittaker & Sons, F. .	Five-pointed star, letter "W," and firm motto	Sugar-cured hams	920
Whorley, T. & L. . .	Negro's head, &c., and "Celebrated Tar-Heel"	Tobacco . . .	810
Wiard & Hough . . .	Character consisting of five circles	Plows, cultivators, &c.	819
Wilder, James Davis .	"Wilder's Liquid Slating," elaborate device	Liquid slating, &c.	511
Willetts, Charles E. .	"Quaker"	Soap	305
Williams, Blanchard, & Co.	Japan dragon, with drawing, &c. .	Tea	214
Williams (Thomas C.) & Thomas (James, Jr.)	Monogram, "T. W. C.," globe, and tobacco plants	Tobacco . . .	400
Williamson, Edward J.[2]	"Melaroma," and beehive & plants	Beverages . .	401
Willoughby, Hill, & Co.	"Square-Dealing Clothing" . . .	Clothing . . .	735
Wilson Sewing-Machine Co.	"Excelsior Wilson," eagle, &c. . .	Sewing-machines	679
Wilson, Sorg, & Co. .	Border enclosing firm-name and "Beauty Navy Tobacco" . .	Tobacco . . .	910
Winfree & Loyd[3] . .	"Uncle Bob Lee," and face . . .	do. . . .	402
do. do. . . .	Figures of two Indians, word "Hiawatha"	Smoking-tobacco	689
do. do. . . .	Words "Pride of Virginia," figures of men, &c.	do.	690
Winslow & Rogers . .	"Alexina"	Boots or shoes .	643
Witherspoon, Witherspoon, & Wern . .	"Magic Polish," and figures . . .	Metal polish . .	466
Wood & Co., Alan . .	"Best Charcoal Bloom," &c., "XXX"	Sheet or plate iron	505
do. do. do. . .	Monogram "A W"	Sheet-iron, &c. .	564

[1] Not described in specification. [2] See § 273, *ante* [3] See § 218, *ante.*

Registrants.	Brief Description.	Class.	No.
Woodbury, Booth, & Co.	"Endurance"	Working-barrels for petroleum-wells . . .	435
Woodbury, Edward W.	Figure "A" of a cigar, with label attached, words "Industria Del Tobacco," &c.	Cigars	900
Worcester Co. Free Institute of Industrial Science	Monogram of "W. and S.," artist's palette, a trefoil on a circular disk, &c.	Mechanical tools, &c.	911
Worth, Judson G. . .	Woman carrying a tray with cup and glass	Teas, coffees, & spices . . .	842
Wostenholm & Son, G.[1]	"I X L"	Cutlery . . .	666
Yates, Wharton, & Co.	Shield (quartered), hats, "Excelsior".	Hats	369
York & Co., George H.	Scroll, and monogram "G. H. Y. & Co."	Medicine . . .	174
Young & Co., George T.	Name, and "Liquid Enamel Paint"	Paint	385
do. do. do.	Name, and "Always Ready for Use"	do.	386
Young & Co., Charles H.	"Metropolitan — Dressing" . . .	Blackings . .	526
do. do. do.	"Paris Dressing"	Shoe-blackings .	680
Young, John B. . . .	"Crown Brand Leather Stuffing".	Compound for stuffing leather	820
Zeilin & Co., J. H.[2] . .	Autographs, monogram, &c. . . .	Medicine . . .	52
Zoller & Little . . .	Rising sun, and words "Rising Sun"	Roasted coffees .	1088

[1] See §§ 68–70, 450, *ante*.

[2] Many errors are connected with this case. The specification speaks of "a wrapper or label as a trade-mark for said medicine, of which the design shown in the annexed drawing is a true copy," &c. No *drawing* is or has been annexed. A copy of the printed label or wrapper was filed. By some fatality, that was not signed by the applicants. Singular enough, one person signed it as witness! Yet on the label there is a perfectly-valid trade-mark. All errors can yet be cured. See §§ 418, 419. *ante*.

ADDENDUM.

Registrants.	Brief Description.	Class.	No.
Ames & Co., Henry . .	"Henry Ames & Co., Standard," figure of hog on a banner, and monogram "H. A. & Co." . .	Sugar-cured hams, &c.	976
Beckwith, Philo D. . .	Words "Round Oak"	Stoves	1089
Brown & Co., J. . . .	Word "Liberty"	Chewing-tobacco	1090
Carey & Co.	Device of a dragon	Oils	1092
De Bary & Co., F. . .	Elaborate device	Champ'ne-wine	1099
Florence Sewing Ma. Co.	Word "Bureau"	Sew'g-machines	1081
Fort Plain Spring Axle Co.	"Green Jacket"	Springs and axles	1095
George, Rogers . . .	"B. C.," a hyphen, and fig. "70" .	Liquor packages	671
Hanau, Julius . . .	E. front Capitol at Washington . .	Leather . . .	1096
Jenks, Charles W. . .	Words "Sanspareil," &c.	Shirts	1100
Jewett, Sherman, & Co.	Words "White Lily"	Baking-powders	1098
Jowitt & Son, Thomas	Steam-engine, &c.	Files	1101

INDEX.

[*References are to the sections.*]

A.

ABANDONMENT,
sometimes an affirmative defence, 674.
error in arguing from supposed analogies, 675.
of mark differs from that of other property, 675.
discarded symbol may be adopted by another, 677.
resumed by original proprietor, 677.
when extinguishment of trade-mark, 678.
patent cases do not furnish precedents, 679.
what amounts to, 680.
intention is the criterion, 681, 690.
non-resistance to registration by another, not fatal, 682.
what neglect operates as forfeiture, 684.
forbearance to sue is not abandonment, 685.
distinguished from neutralization of symbol, 686–688.
in one country is in law *total* abandonment, 689.
ABATEMENT OF APPLICATION, for defect of allegations, 572.
ABRAHAM dealt in money current with merchants, 10.
ABSTRACT SYMBOL,
no property in, 129, 311, 312, 360, 450, 588, 596, 661, 676.
therefore cannot be assigned, 361.
ABUNDANS cautela non nocet, p. 611.
"A C A" case (*Amosk. Manuf. Co.* v. *Spear*), 153–156.
recognized and registered, 235.
decree of injunction in. (See Appendix, p. 598.)
ACCESS to testimony filed, 640.
ACCOUNT IN EQUITY,
pending result defendant required to keep, 505, 507, 517, 549.
not ordered when complainant negligent, 497.
innocent vendor of spurious goods not to keep, 471.
upon decree for perpetual injunction, 660 (p. 520).
ACCURACY of definition contains much law, 84.
necessary to prevent misconception, 101.

ACQUIESCENCE IN USE OF MARK,
may not amount to abandonment, 684.
defeats right to call for account in equity, 497.
ACQUISITION of title to mark, 53.
ACTS OF CONGRESS in relation to trade-marks, 71, 278–384.
ACTION AT LAW,
as remedy for infringement, 334, 368, 392, 451, 457–458, 462–463.
who may maintain, 63, 334.
in doubtful cases must precede equitable remedy, 462.
must fail when plaintiff has used fraud, 370, 373.
time for bringing, sometimes fixed by Chancellor, 463.
verdict not always conclusive on equity court, 464.
fraud is of the essence of the injury, 458.
discovery, as provisional remedy, 470.
when damages recoverable, 499 *et seq.*
for fraudulent registry of mark, 367.
ADMINISTRATORS may assign trade-mark, 365.
ADOPTION OF SYMBOL AS A TRADE-MARK,
what amounts to, 52, 382–384, 528 *et seq.*, 679.
avowal of intention is not adoption, 52, 382–384, 662, p. 330 *et seq.*
registration is not adoption, 682.
must be in connection with specific class of merchandise. (See CLASS, &c.)
AFFIRMATION equivalent to oath, 320.
AFFIXING of mark to merchandise, 143, 311, 312, 382–383.
what amounts to, 382.
penalty for improper affixing, 384.
word "patent," 357, n.
"*AGENCE des théâtres*" case, 534.
"AKRON" case (*Newman* v. *Alvord*), 182, 188, 538, 598, 657 (p. 497), 659 (p. 507).
ALDUS MANUTIUS, his mark, Dolphin and Anchor, 14.
ALIENAGE no bar to protection, 21, 301.
ALIENATION OF TITLE, by assignment. (See ASSIGNEE, ASSIGNMENT.)
operation of law, 663.
ALLEGATIONS,
must be clear and distinct, 591.
may be true in letter and false in spirit, 607.
not conclusive upon Patent Office, 607–608.
ALLEGIANCE, question of, on application for registration, 291–292.
ALLSOPP'S LABELS, penal servitude for false use of, 452.
ALLUSIVE NAMES, 198.
AMENDMENTS,
of application-papers is limited, 577.
enlarging claim must be upon supplemental oath, 578.
must not substitute other symbols, 578.
to be made on sheets separate from original, 579.

AMENDMENTS (*continued*).
strictness of practice required in, 579.
to be filed with Chief Clerk of Patent Office, 579.
forms of. (See Appendix, pp. 577, 592.)
"AMERICAN SARDINES," not a valid trade-mark, 610.
AMERICAN WATCHES, piracy upon, 74.
AMERICAN CITIZEN may be commercially a foreigner, 290.
ANALOGUES OF THE TECHNICAL TRADE-MARK,
discrimination necessary, 81, 83, 90, 131.
labels, advertisements, signs, 83, 90–101, 130.
advertisement miscalled a trade-mark, 127, 133–134.
mere labels, 133–136, 345, 377, 379, 537–538, 541–544, 562–564.
applicant's own name not a trade-mark, 137.
business-signs, 161, 344, 524 *et seq.*, 528–529, 534–535, 540.
cards, circulars, 311.
firm-names on signs, 521, 524–527, 538.
upon dissolution, 530.
titles of publications. (See Books; Song; Journals.)
names on coaches, 560–561.
"ANATOLIA" case (*McAndrew* v. *Bassett*), 184, 657 (p. 500).
"ANGOSTURA BITTERS," registered case, 194.
ANIMATE PROPERTY with owners' marks, 3, 16.
"ANNIHILATOR," a valid mark for medicine, 273.
ANTIQUITY of proprietary marks, 1–19.
"ANY CORPORATION," meaning of words restricted, 277–300, 305.
"ANY PERSON," words qualified and explained, 283–284.
APPEAL FROM TRADE-MARK EXAMINER, (See Forms, pp. 577, 585.)
is only to Commissioner in person, 646, 649.
pro formâ, and in nature of a rehearing, 659.
stands for argument at one o'clock, P.M., 648.
reasons for, and briefs of argument, to be filed, 649.
thirty days' time usually allowed, 658.
APPLICANT'S OWN NAME,
is not a trade-mark, 137, 195, 206, 348.
when combined with other words, 199.
use of may be only a cover for fraud, 200.
APPLICATION FOR REGISTRATION, (See Chapters VI. VII.)
preliminaries to, 565–567.
necessity for forms, 568.
substance more necessary than technical form, 569.
system of examination, 570–575.
papers serve purpose of declaration in action, 571, 573.
objections taken by the Office, 572–573.
questions not answered in advance of filing, 574.
objections, how met by applicant, 575.
drawing and filing of papers, 576.
power to make amendments limited, 577.

APPLICATION FOR REGISTRATION (*continued*).
design of oath, 580.
primâ facie title of applicant to his mark, 581.
indefiniteness of description, 583–585.
(See titl · "Specification.")
APPLICATION OF MARK TO MERCHANDISE,
is essential to title, 143, 311–312.
mode of making, 313, 315.
"ARAMINGO MILLS" case (*Colloday* v. *Baird*), 186.
ARMS, national, not a trade-mark, 261.
ART, trade-mark not deemed a work of, 110.
ARTICLE, proper name of, not a trade-mark, 165–177.
ARTIFICIAL PERSON may hold a trade-mark, 55.
but not so unless a trader, 55.
"*ASPHALTE DE SEYSSEL*," being geographical, not a trade-mark, 598.
ASSESSMENT OF DAMAGES,
direct and immediate consequences to be regarded, 510.
one cannot avail himself of his own neglect, 510–511.
actual damages to be recovered, 513.
plaintiff not held to exact statement, 513.
plaintiff's loss, not defendant's gain, the criterion, 513.
rule not same as in patent cases, 515.
ASSIGNEE, must deduce his title, 593 (*note* 10), 661 (p. 528).
unite in concession of priority of right, 634.
ASSIGNMENT, 359, 360. (See FORMS.)
ATTORNEY, comprehensive meaning of term, 566.
care requisite in the selection of, 566–567.
notice to, of declaration of interference, 635.
taking testimony, 646.
may attend examination of witnesses, 646.
AUSTRIAN LAW of 1858, 26, p. 560.
AUSTRO-HUNGARIAN CONVENTION, App. p. 557.
AUTOGRAPH is a valid trade-mark, 204.
so is a fac-simile thereof, 207, 272.
copy of, as means for deceiving the public, 208.
trade-mark for assignee, 209–211.

B.

BADGE as a proprietary mark, 5.
"BALM OF THOUSAND FLOWERS" case, 148, 241–244, 448.
BANKRUPTCY, trade-mark included in assets, 663.
BASS & CO.'S case, 448.
the placing of genuine mark on genuine goods not piracy, 448.
BAVARIA, trade-mark law of, 563.
BELGIAN LAW, App. p. 563.
BELGIUM, treaty with, App. p. 558.
"BISMARCK," a valid trade-symbol, 68.

BONA FIDES,
inquired into by Patent Office, 607–611, 613, 619–620, 627, 634, 643, 646, 666–668.
BOOKS, trade-marks for, 14, 15, 161.
protected as merchandise, not as literature, 116.
titles of, sometimes perfect trade-marks, 547 *et seq.*
"BORWICK'S BAKING POWDERS" case, criminal, 452.
"BOUQUET" CASE,
picture of bouquet and word "Bouquet" held to conflict, 449, 661.
"BOURBON WHISKEY," is this a generic term? 347.
"BOVILENE" and "Bovina" case, 397.
"BLANCHARD CHURN" case discussed, 377–379.
BLASPHEMOUS ALLUSIONS condemned, 602.
"BLONDIN" protected as a pseudonym, 213.
"BLUCHER," a man's name to designate boots, 181.
BRAND, as a mark of ownership, 5.
BREACH OF FAITH, in disclosing secret process, 562.
BREADTH OF CLAIM,
most likely to be founded in simplicity, 586–588.
mistake, by claiming too much, 588, 590.
"BRICK POMEROY," a valid personal designation, 214.
BRITISH "MERCHANDISE MARKS ACT" of 1862, 85, 102, 301, App. p. 565.
"BROSELEY" PIPE case, 17.
"BROUGHAM," a man's name to designate a carriage, 181.
"BURGESS' ESSENCE OF ANCHOVY SAUCE," not a valid mark, 432.
BUSINESS, names protected. (See Chap. XII.)
and styles, in signs and labels, 521 *et seq.*
place of, must be stated in application for registration, 308.
use of mark for unlawful, defeats remedy, 370.
BUYERS OF GOODS falsely marked, suit by, 63.

C.

"CABLE-STITCHED KID GLOVES" rejected, as merely descriptive, 136.
"CABLE-TWIST TOBACCO" case discussed and rejected, 167–177.
CÆSAR, JULIUS, the first to stamp his image on coin, 9.
"CALCULATED TO DECEIVE," oath of applicant that mark is not, 320, 327.
"CALENDAR WATCH" rejected, as merely descriptive, 276.
CANADA, law of, App. p. 564.
"CARTE BLANCHE," champagne-wine case, 438.
CARTHUSIAN MONKS' trade-mark suits, 407–410.
CASE, action on the. (See ACTION.)
CAVEAT emptor, 11, 64.
venditor, 64.

"CENTENNIAL," trade-mark interference, 383, 638.
CERTIFICATE, of officer to affidavit, 324.
Commissioner of Patents, to be evidence, 355.
registration is not a *patent*, 357.
proof of service of papers, 646.
CHARACTERISTICS, essential, of a trade-mark, 143.
CHARGE D'AFFAIRES may administer oath to applicant, 321.
"*CHARIVARI*," French journal case, 551.
"CHARTER OAK," a valid trade-mark for stoves, 148.
"CHARTREUSE" has all essential elements of trade-mark, 410, 582.
CHATTEL, history of word, 3.
"CHEMICAL PAINT" case considered, 251, 259, 612.
CHEMICAL PRODUCTS, name of, not a valid mark, 166.
CHINESE, antiquity of their trade-marks, 13, 215.
perfect system of marking goods, 43.
imitation of marks in England, 232.
an American citizen when regarded as Chinaman, 290.
"CHINESE LINIMENT" case (*Coffeen* v. *Brunton*), 460, 462, 538.
"CHIROPLAST," inventor of, had a good trade-mark in name, 501.
CHRISTIAN NAME, law recognizes but one, 196.
CIPHER, as a distinctive sign or mark, 87, 262.
CITIZENSHIP,
not necessary to entitle to registration, 291, 301.
yet must be divulged in application, 287, 578, 594 (*note* 44).
of State may possibly not be of United States, 594 (*note* 44).
CLAIM must be clearly defined, 586–588, 590, 592–593.
confined to one class of merchandise. (See CLASS.)
CLAIMANT does not register mark, but a *copy* thereof, 382.
"CLASS OF MERCHANDISE,"
restricted meaning of phrase, 67, 450.
protection given only in connection with, 66–70, 310–312, 450, 590, 592.
particular description of goods must be alleged, 310.
CLASSIFICATION OF RIGHTS analogous to those of trade-marks, 521.
"CLEAN HANDS,"
complainant in equity must come with, 474 *et seq.*, 488.
false indication of origin of goods is fraud, 480, 483, 485, 487, 489–490, 493.
misuse of another's name *with his consent* is fraud, 474, 478.
deception, although harmless, may indicate fraud, 484, 485.
false name of editor manifests a lack of clean hands, 474.
the vendor of a nostrum has not clean hands, 475–476, 479, 491.
laches is equivalent to a lack of clean hands, 497.
a mere exaggerated statement not fraudulent, 492.
nor is harmless fictitious name of manufacturer, 494.
nor immaterial statement, not calculated to deceive, 480.
CLICQUOT, la veuve, champagne-wine piracy case, 455.

"COCOAINE" case, 227, 450, 612.
CODE NAPOLEON, flexibility of, 91.
COINER of new word may use same as trade-mark, 219.
COINS, 76.
COLOR,
as an essential element of a trade-mark, 263–268, 585, 603.
one may neutralize another, 264. 585.
must be definite and certain, if essential, 266, 285.
an important circumstance in infringement case, 267, 413.
as means of deceiving the public, 268.
independent of *form* cannot be a trade-mark, 170, 271.
as national proprietary signs, 74.
COLORABLE infringements, 385 *et seq.*
COLTON DENTAL ASSOCIATION, sign case, 540.
COMBINATION, improper application of patent theory, 346, 347.
COMITY OF NATIONS, 21, 22, 301.
demands the protection of all commercial rights, 21, 22.
courtesy due to all friendly strangers, 21.
disregarded at times by France, 23.
protection of mark dependent upon, 305.
COMMERCE and manufacture, twin-sisters, 78.
trade-marks of equal antiquity, 2.
required its hieroglyphics, 12.
COMMERCIAL SIGNATURE, a trade-mark is one's, 130.
mark should be valid all over the world, 260, 689.
character, imparted by residence in foreign country, 291, 295.
COMMISSIONER OF PATENTS,
to make regulation for registration of marks, 319, 359.
not to receive or record marks not lawful, 334, 607, 657 (p. 493).
nor merely the name of person, firm, or corporation, 334.
nor one improperly claimed, 334.
to issue certificate of registration, 355.
prescribe rules, regulations, and forms for transfer, 359.
strictly follow statutes in ministerial acts, 328, 329.
acts of, not warranted by the government, 355.
has not power to cancel certificates, 624, 659 (p. 509).
may place two parties on same footing, 624.
decision of, in interference cases, final, 650.
to officially notify parties, 656.
appeal to, in person, from Examiner. (See APPEAL.)
COMMON-LAW REMEDIES FOR INFRINGEMENT, (See ACTION.)
not affected by Act of July 8, 1870, 369.
"*COMPAGNIE DES PROPRIETAIRES DE VIGNOBLES*" case, 599.
COMPLAINANT, in equity court,
must be free from wrong. (See CLEAN HANDS.)
residence, &c., of, in Federal courts. (See "Pleadings," in Appendix).

COMPULSORY testimony, 639.
CONCEPTION or invention of mark is not adoption. (See INVENTION.)
CONCESSION of priority of adoption, how made, 634.
assignee must join in, 634.
CONDITION PRECEDENT to registration, 282 *et seq.* (See PRACTICE.)
protection. (See CLEAN HANDS; PROTECTION.)
CONFEDERATE STATES' notes counterfeited, 76.
CONFIDENCE indispensable to social compact, 580.
is the object of applicant's oath, 580.
"*CONFORMATEUR DU TAILLEUR*," sign infringement, 535.
CONGRESS,
provision to protect American watch-makers, 74.
Act of, in relation to registration of trade-marks, 278–384.
does not pretend to create trade-marks, 382.
"CONGRESS WATER" trade-mark case, 147, 598.
CONSTITUTION, power conferred on Congress by, 109.
CONTEMPT of witness before Patent Office, how punished, 639.
CONTRA NON VALENTEM agere non currit prascriptio, 686.
CONVENTION, meaning of term as used, explained, 301, 302.
"CONVEYANCE COMPANY" case (name of coach), 413.
CONVICTION of perjury debars from taking oath, 321.
COPIES,
ten fac-similes of mark to be filed, 314.
of testimony, printed preferred, 641.
COPYRIGHT cannot protect a trade-mark, 109, 110.
not analogous to trade-mark, 112.
protects book as work of intellect, not as mere merchandise, 117.
difference from a trade-mark or a patent, 109, 129.
CORPORATION, protected in use of lawful mark, 282, 330.
entitled to trade-mark only as a trader, 55, 297–300, 305.
"any," limited meaning of word, 55, 297–300.
meaning of term "corporation" sometimes misunderstood, 304.
oath to be made by an officer of, 320.
who is such officer, 326.
mere name of, not a trade-mark, 334, 348, 353–354.
COSTS in infringement cases, 469, 471–472.
COUNSEL, selection of, before Patent Office, 566–567.
COUNTERFEITING,
consists, generally, in actual affixing of false mark, 334, 339.
may consist in applying mark to mere box or envelope, 440.
may sometimes be complete without actual use, 456.
workman not allowed to plead his own good faith, 456.
he is guilty who causes act to be done, 441.
COURT of competent jurisdiction, what? 368.
"*CRAYONS POLYGRADES*" case (*Faber* v. *Faber*), 421.
CREDITOR'S DEED, trade-mark may pass to trustees under, 362.
"*CRÈME D'ARGENT*," as applied to a chemical product, 236.

CRIMINAL PROSECUTION for simulating mark, 452–455.
"CROCKETT" case (Leather Co.'s, H. of Lords), 434.
"CROWN SEIXO WINE" case, 405–406.
"CUNDURANGO OINTMENT, C. O.," rejected, as merely descriptive. 276.
CUTLERS' CO. of Sheffield, Eng., registration of marks by, 18, App. p. 565.

D.

DAMAGES, (for measure of, generally, see Chap. XI.)
statutory provision for, in case of infringement, 334.
fraudulent registration, 367.
depends upon substantial loss to plaintiff, 499.
actual affixing of mark to goods, 334, 500.
sometimes given without proof of specific injury, 501.
no fixed and certain rule for measuring, 502.
compensatory, should be given, 503, 507.
special are not presumed, 504, 509.
must be proved, not based upon mere conjecture, 505.
intent is a prominent element in fixing, 508.
amount of, not dependent on defendant's profits, 507.
plaintiff's negligence may defeat claim to, 510.
difficulty in fixing amount in trade-mark case, 512–515.
patent and copyright cases no standard, 513–516.
exemplary, when allowed, 519–520.
DAMNUM absque injuria, 430, 431, 499, 500.
DANGER in superficially reading Trade-mark Law of 1870, 278.
"DAY & MARTIN'S BLACKING" case, 423.
"DEAD RED BALL" as a mark for a base-ball, 585.
DEBITUM et contractus sunt nullius loci, 22.
DECEIT, protection of public from, 36, 39.
DECEIVE, "calculated to," mark must not be, 320.
Patent Office will judge for itself on this point, 327.
DECEPTION of public, 36, 39, 127, 374, 393, 395, 487–491.
design of, defeats claim to remedy, 370, 374, 487–491.
equity cognizance does not depend upon this point, 37, 38, 393.
no defence that spurious article is equal to genuine, 496, 505.
DECLARATION, (See Forms of, App. p. 586.)
under oath, of exclusive right to use of mark, 320.
to be made by person, or officer of corporation, 320.
can only be made by one who is a competent witness, 321.
must state every thing that is of the essence, 591.
of interference, in what cases, 622, 653, 638.
DEFENCE, (See Chap. X.)
that complainant has been guilty of deceit. (See CLEAN HANDS.)
bad faith in lying by, 497.
negligence, 510.
to bill for injunction in the "Durham Tobacco" case, 660 (p. 511).
(See Form of Answer, in Appendix, p. 597.)

DEFENCE (*continued*).
no defence that spurious goods are equal to genuine, 496, 505.
plaintiff's advertisements are exaggerated, 492.
manufacturer's name is fictitious, 494–495.
complainant delayed, when delay necessary, 498.
DEFINITION and nature of a trade-mark, 80–143.
of the term "trade-mark" necessary for certainty, 80.
"interference," 621.
"*laisser tomber dans le domaine public*," 681.
DE MINIMIS non curat lex, 499.
"DEMOCRATIC REPUBLICAN NEW ERA" case, 550.
DEMURRER to applicant's case, 573.
form of. (See Appendix, p. 590.)
DENMARK, trade-mark law of, 565.
DEPOSIT of mark, not necessary to acquire and conserve title, 48–49.
DESCRIPTION of mark must be filed with application, 313.
color in application, 585.
DESIGN, is not the question, but adoption is. (See INVENTION.)
patent for, explained, 171, p. 529.
of the oath of an applicant, 580.
DESIGNATION of quality cannot be a valid mark, 162–165, 276–277.
trade or occupation, 161.
necessary name of a thing, 166–177, 345.
DEVICE for trade-mark is a matter of fancy, 87, 102.
DICTA not authorities, 84, 99, 391.
DILIGENCE, "race of," not inquired into, in registration, 352.
DIRECTOR of corporation not an officer thereof, 320.
DISAGREEMENT of judicial minds, 149.
DISCOVERY,
usually an equitable remedy, 470.
under Judiciary Act of 1789, in actions at law, 470.
in aid of forfeiture, not favored in equity, 470.
DISGUISE not generally assumed for honest object, 44.
DISSOLUTION OF PARTNERSHIP,
in absence of stipulation, each can use old firm-name, 530.
"DOLLY VARDEN" as a trade-mark, 218.
DOMICILE,
person or firm having, in United States, may register mark, 282.
term commented upon and explained, 287–296.
an essential allegation in certain applications, 287, 591.
every person has domicile somewhere, 289.
forensic, 290, 296.
national and commercial may not be identical, 295.
favorable interpretation of term, by Patent Office, 296.
necessary to enable one to sue in France, 302.
and residence not convertible term, 309.
DRAWING and filing of application, 596.
DURATION of trade-mark life unlimited, 109, 143.

"DURHAM" may, or may not be, a geographical name, 192, 657.
interference case, three opinions, 653–660.
opinion of Examiner, 657.
Commissioner, 659.
Judge Rives, 660.

E.

"*EAU DE LA FLORIDE*,"
infringed by "*Eau de la Fluoride*," 397, 450, 612.
EGYPTIANS, ancient, sign-boards of, emblem, &c., 6.
ELECTION of remedies, 506.
"ENGLISH'S BROOMS" case considered and criticised, 162–163, 597.
ENGLISH COURTS, open to alien and subject alike, 178.
"ENGLISH EMBASSY CHEMIST," shop-sign case, 529.
royal arms, as water-marks upon paper, 6.
EMBLEMS OF OWNERSHIP, (See TRADE-MARKS.)
coeval with birth of traffic, 2.
had origin in general ignorance of reading language, 3.
as signs of ancient Egyptians, Greeks, Romans, 6.
used in all ages, among all races of men, 11.
of old-time booksellers and printers, 14, 15, 116.
pipe-makers in England, 17.
goldsmiths in England, 19.
variety of, 87.
nondescript vignettes, groups of flowers and fruits, not legal, 89.
comprehensiveness of British Act of 1862, 102, App. p. 565.
one's autograph is his emblem, 204.
EQUALITY in value of spurious with genuine goods, no defence, 496, 505.
EQUITY, (See CLEAN HANDS; PROTECTION; Forms, App.)
acts only when legal title is clear, 31, 451, 462, 464–465.
jurisdiction attaches only because of injury to owner of mark, 37.
when case clear, duty of equity court to act promptly, 467.
verdict at law not conclusive in equity, 464.
restrains even an innocent misuse of mark, 468, 471–472.
may compel discovery, 470.
"ERVALENTA–WARTON" infringed by "Revalenta Arabica," 439.
ESSENCE OF MARK, ascertainment of, 429.
cannot consist of mere name of user, 195, 202.
designation of quality, 164.
necessary name, 166 *et seq.*
ESSENTIAL CHARACTERISTICS of a trade-mark, 143.
ESTIMATING DAMAGES. (See Chap. XI.)
ESTOPPEL by reason of previous declarations, 627, 631.
"ETHIOPIAN" trade-mark case, 612.
ETRUSCANS eminently skilled in arts of use and beauty, 11.
EVIDENCE, (See TESTIMONY.)
of false use of unessential elements may be important, 132.

EVIDENCE (*continued*).
fraudulent intent deduced from slight circumstances, 268.
sources of, before the Patent Office, 645.
judicial notice taken of certain facts, 646.
certificate of registration to be evidence, 355.
EXAGGERATED STATEMENTS,
in advertisements, not conclusive evidence of fraud, 492.
EXAMINATION,
of application for registration of mark. (See Chap. XIII.)
inspection of papers as to formalities, 570 *et seq.*
sometimes involves a course of special pleading, 571.
plea in abatement, or in bar, 572.
various grounds of objection by Office, 572.
demurrer to *quasi* declaration of applicant, 573.
oath of applicant not conclusive upon Office, 581.
EXAMINER OF TRADE-MARKS, judicial functions, 574.
EXAMPLES of indefinite descriptions, 583–584.
vicious application-papers, 592–594.
EXAMPLES OF TRADE-MARKS, general discussion, 175–295.
autograph good for the purpose of trade, 204.
or fac-simile of the same, also valid, 207, 211.
pseudonyms protected as trade-marks, 213–214.
fancy names of men, 216.
products, 236–243, 245, 273–275.
variation of one's patronymic, 217.
fictitious names and sobriquets, 218.
neologisms, 219.
newly-compounded words and names, 220.
letters of the alphabet as marks, 234.
device of fancy, including name, 246–250.
necessary name of article of which one has the monopoly, 251.
picture of public building belonging to State, 258.
national arms combined with other things, 261.
heraldry, 260, 263.
monograms and ciphers, 262.
marks depending upon color, 263–268.
EXCELLENCE,
excites cupidity of fraudulent dealers, 74.
of spurious goods, no defence to infringer, 496, 505.
sometimes is sufficient protection to the ingenious, 29.
EXCLUSIVE USE of symbol the foundation of title, 143, 303.
cannot be claimed of a mere geographical name, 182, 185.
designations of trades or occupations, 161.
necessary name of thing, 164–165, 189.
description, 166–167.
one's surname, 423.
EXEMPLARY DAMAGES, 519.
EXTERNAL APPEARANCE of goods demand peculiar marks, 59.

EXTINGUISHMENT of trade-mark. (See ABANDONMENT.)
"EXTRACT OF NIGHT-BLOOMING CEREUS," a deception, 484.
EX TURPI CONTRACTU non oritur actio, 370.

F.

FABRIKZEICHEN, the German of "trade-mark," 85.
FAC-SIMILES,
ten to be filed except in case of drawings, 314.
must be attested by oath of applicant, 320.
of autographs are valid trade-marks, 207.
definition of term "fac-simile," 606.
"FAILLANTINE," as fancy name of thing, 601.
FAITH guides the purchaser, 1, 76, 145.
FALSEHOOD in mark cuts off right to protection. (See CLEAN HANDS.)
FALSE models of application-papers, 592–594.
suggestion a cause of rejection, 607–612, 666–667, 670–671.
representation by applicant, 328, 592.
use of marks, penalty for, 334.
FAMILY NAMES, considered, 196–197.
FANCY NAME, used as trade-mark, 236–251. (See EXAMPLES.)
given to products of one's industry, valid ("Pearls of Ether") case, 236.
nice discrimination required to determine what is, 240.
must be clear of the idea of fraud, 242.
may become generic, 252.
Instances of fancy names, from men and things: —
"Anatolia," liquorice, 184.
"Angostura," bitters, 194.
"Annihilator," medicine, 273.
"Arctic," soda apparatus, 273.
"Balm of Thousand Flowers," dentifrice, 148, 241.
"Bay State," iron, 193.
"Cashmere Bouquet," toilet-soap, 273.
"Charter Oak," stoves, 148.
"Cocoaine," preparation of cocoa-nut oil, 237.
"Congress Water," mineral spring, 146.
"*Crème d'Argent*," chemical product, 236.
"Crystal," castor-oil, 273.
"Damascus Blade," scythes, 249.
"Deer Tongue," tobacco, 273.
"Diamond," soap, 273.
"Dolly Varden," fancy paper and envelopes, 218.
"Everlasting," pills, 273.
"*Flor del Tropico*," cigars, 273.
"Gaslight," illuminating oil, 273.
"Gold dust," whiskey, 273.
"Harvest Victor," scythe, 273.

FANCY NAME (*continued*).
"Kentucky Pioneer," whiskey, 193.
"King of the Field," scythe, 273.
"Marieland," whiskey, 194.
"Melaroma," beverage, 273.
"Mineral Sperm," illuminating oil, 273.
"Pain Killer," medicine, 273.
"*Poudre Brèsilienne*," chemical product, 236.
"Queen of the Meadow," scythe, 273.
"Roger Williams," long-cloth, 216.
"Royal Batswing," ladies' corsets, 273.
"Royal Victoria," 216.
"Samson Brace," suspenders, 273.
"Sunny South," stove, 273.
"Tip Top," scythe, 273.
"Valley Gem," piano-forte, 273.
"Water White," refined petroleum, 273.
"Western Dutchman," scythe, 273.
"Wisconsin Wood Chopper," axe, 193.
"Young America," writing-ink, 218.
"Zero," water-cooler, 273.
(See EXAMPLES OF TRADE-MARKS.)
FEDERAL COURTS,
form of action in, unchanged, 337.
forms of pleadings. (See Appendix, p. 586 *et seq.*)
FEE payable upon application for registration, 318.
is not a pledge or deposit, but an unconditional payment, 318.
cannot be reclaimed, unless paid by mistake, 318, 615–616.
FEES of witnesses in interference cases, 639.
FELON'S OATH cannot be received, 283, 321.
"FERRO-PHOSPHORATED ELIXIR OF CALISAYA BARK,"
as a newly-coined name, held to be a valid trade-mark, 220.
FICTITIOUS NAME of manufacturer, innocent use of, 494.
FILING of declaration in Patent Office, 320.
statement, to be noted and certified, 355.
application for registration, 576.
amendments with Chief Clerk of Patent Office, 579.
representation or copies of mark creates no title, 682.
FIRM, may register a trade-mark, 282.
definition of the term "firm," 286.
mere name of, not registerable as a mark, 334, 348.
name on signs protected in equity, 521, 524, 526–527, 531, 538–539.
by whom used, on dissolution, 530.
FORCE for thirty years, protection under certificate qualified. 330–331.
FOREIGN COUNTRY,
resident of, upon what conditions allowed to register here, 282.
deemed a citizen of that country commercially, 290, 301.
before whom to take oath, 321.

FORENSIC DOMICILE, 290.
FORGERY at common law defined, 453.
or counterfeiting of labels, &c., punished by local laws, 454.
of will detected by means of water-mark; 7.
FORM,
or peculiar disposition of letters a valid personal sign, 165.
of natural object, given by chemical means, 166.
is implied in the use of the term "mark," 269.
of a product cannot be a trade-mark, 605, App. p. 625, *note*.
FORMS,
necessity for, 568.
technical, less desirable than substance, 569.
of applications for registration, App. p. 574 *et seq.*
Commissioner to prescribe, for transfer of mark, 359, 363.
FOUNDATION of title to trade-mark, discussed generally, 46–51.
rests upon mere adoption and use, 46.
does not depend upon statutory law, 47, 48–51.
is in immutable law of nature, 86.
FRANCE, trade-marks optional in, as a rule, 18, 281.
has made more than thirty treaties for protecting labor, 25.
law of 1857, in regard to deposit of trade-marks, App. p. 569.
Convention of United States with, App. p. 558.
treaty of England with, cited, 178.
FRAUD, vitiates every contract into which it enters. 370.
upon the public is not ground for private suit, 30, 37–38.
evidenced by circumstances, 132, 183, 188, 201, 223, 226–228, 238, 268, 375, 385–401, 485 *et seq.*
is essence of action on the case for deceit, 336.
no right of action can arise out of, 370, 373, 384.
actual or constructive, 608.
a lack of sincerity is a badge of, 71.
necessity for protection against, 74.
who protected by law against, 62–65, 393.
part-imitation of another's trade-mark, is fraud, 34, 223.
is the basis of judicial intervention, 61.
of dishonest merchants, 74.
committed in the use of one's own true name, 200, 388–390.
the word "patent," 72, 357.
assigning use of one's name, 361.
perversion of mark, 443–447.
not fraud for stranger to place genuine mark on genuine goods, 448.
to use another's symbol for different class, 450.
FRAUDULENT representations in Patent Office, action for, 367.
intent precludes registration, 320, 327, 592, 607–612.
FRAUDULENTLY-OBTAINED TRADE-MARK, no action upon, 370. 372.
FRENCH TRADE-MARK LAW, (See Appendix, p. 569.)
courts do not admit foreigners not domiciled, 178, 281, 302.

FRENCH TRADE-MARK LAW (*continued*).
laws as to citizens abroad, 293.
definition of term "trade-mark," 87.

G.

"GAUNTLETT-PIPES," marks upon, 17.
"*GAZETTE NATIONALE*" or "*Moniteur Universal*" case, 415.
GENERIC TERMS, must be avoided, 131.
cannot be trade-marks, 161, 164–165, 203, 344.
men's names may become, 178–181, 203.
fancy names of things may become, 252.
phrase explained, as applied to trade-mark law, 251.
carelessness in use of, 310.
GENEVA, enlightened liberality to foreigners, 22, 51.
imitation of American watches in, 74.
GENIUS does not enter into idea of trade-mark. (See INVENTION.)
"GENUINE YANKEE SOAP" case, 119, 125, 597.
GENUINENESS OF MARKS, faith of purchaser depends on, 1, 145, 151–152.
ceases with use on false goods. (See PERVERSION.)
GEOGRAPHICAL NAME, mere, not a trade-mark, 182–183, 185, 187–191, 659.
may cease to be such, 184, 657 (p. 500).
when is a word merely such? 192–194.
GEOMETRICAL FIGURE, as a trade-mark, 269.
GERMAN definition of term *trade-mark*, 85.
law as to protection of marks, App. pp. 572, 573.
GERMANY, official inquiries in, as to patent laws, 28.
convention with, in regard to trade-marks, App. p. 559.
"GEYSER SPRINGS" not a trade-mark, 276, 598.
"GOLDEN CROWN CIGARS" case (*Palmer* v. *Harris*), 481, 483.
GOLDSMITHS' Company mark, 18, 19.
hall-mark, 19.
"GOLSH'S FRICTION MATCH" case. (See *Partridge* v. *Menck*.)
GOOD FAITH, assurance of, necessary, 1. (See BONA FIDES.)
symbol, as a badge of, 11.
GOODS of same class of different owners, different marks, 87. (See CLASS.)
GOOD-WILL signs distinguished from trade-marks, 83, 96–99.
of establishment protected against fraud, 104–105, 521 *et seq*. (See Chap. XII.)
assignment of, may incidentally include trade-mark, 210, 359, 360.
name of firm, business, &c. (See SIGN-BOARDS.)
on dissolution of firm, to whom it belongs, 530.
"*GRAND HOTEL DE LA PAIX*" case of unfair competition, 529.
GRAND SEIGNEUR, capital penalty for deceit in marks, 76.

GRANT,
objection to injunction in some cases, 31.
the registration of a trade-mark is not a, 357, 383.
distinguished from mere recognition of title, 383.
"GREAT LIGHT(E)NING INK ERASER" case, 600.
GREEKS, ancient, sign-boards of, 6.
had cattle for currency, 9.
GREEN BUSH, as vintner's sign, 6.
GREEN SEAL for bottles, held to be a valid trade-mark, 170.
"GROCERIES," too indefinite a word to denote class, 310.
GROUNDS OF INTERFERENCE, 638.
GUARANTY of excellence, a mark should be, 3, 27, 78, 145.
success, in the protection by law of mark, 40.
public faith, in genuineness of coin, 76.
GUILDS,
in olden times maintained high character of goods, 74.
GUTENBERG, mark of himself and associates, 14.

H.

HAGGAI, seal of, found in exploration of Jerusalem, 7.
"HALL MARKS" on gold and silver products, 19.
"HALL'S VEGETABLE SICILIAN HAIR RENEWER" case, 425.
"HAMBURGER TROPFEN" case rejected, 609.
HAMILTON, Sir William, cited as to definition, &c., 82.
"HARDWARE," too indefinite to describe a class of goods, 310.
HAREBOTTLE, a hare and a bottle as his rebus, 6.
HAYTIAN COIN counterfeited, 76.
HEARINGS,
before Commissioner, on appeal, at one P.M., 648.
oral arguments generally limited to one hour each, 648.
printed briefs of arguments preferred, 649.
how much of case to be shown in brief, &c., 650.
final. are before the Patent Office, 650.
notice of. (See Appendix, p. 582.)
HENNESSY, James, name used fifty-five years in commerce, rejected, 137.
HERALDRY, a science with system, classification, language, 5.
trade-marks frequently borrowed from mediæval, 260.
caution to be observed in copying devices, 260.
colors of English, — blue, red, black, green, purple, 263.
HERCULANEUM, emblematic signs in, 6.
HEREDITARY DIGNITIES, seal importing, 5.
"HEROINE" trade-mark infringement case, 612.
HINDOOS, 1200 or 1300 years B.C., had merchandise-marks, 11.
HISTORY of proprietary marks. (See Chap. I.)
the Crusades, book-title case, 553.
word "chattel," 3.

HOLLAND, patents abolished in, 28.
protection of trade-marks in, p. 572.
"HOLLOWAY'S OINTMENT" case, similarity of names, 430.
HOMER mentions brass money as existing twelve centuries B.C., 9.
HONESTY, marks vouch for honesty of traders, 3, 27, 78, 145.
disguise does not generally indicate, 44.
a lack of, debars from protection. (See CLEAN HANDS; PROTECTION.)
an essential characteristic of a trade-mark, 143.
HOTEL, name of, not a trade-mark, 83, 90, 96–97.
protected in equity court, 528–529.
"*HOTEL DE LA PAIX*" case, unfair competition by signs, 529.
"HOWE'S BAKERY," good-will case, sign of business, 98.
"HOWQUA'S MIXTURE" case, 480.
"HUDSON G. WOLFE'S BELL SCHNAPPS" case, 596.

I.

IDEA, not a subject for registration, 606.
IDEM SONANS, 527, 600.
IGNORANT MISUSE of word "patent," not penal, 357.
IGNORANTIA LEGIS neminem excusat, 661.
ILLOGICAL USE of term "trade-mark patent," 357.
IMITATION in part, may be a colorable infringement, 33, 58.
harms as much as entire counterfeit, 34.
without use, is not infringement, 42, 60, 61, 339.
IMPOSITION upon public not ground for private action, 30, 37, 393.
incidentally considered by court, 36.
cause for refusing registration. (See BONA FIDES.)
INCORPORATED COMPANY may register trade-mark, 305.
INCREASED IMPORTANCE of trade-marks, 28.
INDEFINITENESS of allegation may defeat application, 583 *et seq.*
INDIAN, may he register a trade-mark? 294.
INDICATION of origin, or ownership, discussed, 144 *et seq.*
is the office of trade-mark, 144.
mere trade or occupation not a trade-mark, 161.
quality, kind, or nature, not exclusive property, 148, 154, 157, 160, 163–166, 177–181, 276–277.
place may possibly be valid mark, 184, 193–194.
INDICTMENT for simulating marks. (See Chap. IX.)
INDIVIDUALITY an essential characteristic of trade-mark, 143, 342.
INFORMALITY may vitiate act of Office, 328–329, 591.
INFRINGEMENT, generally considered, 385–450.
wherein it consists, 32, 385.
frequently difficult to determine, 33, 386.
criterion of, the probability of deceiving purchasers, 33.
mere imitation of abstract symbol is not, 42.

INFRINGEMENT (*continued*).
part-imitation may be, 228, 237–239, 268, 385.
colorable imitation is, 387.
actual physical resemblance not the only question, 385.
Instances of:—
by means of similarity of surname, 388–390, 395, 430–432, 435–436.
to fancy name, 434.
using "Bovina" for "Bovilene," 397.
"Cocoïne" for "Cocoaine," 397.
"Eau de la Fluoride" for "Eau de la Floride," 397.
"Job," a real name coinciding with fancy name, 398.
"*La Presse libre*" for "*La Presse*," 416.
"*Moniteur officiel*" for "*Moniteur universel*," 415.
"*Petit Journal de la France*" for "*Petit Journal*," 417.
"*Petit Journal de la Somme*" for "*Petit Journal*," 417.
"*Petit Journal du Nord*" for "*Petit Journal*," 417.
"*Revalenta arabica*" for "*Ervalenta-Warton*," 439.
crown and anchor for anchor, 411.
picture of bill of exchange, substantially copied, 414.
fac-simile of signature, 427.
marking box or envelope, but not the goods, 440.
filling bags bearing genuine mark with inferior goods, 443–444.
shifting genuine mark to false or inferior goods, 444–446.
figures "303" a part of genuine mark, 401.
labels, 93, 120–128, 201. (See LABELS.)
sign of place of business, 92, 95–99.
name of newspaper, 104–115.
mark on books in the olden time, 14.
name of natural product, 146–147.
green-seal on mineral-water bottle, 170.
INFRINGER, who is, 58.
may be the pirate himself, or innocent vendor, 58, 468.
agent, 472.
INITIAL LETTERS of name may by accident become valid mark, 212, 398.
not sufficient for legal signature, 308.
INJUNCTION, (See REMEDIES.)
an objection to granting, 31.

INJUNCTION (*continued*).
against use of another's name, 527, 531, 539–541, 554, 556.
an old firm title, 524, 526–527.
title of book, 547, 553.
publication, 548–550, 557.
place of amusement, 528.
hotel. (See SIGN-BOARDS.)
INJURIA SINE DAMNO, 499.
"INJURIOUS in itself," meaning of phrase in statute, 370–371.
restraint upon trade-protection of mark is not, 36.
INNOCENT VENDOR may be an infringer, 58.
not compelled to account, or pay costs, 471–472.
INN SIGN, not a technical trade-mark, 83, 90, 96–97.
IN PARI DELICTO, potior est conditio defendentis, 370.
INTENT, express or implied, an element in fixing damages, 508, 520.
must be proven to convict of misuse of word "patent," 357.
INTENTION to adopt is not adoption without use, 311–312, 382–384.
one having an, may register proposed mark, 282, 310.
permanently reside creates domicile, 289.
return to one's original country defeats domicile here, 309.
INTEREST OF COMMERCE, the trade-mark law is in the, 296.
INTERFERENCE, subject generally considered. (See Chap. XIV.)
when may be declared, 352, 622, 655–656.
demands skilful management, 617–619.
practice in, modelled on equity practice, 618.
defined to be an interlocutory proceeding, 621.
preliminary, first declared, 625.
object of, 626.
effect of, 627.
oath in, by whom to be made, 628.
statement not open to inspection until filing completed, 629.
evidence for party filing it, 631.
adjudication of case on preliminary statement, 630.
declaration and dissolution of interference, 633.
judgment based upon written concession of priority, 634.
notice to parties of declaration of, 635, 637, 656, App. p. 582.
in what order of time testimony taken, 636.
grounds of interference, 638.
access to testimony, 640.
printed copy of testimony, when required, 641.
postponement of taking testimony, or of hearing, 642.
motion for a rehearing, 643.
information of opponent's case, 644.
sources of evidence, 645–646.
closing of case, 647.
hearing, 648.

INTERFERENCE (*continued*).
appeal from Trade-mark Examiner, 649. 658–659.
examples of actual trials and opinions, 653 *et seq.*
INSTANT PERFECTION of title to trade-mark, 52, 54.
INSTRUMENT in writing, as evidence of assignment, 363.
INVARIABILITY is an essential attribute of a trade-mark, 143, 342.
INVENTION has nothing to do with trade-mark law, 346–347, pp. 527 (*note*), 528–529, 539.
INVENTOR alone has right to apply word "original" to product, 546.
IRREGULARITY in making oath, &c., fatal to protection, 316, 325, 340.
"IRVING HOUSE" case. (See *Howard* v. *Henriques*.)
"I X L," instance of same symbol for different owners, 68–70, 450.

J.

JACOB'S CATTLE distinguished by their marks, 3.
JAPANESE MARKS pirated in England, 74.
"JERUSALEM DELIVERED," fraud upon public, 553.
"JOB," originally formed of initials J. B., and lozenge, 398.
JODOCUS BADIUS, caution against pirate of book-mark, 14.
"JOHNSON'S AMERICAN ANODYNE LINIMENT" rejected, 135, 345.
JOINDER OF ISSUE in Patent Office, 575.
JOINT OWNERS of marks, application by, 604.
JOURNALS, or newspapers, 104–115, 550, 558. (See INFRINGEMENT.)
J. STYLES not a legal name, being too indefinite, 308.
JUDGMENT BY DEFAULT,
when defendant in action fails to make discovery, 470.
in interference case, 630.
based upon concession of priority. 634.
of Commissioner in interference is final, 650.
JUDICIAL OFFICERS,
sometimes confound technical terms, 90, 92–93, 98, 108, 222.
disagreements of, in conclusions, 65, 149, 244.
before whom oath may be made, 321.
JUNIOR applicant in Office, not chargeable with laches, 352.
adoptor of mark must fail, 623–624.
JURAT, valid although not dated, 323.
JURISDICTION,
of chancery attaches because of injury to owner of mark, 37, 39, 65.
the subject-matter must give to Patent Office, 298.
gives to the Federal courts, 353, App, p. 587.
JURISPRUDENCE has resolved innumerable questions by light of natural justice, 26.
JURY, inquiry by, in equity suit, in discretion of court, 466.
to fix damages for infringement, 502.
JUS ET FRAUS nunquam cohabitant, 685.
JUSTICE not dependent upon niceness of terminology, 101.
"*JUSTINUS ET FLORUS*," of Bernard Hector,
caution in, against piracy of trade-mark for book, 14.

K.

"K" within two concentric circles, decision examined, 149.
"KATHAIRON" case (*Heath* v. *Wright*), 491.
KNIGHT IN ARMOR known by device on shield, 254.
KNIGHTS TEMPLARS' renowned banner "*Beauseant*," 263.
KLOSTERMANN on Trade-marks, definition in, 85 (*note*).

L.

LABELS,
are not technical trade-marks, but mere vehicles for them, 155, 271–272.
are usually protected only by local laws, 83, 148.
mere analogues of trade-mark, 81, 521.
and wrappers, connecting-link between good-will and trade-mark property, 537.
made instruments of fraud, 538, 541-544.
instances of infringement of mere labels, 396, 418–419, 430–432, 477–480.
"LACKAWANNA COAL" case (*Delaware and Hudson Canal Co.* v. *Clark*), 190, 598, 657.
LACHES,
junior applicant not amenable to charge of, 352.
what not deemed as when one is seeking evidence, 498.
bad faith in plaintiff to lie by a long time, 497.
as applied to question of abandonment, 684.
"*LA CIVETTE*" sign-infringement case, 536.
LACK OF TRUTH, debars from protection 71. (See CLEAN HANDS.)
"*LA CRONICA*" newspaper case, 550.
"*LA FLOR DEL TROPICO*," a valid trade-mark for cigars, 273.
"LAMARTINE," valid as fanciful denomination, 216.
LANGUAGE of trade-marks easily read, 3.
heraldry speaks forth in many trade-marks, 5.
"*LA PRESSE*" infringed by "*La Presse libre*," 416.
LATIN merchants, distinctive signs of trade, 6.
language, in Middle Ages, effect of on men's names, 197, 213.
"*LA VALENTINE CEMENT*" not a valid mark, 190.
LAW OF NATIONAL DOMICILE, effect of, 293.
LAW OF TRADE-MARKS,
is in the interest of commerce, 296.
founded in natural right, 297.
commerce affords redress for infringement, 47.
protects a man in selling his own goods, 183.
"LAWFUL TRADE-MARK," as used in Act of July 8, 1870, 341, 352, 372, 381.
not to be refused registration, 195, 282, 334, 352.

LAWS OF VARIOUS COUNTRIES, (See Appendix.)
necessity for examining, 80.
LEGAL DEPOSIT of marks simply declarative, not attributive, 50.
LEGAL INTERPRETATION and principles of construction, 278.
LEGAL TITLE, must be clear before equity will intervene, 31, 155.
LEGALITY OF ACTS of public officers may be questioned, 329.
LEGISLATION, on subject of trade-marks,
has been vague, uncertain, incomplete, 26.
of various countries. (See Appendix.)
States of this Union referred to, 451, 454.
"*LES OISEAUX DE PROIE*," a publication case, 522.
LETTERS,
initial, as marks for painters, designers, sculptors, &c., 15.
fabrics of gold and silver in England, 19.
sometimes designations of products, 87.
LEX NON COGIT ad impossibilia, 363.
LEX SEMPER dabit remedium, 337.
LIBELS cannot be valid marks, 602.
LIMITATION OF PROTECTION, under Act of July 8, 1870,
generally is fixed at thirty years, 331.
when goods manufactured abroad, may expire at any time, 331.
"LIST OF HOUNDS" not exclusive property, 559.
LITIGATION not unduly encouraged by Patent Office, 613.
LIVY OF ALDUS, of 1518, piracy of trade-mark, 14.
LOCAL laws alone protect works of art, 60, 81.
peculiarities and customs in making oath, 321.
"LONDON CONVEYANCE COMPANY," name on coach, 560.
"LONDON DISPENSARY" case shop-sign, 529.
"LONE JACK," a valid trade-mark of fancy, 218.
LUTHER represented by symbol of a swan, 6.
LYDIANS, inventors of gold and silver coin, 9.

M.

"MACASSAR OIL" case, in France, 23.
"MAGNOLIA" a valid trade-mark for alcoholic liquors, 67.
MALA GRAMMATICA non vitiat chartam, 286.
MANUFACTURER,
has right generally to place his name on his products, 420.
may use his name as instrument of fraud, 425, 430–432, 434–436, 438.
of quack medicines not entitled to invoke aid of equity, 475.
unlawfully engaged, or deceiving public, &c., refused protection, 370–375.
MANUFACTURING AND TRADING CORPORATIONS,
the only kind of corporations that can have trade-marks, 277–300.
"MARIELAND" held not to be merely geographical, 193.

MARKS, generally. (See TRADE-MARK.)
sometimes distinguished from *trade-marks*, Eng. Act of 1862, p. 565.
upon animate property, 3, 16.
registration of swan-marks in England, 16.
seals, the most sacred proprietary marks, 4.
of sovereign upon coin, a guaranty of genuineness, 76.
trade, &c., property under law of nations, 22, 48–50.
assuming increased importance, 28.
may resemble each other and essentially differ, 33.
of workmen in quarries of Solomon's temple, 8.
MARQUE DE FABRIQUE ET DE COMMERCE of France, Belgium, &c., means same as "trade-mark" in English, 85.
MARRIED WOMEN as traders, marks protected, 285.
incapacity of, at common law, 285.
MASONIC SYMBOLS,
not calculated by their nature to serve as trade-marks, 342–344.
impossible to divest them of ordinary signification, 344.
liable to misinterpretation, and to deceive public, 344.
MASSACHUSETTS STATUTES referred to, 299, 427.
MEANING OF PHRASES AND TERMS,
"*any* person" or firm, &c., in Act of July 8, 1870, 283.
"any" corporation, has a restricted and limited sense, 297–300.
"exclusive use within the United States," in Act of 1870, 305.
"in force for thirty years" (trade-mark to be), 331, 333.
"lawful trade-mark," 341–347.
"merely the name of a person, firm, or corporation," 348–350.
"mark rightfully used at the time of the passage of this Act," 352.
"origin or ownership," indication of, 144–160.
MEASURE OF DAMAGES FOR INFRINGEMENT, (See Chap. XI.)
nominal damages, at least, always given, 501, 504.
defendant's profits is a usual guide, 502.
compensatory damages is the rule, 502–503.
special damages must be set forth in declaration, 504, 509.
proven, not presumed, 505.
difficulty of fixing a rule for trade-marks, 509, 512–517.
patent and copyright cases no criterion, 513–516.
exemplary damages, when allowed, 519–520.
"MEDICATED MEXICAN BALM" case (*Perry* v. *Truefitt*), 243, 479.
"MEEN FUN" case (*Hobbs* v. *Francais*), 485.
MELANCHTHON, change of surname into Greek, 213.
"MELAROMA," a valid trade-mark for a beverage, 273.
MEMBER OF FIRM to make sworn declaration of right, 320.
MEN'S AND WOMEN'S NAMES, as denominations of fancy: —
Albert, 185; Alexina, 348; Bismarck, 216; Daniel, 348; Dolly Varden, 218; Falstaff, 218; Gulliver, 218; Job, 398; Lamartine, 216; Minnie, 557; Our Fritz, 218; Paul Jones, 218; Phil Sheridan, 218; Rip Van Winkle, 218; Roger Williams, 216; and, Uncle Bob Lee, 218.

MERCHANDISE,
definition of term, as used in Act of July 8, 1870, 139–142, 298, 311.
books protected by trade-mark, merely as merchandise, 116–117.
symbol not a trade-mark, unless affixed to merchandise, 143, 310–311.
class must be specified, 310.
MERCHANDISE MARKS ACT (British) of 1862, 26, 102, 301, 453, p. 565.
comprehensive enumeration of kinds of marks, 102, p. 565.
deemed equivalent to treaty or convention, 301.
MERCHANTS, aliens, protection under Magna Charta, 301.
MICHAEL ANGELO signed paintings by monogram, 262.
"MINERAL SPERM" as fancy name for illuminating-oil, 273.
"MINNIE, DEAR MINNIE" case, name of song, 557.
MISREPRESENTATIONS, (See CLEAN HANDS; PROTECTION.)
in a trade-mark, destroy its legal efficacy, 72, 327, 370, 372, 374.
in procuring registry of mark, actionable, 357.
not amounting to fraud, does not vitiate, 72–73, 494–495.
defeats application for registration, 359, 327, 351, 370, 372, 375.
in misuse of word "patent" or equivalent term, 357.
statutory penalty for such misuse, 357.
in permitting one's name to be misused, 361.
literally true, false in intent, 71.
MODE of affixing mark to be stated in application, 313, 315.
MODELS of vicious application-papers, 592–594.
"MOLINE PLOW" case, qualifying marks, 597.
MONEY paid as fee, when returnable, 615–616.
"*MONITEUR*" of Paris, newspaper infringements, 415.
MONKS OF BORDEAUX marked wine as mineral-water, 77.
MONKS OF *LA GRANDE CHARTREUSE*,
suits for infringements of their trade-marks, 407–410.
MONOGRAMS, used as marks for many centuries, 262.
Dictionnaire des Monogrammes, Marques, &c., 15.
"MONTICELLO" not merely a geographical name, 193.
MORALITY must be inviolate in mark, 64, 370–373, 602.
"MORISON'S UNIVERSAL MEDICINE" case, 429, 562.
"MORSE'S INDIAN ROOT PILLS," 563.
MOTION,
to postpone taking testimony or hearing, 642.
open interference for rehearing, bad faith, 619, 643.
bring in a new party, interference, 603.
fix time for hearing, 647.
where motion heard in first instance, 646.
on appeal, 646.
"MOUNT CARMEL" held not to be merely geographical, 184, 657.
"MRS. MARPLE'S SALVE" case, 246.
"MUSICAL NOTE PAPER" not a trade-mark, 134.

N.

"NADAR," a pseudonym protected, 213.
NAME, what is a? 196.
of person, firm, &c., not a trade-mark, 195, 202.
fancy, of famous living or dead person, 216, 348, 426.
a country may be a valid trade-mark, 184, 193–194.
product solely made or sold by inventor of name, 220, 251.
newspaper, a valid trade-mark, 115, 415–417, 558.
books, 116–117, 547–549, 553.
a song, "Minnie," 557.
to be a valid mark must not be generic. (See Chap. III.)
of a man may lose idea of personality, 178–181.
cannot be assigned as a mark for another, 361.
sometimes illegal for himself, in trade, 200, 209, 434, 436, 438.
included among English local marks, 102, p. 565.
frequently changed in Middle Ages, 213.
of applicants to be written in full, 308.
may generally be attached to goods, *bonâ fide*, 390.
fraud may be inferred from usurping another's, 396.
one's name sometimes usurped without redress, 393, 555–556.
of old commercial house protected, 524, 526–527, 531.
a trader or firm protected, 521, 539–541.
firm, on dissolution of partnership, 530.
coach, 560–561.
NATIONAL,
bonds and bills, colored threads in paper, 74.
arms, not susceptible of private use as marks, 261.
flags blended with other objects to catch eye, 265.
comity regarded by the courts, 301.
conflicts dissolve partnership, 370.
"NATIONAL POLICE GAZETTE" case (*Matsell* v. *Flanagan*), 550.
NATIONALITY, commercial, may differ from political, 290–291.
NATURAL LAW, foundation of trade-mark rights, 46–51.
NEGLIGENCE. (See LACHES.)
NEOLOGISM, coiner of, may have title thereto, 219–221.
"NEW ERA" *omnium gatherum* case, 590.
"NIGHT BLOOMING CEREUS" not a valid mark, 166, 484.
NIHIL quod est contra rationem est licitum, 297.
NINEVEH, ancient, bricks with marks, 8.
"*NOMS DE PLUME*," 213–214.
NONDESCRIPT,
picture, vignette, &c., not valid marks, 89.
NON-RESIDENT CITIZEN regarded as a foreigner, 290–291.
NOSCITUR A SOCIIS, 132.

NOTARY PUBLIC, may administer oath to applicant, 321.
must in all cases affix official seal, 321.
certificate of, to affidavit, how made, 324.
NOTICE, of motion to take testimony, how served, 646.
proven, 646
for further time, 646.
to Office of inability to procure testimony, 646.
by Office of interference, 656, p. 582.
not taken of mere formal objection, 646.
NUMBERING of folios of depositions, 646.
NUMERALS, merely, not legal trade-marks, 225–233, 442.

O.

OATH required of applicant for registration, 320.
design of, is confidence, 580.
perverted by applicant or solicitor, 580.
OCCUPATION, name of, is not a valid mark, 161.
OFFENCES,
against morality or good faith defeat remedy, 370.
public policy in any wise, 370.
in fraudulently procuring registration, 367.
affixing "patent" or equivalent term, 357.
OFFICER OF CORPORATION to make oath, 320.
mere director is not such officer, 326.
"OINTMENT OF IMMORTALITY," hypothetical, 242, 374.
"OLD LONDON DOCK GIN" not a valid mark, 597.
"OLD MOORE'S FAMILY PICTORIAL ALMANACK" case, 257, 549.
ONE'S OWN NAME, what is it? 196.
the law knows but one Christian name, 196.
surname changed at pleasure, 196.
dispensed with, legally, 196.
translated into another tongue, 196.
used by himself as means of fraud, 200–201, 209, 561.
may generally be lawfully used in trade, 201–202.
sometimes be misused, without remedy, 393.
not protected, unless pecuniary loss ensued, 393.
not an essential part of trade-mark, 206.
prohibited from registration as a trade-mark, 334, 348.
autograph is his emblem of himself, 204.
not merely his name, 204.
pseudonym valid as mark of commerce, 213.
"ORIGIN OR OWNERSHIP," indication of, discussed, 144–160.
essential characteristic of trade-mark, 143–144, 148.
name originally geographical may suffice, 184, 192–194.
"ORIGINAL," or equivalent term, may be enjoined, 546.
proprietor takes precedence independent of registration, 49, 356.
"OU, the Old Man who lives in solitude," old Chinese mark, 215.

P

"PAIN KILLER" (Perry Davis') case, 273, 563.
"*PAPIER CREME DE LA RIZ*" held to be valid mark, 224.
"PARCHMENT DEED" held to be merely descriptive, 276.
PARIS, old booksellers of, had trade-marks, 14.
"PARSON'S PURGATIVE PILLS, P. P. P." not a trade-mark, 315.
PARTNERSHIP,
name or title of, protected, 521, 526.
with survivor, 526.
upon dissolution, 530.
"PATENT," or "patented," untrue use of term, 72.
may sometimes be used when patent expired, 72–73.
penalty of misuse of, 357.
PATENT CASES do not furnish rule for trade-mark cases, 513, 515, 676, 679.
PATENT OFFICE OF THE UNITED STATES,
place of deposit of foreign marks, pp. 557–560.
registration, under Act of 1870, 308.
officers and employés of, may register marks, 358.
will judge for itself in all cases, 327, 341, 351–352, 375, 607–612, 624.
does not possess powers of cancellation, 352, 624.
errors of, corrected without cost, 614.
will return fee when paid by mistake, 615–616.
preliminaries to application for registration in, 308 *et seq.*, 565 *et seq.*
rules of practice in, cited, 319.
practice in, generally, 565–616. (See INTERFERENCE.)
does not grant a "patent" for trade-mark, 357.
"PAUL JONES" may be a valid trade-mark, 218, 637.
"PAYSON'S INDELIBLE INK" case, curious, 271.
"PEARLS OF ETHER," a valid fanciful mark, 166, 236.
PENALTIES,
for infringement of mark, Act of 1870, 334.
fraudulent representations or registry, 367.
by indictment at common or local law, 451–455.
under treaties and conventions. (See Appendix.)
laws of various countries, App. p. 560 *et seq.*
PENNSYLVANIA STATUTES referred to, 396, *note*, 539.
PERSON, definition of term. in law, 283.
PERSONA ECCLESIÆ, a corporation sole, 299.
a minister of parish not a corporation meant by Act of 1870, 299.
PERSONAL TRADE-MARK, rule as to assignment of, 366.
PERSONALITY, a man's name may lose all idea of. (See NAME.)
PERVERSION of mark by transference to spurious goods, 443–447.
"PESSENDEDE" was *not* decided to be a trade-mark, 222.
"PETIT JOURNAL" newspaper case, 417.
"*PHARMACIE DE L'AMBASSADE D'ANGLETERRE*," sign, 529.

PHRASES explained. (See MEANING OF PHRASES AND TERMS.)
"PICTORIAL ALMANAC" case, 257.
PICTURE, as a trade-mark, 255–259.
PIRACY ON TRADE-MARKS. (See INFRINGEMENT; REMEDIES.)
may be committed by part-imitation, 385 *et seq.*
action on case for deceit, 392.
equitable remedy, 393, 451, 462 *et seq.*
indictment in State courts, 452, 454.
PIRATE, on sea or land, a common enemy, 24.
PLACE OF BUSINESS to be alleged by applicant, 308–309.
"POLICE GAZETTE" case, 550.
POMPEII, ancient, commercial signs in, 6.
POSTPONEMENTS in interference cases, 642.
POTIOR est conditio defendentis, 495.
PRACTICE in Patent Office, 565–616.
interference cases exemplified, 652 *et seq.*
PRELIMINARY INTERFERENCE,
detailed sworn statement required, 625.
statement serves as a pleading, 627.
when open to inspection of adversary, 629.
adjudication upon preliminary statement, 630.
for want of such statement, 630.
not evidence for party filing it, 631.
forms of statement. (See Appendix, p. 580)
PREREQUISITES OF LAW cannot be dispensed with, 329.
PRESUMPTION OF FRAUD, against infringer, 501, 505, 518.
must arise from evidence, not conjecture, 505.
PRIMA FACIE RIGHT not always questioned by Office, 581.
PRINTED COPIES of testimony, 641.
PRINTED PUBLICATIONS,
books protected by trade-marks, 116–118.
as merchandise, not literature, 117.
by titles as trade-marks, 118, 547.
newspaper headings may be valid trade-marks, 103–115, 558.
infringed by part-imitation, 415 *et seq.*
name of song may be protected, 557.
PRIORITY OF ADOPTION, concession of, 634.
"PRIZE MEDAL" not a valid trade-mark, 597.
PROCURING REGISTRY of mark by fraud, penalty for, 367.
PROFIT of defendant, not the measure of damages, 507–508.
PROPERTY IN A TRADE-MARK,
does not depend upon arbitrary law, 46, 51, 676–677.
protected by common law and by statutes, 47.
exists throughout domain of commerce, the world, 47, 51, 689.
not protected by some nations unless mark deposited, 48–50, p. 560 *et seq.*
cannot exist without an affixing to merchandise, 46.
title to, may be acquired instantly, 52.

PROPERTY IN A TRADE-MARK (*continued*).
all persons in trade may hold title, 53–56.
a non-trading corporation cannot have, 55. 297 *et seq.*
"*PROPRIÈTAIRES DE VIGNOBLES*" not a valid trade-mark. 599.
PROPRIETARY MARKS. (See EMBLEMS; MARKS; TRADE-MARKS.)
PROTEAN REPRESENTATION not a trade-mark, 79.
PROTECTION, theory of, as to trade-marks, 20. 306.
to alien friends as well as our own people, 21.
stipulated by treaty sometimes, 48, pp. 557–560.
sometimes dependent upon domicile, 47, 287.
residents abroad protected only by treaty or convention, 301.
to whom extended, generally, 62–65, 282.
duration of protection under Act of July 8, 1870, 330 *et seq.*
has always existed, in one form or another, 335.
must always exist in connection with class of goods, 66–70.
withheld, for lack of truth, 71–72, 357, 370, 374–375, 487–491.
unlawful business, 370.
immorality, 373, 602.
impropriety of emblem, 342–344, 602.
non-fulfilment of conditions of registration, 279, 316. 322, 325, 328–329.
PRUSSIA, (See "Convention with German Empire," p. 559.)
protection of trade-marks in, p. 572.
PSEUDONYM may be a valid trade-mark, 213–215.
PUBLIC OFFICER held to strict accountability, 329.
PUBLIC POLICY a ground for refusing protection, 370, 602.

Q.

QUACK MEDICINES discountenanced, 475–476.
QUADRUPED as a trade-mark, 87.
QUALITY, mere indication of, not a trade-mark, 164, 657, 658.
QUARRY-MARKS in ruins of Solomon's Temple, 8.
QUASI TRADE-MARKS. (See Chapter XII.)
"QUEEN OF THE MEADOW" a valid trade-mark, 275.
QUI FACIT per alium facit per se, 628.
QUOD AB INITIO non valet, tractu temporis non convalescit, 225.

R.

"RACE OF DILIGENCE," not applicable to registration, 352.
RAPHELENGIUS, bookseller at Leyden, trade-mark, 15.
"RAZOR STEEL" not a valid trade-mark for cutlery, 164, 276.
"READING SAUCE" label case, 542–543, 546.
RECIPROCITY in protection of trade-marks, 301, 332.
American citizens resident abroad dependent upon, 291.
Act of July 8, 1870, intended to promote, 290.
by treaties and conventions, pp. 557–560.

"RED RACER" a valid mark for implement. 275.
REGISTRATION, optional in this country and some others, 18, p. 560 *et seq.*
does not create title to a trade-mark, 225, 376–383. 592, 682.
certificate of, *primâ facie* evidence of certain facts, 355.
conditions precedent to registration. (See Chap. VI.)
renewal of, under Act of July 8, 1870, 330–333.
a "patent" is not granted for a trade-mark, 357.
of doubtful cases deprecated, 229, 310.
fraudulent marks punished, 367.
mere names of persons, &c., prohibited, 334, 341.
marks not "lawful" prohibited, 334, 341.
refused as descriptive, instances, 133–138, 167–177, 276–277. 345, 347.
for deceit, 370, 375, 609–611.
impropriety of emblem, 342–344, 602.
REGISTERED TRADE-MARKS, examples of, 273–275.
list of 1100, with brief descriptions, &c., p. 602 *et seq.*
REGISTRANT, name of each, down to January, 1873, p. 602 *et seq.*
REGULATIONS, Commissioner of Patents to prescribe, 319, 359.
REISSUE, after surrender, 614.
REJECTION OF APPLICATION FOR REGISTRATION,
on account of lack of title, &c., 572.
REMEDIES, law and equity, 451–473.
election of, 506.
REMEDY, a figurative expression, 337.
right to, rests upon two maxims, 337.
at common law not affected by the statute, 369.
action on the case, 334, 338, 392.
at law refused for fraud, deceit, &c., 370.
injunction, 334, 338, 393 *et seq.*
invariably granted when necessary, 447.
RENEWAL OF REGISTRATION, 330–333.
RESIDENCE,
in foreign country imparts national character, 290, 295.
to change domicile must be voluntary, 289.
in non-reciprocating country debars from registration here, 291.
a citizen of United States held to be commercially a Chinaman, 289.
definition of term under Act of July 8, 1870, 309.
person may have more than one, 309.
as distinguished from *domicile*, 287, 293, 295, 309.
must be alleged by applicant for registration, 307.
"*REVALENTA ARABICA*," infringement on "*Revalenta-Warton*," 439.
"REVERE HOUSE" coach case, 458.
"RICHARDSON'S PATENT LEATHER SPLITTING MACHINE."
not a trade-mark, 611.

RIGHTS analogous to those of trade-marks, 521–564.
"RIGHTFULLY USED," meaning of term in Act of 1870, 352.
RIGHT USE of words, necessity for, 300.
legal terms, 83–84, 130.
"RIP VAN WINKLE" a valid trade-mark, 218, 613.
RODGERS' CUTLERY spuriously imitated, 74, 428, 684.
"ROGER WILLIAMS" a valid trade-mark of fancy, 216, 426.
ROMANS, ancient, signs and trade-emblems, 6.
coined money, 578 years B.C., 9.
ROME, protection of trade-marks in, p. 572.
"ROSEBAUME" (from Rose, the owner), valid mark, 217.
ROWLAND & SONS' case in France, 302.
"ROYAL BATSWING," valid mark for corsets, 273.
"ROYAL VICTORIA" a valid trade-mark, 216.
RUSSIA, treaty with, as to trade-mark, p. 559.
trade-mark laws of, p. 572.

S.

"SAMSON BRACE," valid mark for suspenders, 273.
SARDINIA, trade-mark law of, p. 573.
SAXONY, trade-mark law of, p. 573.
"SCHENCK WATER-PROOF TAGS," &c., not a valid mark, 133.
"SCHIEDAM SCHNAPPS" case, 596.
SCIOLISTS confound technical terms, 131.
SCIOTO for a product of Scioto Co., *query*, 193.
SCOTLAND, Merchandise Marks Act of 1862, p. 565.
SEALS of ownership coeval with traffic, 2.
most sacred of proprietary marks, 4, 5.
SECRET PROCESS, breach of faith in divulging, 562 *et seq.*
"SERPENT" not a trade-mark for artificial serpent, 166.
SIC UTERE tuo ut alienum non lædas, 420.
SIGNATURE, as authenticating mark, 1.
a trade-mark is one's commercial signature, 130.
itself as a trade-mark, 204–206, 350.
fac-simile of, as a trade-mark, 207–211.
SIGN-BOARDS, are not trade-marks, 96–99, 101, 535.
protected by courts of equity, 521, 528–529, 535.
"SIMMONS' GENUINE LIVER MEDICINE" case, 418, p. 625.
SINCERITY, an essential requisite of mark, 71, 143, 242, 327, 370.
"SIR JAMES CLARK'S name usurped with impunity, 393, 555.
SMECTYMNU-US, initials of five men's names, 118.
"SNOW FLAKE STARCH" not valid if for imitation, 174.
SONG, name of, protected as *quasi* mark, 557.
SPAIN, trade-mark law of, p. 573.
SPECIAL DAMAGES not recoverable unless pleaded, 502, 504, 509.

SPECIFICATION OF APPLICANT FOR REGISTRATION,
considerable degree of accuracy required, 570.
must be written in the English language, 570.
essence of mark must be evolved on papers, 587–588.
indefiniteness defeats protection, 588–590.
breadth of claim, how best attained, 586.
simplicity and breadth go together, 587.
too great breadth defeats object, 588.
degree of specificness required, 591 *et seq.*
difficulty in describing colors, 585.
rules of propriety in selecting emblems, 602.
allegations true in letter false in spirit, 607.
but *one* class of merchandise in certificate, 590.
hypothetical cases analyzed, 592.
amendment, how made, 572–573, 577.
requiring supplemental oath, 578.
form of, p. 577.
"SPIEGELMACHERS, assumed name of early printers, 14.
the speculum their symbol, 14.
"STANHOPE," man's name for a carriage, 181.
"STAR OF THE WEST" a valid trade-mark, 275.
STATEMENT, by applicant for registration, 308–320.
upon preliminary interference, 625 *et seq.*
"STONEBRAKER'S MEDICINES," &c., case, 435–436.
"SUNLIGHT," valid mark for illuminating-oil, 274.
"SUNNY SOUTH" valid mark for stoves, 273.
SURNAME, subject considered, 196.
dispensed with, or changed at pleasure, 196.
translated into foreign tongue, 196–197.
SURRENDER and reissue, 614.
"SWEET OPOPANAX OF MEXICO" case, 493.
SYMBOLS of ownership. (See MARKS; TRADE-MARK.)

T.

TECHNICAL MARK. (See TRADE-MARK.)
must be distinguished from its analogues, 80 *et seq.*, 130–133.
label, notice, advertisement, card, &c., is not, 133, 155, 271–272.
mere descriptive designation not such mark, 134, 166–177, 180, 203.
label with coupon, in nature of license, is not, 140.
to be sold as merchandise, is not, 141–142.
cannot consist of *mere* numerals, 225, 233, 442.
designation of occupation or business is not, 161.
quality of article is not, 164.
genus is not, 164–165.
TERM OF PROTECTION, under registration Act, 330–333.
is generally for thirty years, 330.
on foreign-manufactured goods may expire sooner, 330–332.

TERM OF PROTECTION (*continued*).
may be renewed six months before expiration, 330.
expiration of, does not affect common-law rights, 330.
in various countries, App. p. 560 *et seq.*
TERMS EXPLAINED. (See MEANING OF PHRASES AND TERMS.)
TESTIMONY, in Patent Office cases,
of witnesses, principal source of evidence, 646.
subpœna for witness to appear, 639.
parties may testify on own behalf, 639.
access to, and copies of testimony, 640.
when testimony must be printed, 641.
postponement of time for taking, 642, 646.
taken upon notice to adverse party, 646.
cross-examination of witnesses, 646.
folios to be numbered consecutively, 646.
form may be narrative, or interrogative, 646.
must comply with rules, 646.
taking of, by one party only, case closed, 647.
testimony sealed and at once forwarded, 646.
objection to consideration of, at hearing, 646.
abstracts of testimony, 650.
"THOMSONIAN MEDICINE" case, 459.
TICKETS or labels to be sold are *merchandise*, not *marks*, 141 142
"TIGER" case, *idea* sought to be registered, 606.
TIME required for gaining perfect title to mark, 52, 129.
TITLE OF BOOK protected in equity, 547 *et seq.*
may possess all characteristics of trade-mark, 558.
TITLE TO A TRADE-MARK,
may generally be held by any person, 53, 57.
exceptions, persons under legal incapacities, 283.
a necessary incident of trade, 54, 297–300.
non-trading corporation cannot hold, 55, 297–300.
when assignee in bankruptcy may hold, 663.
TRADE-MARK, definition and nature of. (See Chap. III.)
antiquity of, 1–3.
depends on natural right, not arbitrary law, 46–50, 86, 129, 682.
time required for perfection of title to, 52.
may be resumed after being discarded, 677, 690.
right to use is necessarily exclusive in nature, 303.
must be carefully distinguished from its analogues, 80, 130–131.
should be susceptible of being easily read, 78.
office of, to designate article as product of him who uses it, 39, 144, 516.
should be index of truthfulness and good-faith, 343.
does not act as injurious restraint upon trade, 36.
is sometimes more valuable than patent, 29.
who may acquire property in, 53–57.
differs essentially from patent or copyright, 112, 515, pp. 531, 675.

TRADE-MARK (*continued*).
is one's commercial signature to his goods, 130.
may be used on any manufacture or object of commerce, 146.
product of nature as merchandise, 147.
is a short phrase between buyer and seller, 147.
to be valid must be recognized by public, 151.
credit given to it is highest evidence of its validity, 150.
is frequently the purchaser's only guide, 152.
indication of place, 437.
should strike the eye by clearly-defined character, 88, 145.
ear sometimes, when pronounced, 88, 145.
impress memory as it does merchandise, 269.
proper symbol only can become, 127, 342, 602.
it may have been merely a name of region, 184, 193–194, 249, 273.
man's name, 216, 218.
may consist of one's autograph, 204.
fac-simile of signature, 207.
a pseudonym, 213–215.
derivation from one's name, 217.
peculiar hand-writing, 249.
name of new product, 245, 251, 601.
multifarious objects, 87, 602.
meaningless in itself, when affixed is owner's emblem, 88.
its nature distinct from all other property, 130, 253–254, 675.
the less descriptive of goods the better, 243.
valid from mere long user and reputation, 317.
confidence of public the test of validity, 145.
color may be an essential element. (See COLOR.)
when mark assigned. (See ASSIGNMENT.)
has certain essential characteristics, viz.: —
application to merchandise, 54, 66–70, 129, 310–312, 335, 680.
duration limited only by volition, or trade, 46–47, 143, 331, 681.
exclusiveness of right to use, 143, 303, 679.
individuality (free from confusion), 89, 266, 269, 342, 353–354, 605.
invariability of form, 143, 269, 583–585, 588, 596–597, 606.
universality of owner's right, 26, 109, 143, 260, 689.
use in lawful business, 143, 370.
sincerity and good-faith, 71, 143, 327, 370, 372–375, 607–612, 667.

TRANSFER OF A TRADE-MARK. (See ASSIGNMENT.)
Commissioner of Patents to make regulations for, 359.
at common law, 360.
as affected by law of domicile, 293.
applicant claiming under, must set forth title, 303.

TREATY or convention for protection of marks, 282–302.
British Act of 1862 equivalent to convention, 301.
American citizen resident abroad protected here under, 301.
with various nations. (See Appendix.)

TRIAL BY JURY,
constitutional right to, exists only at law, 466.
within discretion of equity court, 466.
TRICKS OF TRADE, not always guarded against, 448.
TRUTH and good faith. (See CLEAN HANDS.)

U.

UBI JUS IBI REMEDIUM, 337.
"UDOLPHO WOLFE'S AROMATIC SCHIEDAM SCHNAPPS"
case, 596.
UNIVERSALITY of owner's right to trade-mark, 26, 109, 143, 260, 689.
UPTON on Trade-marks cited, 63, 111.
USE OF PROPRIETARY MARKS. (See TRADE-MARK.)
by ancients, 1–13.
in lawful business essential, 143, 370.
name of firm after dissolution, 524, 530.
by survivor, 526.
assignee, 525–527.

V.

VAGUENESS OF LEGISLATION as to trade-marks, 26.
VALIDITY OF DOCUMENTS dependent on seals and signs, 1, 5.
"*VALLEE D'AURE*" a mere geographical name, 187.
"VALLEY GEM," good trade-mark for piano-fortes, 273.
"VALVE JAR" rejected, as merely descriptive, 134.
"VEGETABLE SICILIAN HAIR RENEWER" case, 425.
VENDIBLE COMMODITY, only object of trade-mark, 54, 66–70, 129,
310-312, 335, 680.
VENETIAN PRINTERS' MARKS, 14, 15.
"VICTORIA" a valid trade-mark, 185.
VIGILANTIBUS, non dormientibus, leges subveniunt, 64.
VINTNERS' SYMBOL, a green bush, 6.

W.

WAARENBEZEICHNUNGEN ODER FABRIKZEICHEN, MARKEN, 85.
WATER-MARK on paper detects forgery, 7.
"WATER WHITE," a valid mark for refined petroleum, 274.
WECHELENSES' marks on publications, 15.
WEDGWOOD'S reliance upon trade-marks, 29.
family name, as mark, for centuries, 216.
"WELLINGTON" as a fancy name for boots, 181.
"WESTERN DUTCHMAN" a valid trade-mark, 275.
"WHAT CHEER HOUSE" case, 92.

"WILLOW SPRING ICE" merely descriptive, 247.
"WINSLOW'S (Mrs.) SOOTHING SYRUP" case, 201, 426.
WIRTEMBERG, trade-mark law of, 573.
"WISCONSIN WOOD CHOPPER," a valid mark for axe, 193.
"WISTAR'S BALSAM OF WILD CHERRY" case, 491.
WITNESS. (See TESTIMONY.)
name of, to be in full on application-papers, 308.
how compelled to testify in Patent Office case, 639.
allowed same fees as in Federal courts, 639.
when fee must be paid in advance, 639.
party a competent witness on own behalf, 639.
WORDS,
may constitute trade-marks, 1, 219–220.
effect of a careless use of, 88, 108, 131.
WOSTENHOLM & SON'S "I X L" case, 68–70, 450.
"WOVEN WIRE MATTRESS" case, rejected, 277.
WRAPPERS, as *quasi* trade-marks, 537 *et seq.*
WRONG-DOER cannot qualify his own wrong, 518.
restraint of. (See REMEDIES.)
WRONGFUL INTENT, inquiry into, in fixing damages, 508

X.

"X" formed of two fishes crossed, as mark for fish, 250.
"X," "XX," "XXX," mere indications of degree, not trade-marks, 162–163, 597.

Y.

"YANKEE SOAP" case, 119–125, 597.
"YELLOW MOSS CHEWING TOBACCO," not descriptive, 173.
"YOUNG AMERICAN" a valid tra le-mark for ink, 218.

Z.

"ZERO" a valid mark for water-coolers, 273.

Cambridge: Press of John Wilson & Son.